



**ARKANSAS STATE HIGHWAY
AND
TRANSPORTATION DEPARTMENT**

PROJECT OVERSIGHT PLAN

OCTOBER 1, 1993

REVISED: DECEMBER 3, 2001

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Dan Flowers
Director of Highways
and Transportation

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PROJECT OVERSIGHT PLAN

PART 1 - GENERAL

I. Introduction

This plan sets forth the standards and procedures adopted by the Arkansas State Highway Commission and the Federal Highway Administration (FHWA) for administering those projects for which the Arkansas State Highway and Transportation Department (AHTD) has project oversight. It further provides certification that all work undertaken on these projects is in accord with these standards and procedures.

Federal legislation has provided the States with great flexibility in using Federal-aid highway funds. This document outlines the working relationship between the AHTD and the FHWA, Arkansas Division for oversight of Federal-aid projects.

While Federal legislation now requires States to assume oversight responsibility for non-National Highway System (NHS) projects, it also allows States to assume the oversight responsibility for non-Interstate NHS projects. In this oversight role, the States are delegated the responsibility and authority for project decision-making in these activities:

1. Design
2. Right-of-way
3. Plans, specifications and estimate (PS&E)
4. Contract awards
5. Construction inspections
6. Final acceptance
7. Materials sampling, testing, and certification

The FHWA will continue to be involved in all aspects on a project-by-project basis in activities not specifically mentioned above including planning and ensuring compliance with non-Title 23 Federal laws, including the National Environmental Policy Act (NEPA). The FHWA still maintains overall accountability for all Federal-aid programs regardless of oversight responsibility.

The AHTD will continue to assume many of the responsibilities for project activity that were formerly vested with the FHWA. The AHTD will continue its oversight role with oversight responsibility for:

- all non-NHS projects,
- all non-Interstate NHS projects, with exceptions noted below, and
- all Interstate system projects which are estimated to cost less than \$1,000,000, except as provided below.

The FHWA will continue to authorize the above-listed types of projects for fiscal purposes on a project-by-project basis.

The FHWA will retain oversight responsibility for:

- all Interstate system projects which are estimated to cost more than \$1,000,000,
- all projects estimated to cost more than \$1,000,000 on Congressionally-designated High Priority Corridors 1, 8, 18 and 39 (Highway 71, Highway 412, future I-69 including the Pine Bluff-Monticello connector, and Highway 63 between Jonesboro and I-55),
- all projects estimated to cost more than \$1,000,000 on Highway 67 (freeway north of Interstate 40), North Belt, and Highway 65 north of Highway 412, and
- other Federal-aid projects by mutual agreement between AHTD and FHWA.

The FHWA will also have oversight responsibility for consultant contracts involving any project for which it has oversight responsibility. The FHWA will retain project oversight responsibility on any Federal-aid project if requested by AHTD.

At the time a project is programmed (state job number assigned) a preliminary determination of Federal (F) or State (S) oversight will be made and the appropriate (F) or (S) placed at the end of the job name. If oversight responsibility subsequently changes, the (F) or (S) designation will be changed accordingly.

Project activities that are under AHTD oversight will still be subject to selected FHWA program reviews to be conducted jointly with AHTD staff.

Forest Highway, Public Lands or other project types that are administered by the FHWA's Federal Lands Highway Division are subject to FHWA oversight in accordance with the agreement between the AHTD and the Federal Lands Highway Division.

II. Definitions

AASHTO	American Association of State Highway and Transportation Officials
AHTD	Arkansas State Highway and Transportation Department
CFR	Code of Federal Regulations
City	Respective city agency or official charged with the responsibility of local road and street control
County	Respective county agency or official charged with the responsibility of local road and street control
DBE	Disadvantaged Business Enterprise
Department	Arkansas State Highway and Transportation Department
EEO	Equal Employment Opportunity
FHWA	Federal Highway Administration
LRFD	Load and Resistance Factor Design
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act
NHS	National Highway System
PDD	Planning and/or Economic Development Districts
Plan	Arkansas State Highway and Transportation Department Project Oversight Plan
STIP	Statewide Transportation Improvement Program
Title 23	Title 23 of the United States Code (relating to highways)

Titles used herein (Director, Chief Engineer, etc.) refer to the current AHTD officer or their designee.

III. Policy

- A. The Department will follow sound engineering, administrative, fiscal and managerial practices in the expenditure of Federal, State and local funds and will comply with all applicable laws in the selection, development, construction and maintenance of projects under this Plan.
- B. All Title 23 requirements for metropolitan and statewide planning, competitive bidding, contract award and Davis-Bacon Act Wage Rates remain in effect and will be administered by the AHTD. The legal requirements of non-Title 23 programs (e.g., NEPA, Civil Rights, Equal Employment Opportunity, Executive Orders, Uniform Relocation and Real Properties Acquisition Policies Act, Disadvantaged Business Enterprise Program, etc.) will be followed, and where required by regulation, project approvals will be obtained from the FHWA for all Federal-aid projects including those for which the AHTD has assumed oversight responsibility. Applicable Federal requirements are listed in Appendix H.

IV. Operating Procedures

- A. State and Federal regulations, directives, manuals, and operating guides are listed in Appendix E.
- B. Exceptions to standards or procedures will be approved in writing by the Chief Engineer. All geometric design exceptions for projects on the NHS, regardless of funding or oversight responsibility, will be submitted to the FHWA for consideration and approval. Each AHTD office requesting an exception or waiver will keep a file of those approved actions. Such files will be available to the FHWA.
- C. Changes in the state-of-the-practice may be reflected through addenda to any of the documents listed in Appendix E.
- D. Projects proposed for implementation with Federal-aid Safety funds will be approved by the Chief Engineer.
- E. The AHTD's current procedures provide for all aspects of project development and administration. The AHTD's internal policies and procedures as well as United States Codes and regulations will form the basic program guidelines by which the AHTD and the FHWA will conduct program reviews.

V. Applicability

This plan will apply to the design and construction phases for those projects for which the AHTD has assumed oversight responsibility.

PROJECT OVERSIGHT PLAN

PART 2 - PLANNING & PROGRAMMING

I. Functional Classification and Project Programming

Procedures for determining functional classification and deciding whether to include a project in the appropriate Transportation Improvement Program will be the same for all Federal-aid projects regardless of oversight responsibility. Individual project programming procedures will be in accordance with the "project-by-project" option allowed by the FHWA.

II. Early Public Involvement

Procedures for informing and involving the public in the development of Long Range Plans (LRPs) and Transportation Improvement Programs (TIPs) have been approved by the AHTD and the FHWA (see Appendix B). Developing the Long Range Plan is the responsibility of the Planning and Research Division.

III. Transportation Improvement Programs

Development of Transportation Improvement Programs in urbanized areas will be coordinated by the appropriate MPO. Consultation and cooperation with local officials required by FHWA regulations will be handled by the Planning and Research Division through its normal participation in the urbanized area planning process.

The Programs and Contracts Division will be responsible for compiling the Statewide Transportation Improvement Program. Project selection and prioritization will be in accordance with Federal regulations and public involvement procedures approved by the FHWA (See Appendix B).

IV. Environmental Review

The environmental impacts of each project will be reviewed and documented in compliance with NEPA, 23 CFR 771, and the agreement for documenting categorical exclusions (see Appendix C).

Before a project is let to contract, it will be reviewed to assure that the plans and specifications conform to the approved environmental document and that mitigation measures are incorporated. After the project is completed, environmental documents will be reviewed to assure that the project was constructed in compliance with all environmental provisions.

V. Public Hearings

All public hearing activities will follow procedures approved by the FHWA in accordance with 23 CFR 771.111 (See Appendix D).

Location and design documentation will be prepared by the appropriate design division and submitted to the Chief Engineer for approval.

PROJECT OVERSIGHT PLAN

PART 3 - DESIGN

I. Lead Divisions

- A. The lead division responsible for coordinating the design of projects on the State Highway System is the Roadway Design Division.
- B. The lead division responsible for coordinating the design of projects on County Road Systems is the State Aid Division.
- C. The lead division responsible for coordinating the design of projects on City Street Systems is the Roadway Design Division.
- D. The lead division responsible for coordinating the design of traffic control-type projects is the Roadway Design Division.
- E. The lead division responsible for coordinating the development of safety projects (high hazard location and rail/highway) is the Programs and Contracts Division. Actual project design will be by the Roadway Design Division.

II. Design Standards

- A. Design criteria will conform to current AHTD and AASHTO policies. The AASHTO and FHWA guidelines provide additional design guidance but are not considered as policy.
 - 1. Geometric design criteria for new construction and major reconstruction will be, as a minimum, in accordance with criteria established in AASHTO's "A Policy on Design Standards-Interstate System" or in the appropriate section of the current, adopted edition of the AASHTO publication, "A Policy on Geometric Design of Highways and Streets," as noted below:

Arterials	Arterial Standards
Major Collectors.....	Collector Standards
Minor Collectors.....	Local Standards
Locals	Local Standards

On collectors and locals, shoulders may be surfaced across their entire width, regardless of the widths of bridge structures.

Exceptions to geometric design criteria will be handled in accordance with procedures outlined in Part 1.IV.B.

2. Resurfacing, Restoration and Rehabilitation (3R) design standards will be in accordance with the Department's 3R Guidelines which have been approved by the FHWA.
3. The project design speed will meet or exceed AASHTO minimum values for the functional classification of the facility being designed. On non-NHS routes, use of design speeds less than AASHTO values may be recommended by the Assistant Chief Engineer for Design and approved by the Chief Engineer. In some cases, the project design speed will be less than the regulatory speed limit. Where this occurs, appropriate signing and pavement marking and other appropriate treatments will be installed to provide advance warning for the specific geometric elements involved.

On NHS routes, use of design speeds less than AASHTO values may be recommended by the AHTD to the FHWA for approval.

4. The geometric design of a facility will take into consideration, and incorporate, as appropriate, findings and recommendations of the Congestion Management Systems developed by MPOs in the Transportation Management Areas.
 5. The design of all Intelligent Transportation System projects will be consistent with established national architecture standards.
- B. Structural design will be in accordance with the current edition of the AASHTO "Standard Specifications for Highway Bridges" or the "LRFD Bridge Design Specifications," and current AHTD specifications. Bridge layouts will be approved by the Assistant Chief Engineer for Design.
- C. For non-NHS projects, pavement design procedures will be in accordance with the current adopted edition of the "AASHTO Guide for Design of Pavement Structures" or other procedures adopted by the AHTD. Minimum standards for low volume roads, overlays, and bituminous surface treatments may be recommended by the AHTD Pavement Selection Committee and approved by the Chief Engineer. Pavement design standards on County projects will be in accordance with the AASHTO Guide except that the ultimate section may be constructed in stages.
- D. For NHS projects, pavement design procedures will be those approved by the FHWA in accordance with 23 CFR 626.
- E. Hydraulic design criteria will be in accordance with the current AHTD Drainage Manual.

- F. Designs will comply with all applicable air, noise and water quality standards established by State and Federal law.
- G. Traffic control device standards will be in accordance with the current "Manual on Uniform Traffic Control Devices" and other applicable AHTD regulations and Federal guidelines.
- H. Bicycle facilities will be developed in accordance with the current AASHTO "Guide for the Development of Bicycle Facilities."

PROJECT OVERSIGHT PLAN

PART 4 - RIGHT OF WAY

I. General

The AHTD Right of Way Division maintains liaison with appropriate local officials. Where right-of-way acquisition is the responsibility of local officials, the Right of Way Division will provide oversight and appropriate assistance in the right-of-way phase of project development. The Right of Way Division will certify the local officials' compliance with all appropriate provisions of 23 U.S.C., 49 U.S.C., pertinent Federal Regulations, and, if appropriate, the AHTD Right of Way Procedures Manual.

Regardless of project type, system, or cost, all right-of-way functions will comply with 23 U.S.C., 49 U.S.C., and pertinent Federal Regulations. Copies of all right-of-way certifications for Federal-aid projects will be provided to the FHWA.

The following right-of-way and utility adjustment procedures are in effect but may be modified by specific Commission Minute Order:

II. Right-of-Way Acquisition and Utility Handling - State Highway Projects

- A. Arterials. Whenever any portion of a project is on an arterial state highway, right-of-way acquisition and utility adjustment for the entire project will be handled in accordance with all requirements and procedures with appropriate certification made by the Right of Way Division and approved by the Chief Engineer.

If the project consists of improvement at the intersection of two state highways, one an arterial and the other a non-arterial, right-of-way and utility handling will be handled in accordance with arterial procedures.

- B. Collectors and Locals. Right-of-way acquisition will be accomplished in cooperation with the appropriate County Judge and/or City official associated with the project. The AHTD will provide just compensation and relocation assistance necessary to acquire the needed right-of-way.

Utility adjustments will be handled in accordance with the AHTD's Utility Accommodation Policy.

- C. Local Financial Participation. Local officials or others may participate in any project cost in order to expedite the implementation of the project.

III. Right-of-Way Acquisition and Utility Handling - Non-State Highway Projects

- A. Right-of-way acquisition and utility adjustments will be the responsibility of the appropriate County or City. Right-of-way acquisition and utility adjustments must meet all applicable Federal regulations and be in accordance with the AHTD Right of Way Procedures Manual.

- B. The State Aid Division will handle coordination with Counties. The Right of Way Division will handle coordination with Cities. The Right of Way Division will certify compliance with all applicable regulations.

PROJECT OVERSIGHT PLAN

PART 5 - PRECONSTRUCTION CONTRACT ADMINISTRATION

I. Plans, Specifications, and Estimates

- A. Upon receipt of plans in the Programs and Contracts Division, a plan review will be conducted and appropriate Supplemental Specifications dealing with EEO, wage rates, etc., will be assembled. (Davis-Bacon wage rates will apply to all projects except those on Rural Minor Collectors or on Local Roads.)
- B. A detailed estimate based upon plan quantities will be prepared by the Roadway Design Division or the State Aid Division.
- C. The project will be added to the list of potential projects for the upcoming letting. This list will be submitted to the Assistant Chief Engineer for Planning for review and approval and then to the Chief Engineer for review of the projects and total estimates.

II. Advertising

- A. Approximately two weeks prior to advertising a letting, a current status of projects proposed for the letting will be forwarded to the Assistant Chief Engineer for Planning for review. This status will reflect current information on all projects regarding environmental review, railroad coordination, right-of-way and utility handling, and any special conditions (see Appendix F).
- B. Prior to transmitting information to the newspapers for the advertisement, an updated status of projects list for final authorization to advertise will be forwarded by the Division Head of Programs and Contracts Division through the Assistant Chief Engineer for Planning to the Chief Engineer for approval.
- C. Upon approval, the Programs and Contracts Division will notify the statewide newspaper(s) and trade journal(s) (currently, Construction News) of the projects to be advertised, will post the advertisement on the AHTD web site, and will mail to all DBE firms and subscribing contractors the notices of upcoming projects. The advertising period will normally be four weeks. When an advertising period of less than four weeks is justified, the Chief Engineer may approve a shorter period.
- D. Project advertisements will meet all non-Title 23 requirements.

- E. In unusual circumstances where all preconstruction activities will not be complete prior to advertising, the Chief Engineer may authorize advertising subject to the completion of these activities prior to opening bids.

III. Bidding

- A. Bidding and non-bidding proposals will be issued in accordance with AHTD procedures which have been approved by the FHWA.
- B. Bids will be received and opened in accordance with all Federal-aid requirements.
- C. Bids will be reviewed by the Programs and Contracts Division and recommended for consideration of award or rejection to the Assistant Chief Engineer for Planning.

IV. Contract Award

- A. The Chief Engineer, the Assistant Chief Engineer for Planning, the Assistant Chief Engineer for Design, and other staff members will make a tentative award or rejection recommendation for each project.
- B. The Director of Highways and Transportation and the Arkansas Highway Commission will make the decision on contract awards based on the recommendations of the Chief Engineer.
- C. Contractor notification, bonding, and contract execution will follow all Federal-aid guidelines.
- D. The AHTD will complete Form FHWA-45 and the bid tabulation information sheet for all projects on the NHS which have award amounts greater than \$500,000 and for which it has oversight responsibility. These completed forms will be provided to the FHWA Division office.

PROJECT OVERSIGHT PLAN

PART 6 - CONSTRUCTION

I. General

Monitoring of Federal regulations pertaining to labor, safety, disadvantaged business enterprises, training, environment, right-of-way, materials acceptance, change orders, etc., will be documented in accordance with current procedures (refer to appropriate FHWA or AHTD manuals).

II. Project Administration

- A. The Resident Engineer and his staff are responsible for obtaining compliance with the contract plans and specifications during construction of all projects and generally have daily contact with the projects.
- B. The District Engineer oversees the Resident Engineer's work and is also responsible for contract compliance. The District Engineer has routine contact with the projects in his District but not necessarily daily contact.
- C. Staff Construction Engineers act as consultants to the Districts to ensure that AHTD policies and procedures, including contract compliance, are followed. Staff Construction Engineers also act as liaisons between the Districts and Central Office Divisions.
- D. All projects are audited by the Contract Estimates Section to ensure that all measurements of pay quantities and subsequent payments are in accordance with the contract specifications. The Contract Estimates Section also ensures that other project documents, such as Materials Certifications, Form FHWA-47, etc., are complete, correct, and on file before a project is closed.
- E. The Final Construction Inspection Report is sent to the Construction Office for distribution. The Federal Aid Section of the Fiscal Services Division will use it and the final estimate from Contract Estimates Section as notice that a project is complete and ready to close.
- F. Internal Audit Section audits Resident Engineers' records and operations on selected construction projects to determine if the job specifications and Department policies are being followed.

The Construction Inspection Report form shown in Appendix G-1 is used by the District Engineer for interim and semi-final inspections and the Final

Construction Inspection Report shown in Appendix G-2 is used for the final inspection. The District Engineer is responsible for the inspection and acceptance of all AHTD oversight projects. On Federal-aid projects on the National Highway System, emphasis will be given to performing interim inspections on the major phases of work.

- G. The AHTD will obtain Form FHWA-47 for all projects on the NHS which have award amounts greater than \$1,000,000 and forward it to the FHWA.

APPENDICES

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- B - Early Public Involvement Process**
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ARKANSAS STATE HIGHWAY COMMISSION

MINUTE ORDER

Statewide

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WHEREAS, the Director and the Federal Highway Division Administrator entered into an agreement dated October 1, 1992, to exempt projects not on the National Highway System from Federal Highway Administration review; and

WHEREAS, the Arkansas State Highway and Transportation Department is now preparing a Project Oversight Plan to exempt all eligible projects from FHWA oversight.

NOW THEREFORE, the Arkansas State Highway Commission hereby authorizes the Director to enter into the necessary agreements with FHWA concerning project oversight and to implement the Project Oversight Plan. Furthermore, the Director is authorized to amend the Plan or agreement from time to time to assure continued efficient operation of the Arkansas Highway System.

This action supersedes Minute Order 92-417.

Approved:

(ORIGINAL SIGNED BY L. W. CLARK) _____ Chairman

(ORIGINAL SIGNED BY BOBBY HOPPER) _____ Vice-Chairman

(ORIGINAL SIGNED BY HERBY BRANSCUM, JR.) _____ Member

(ORIGINAL SIGNED BY JOHN 'M' LIPTON) _____ Member

(ORIGINAL SIGNED BY J. W. BENAFIELD) _____ Member

Submitted By:

(ORIGINAL SIGNED BY CHARLES E. VENABLE) _____
Chief Engineer

Approved:

(ORIGINAL SIGNED BY MAURICE SMITH) _____
Director

Minute Order No. _____ 93-454 _____

Date Passed _____ SEP 15 1993 _____

PUBLIC INVOLVEMENT PROCESS

Statewide Planning Process

To allow for early involvement in the Statewide Plan, the following steps will be taken:

- At the time of the update, a notice referring to the efforts to update the Statewide Long Range Plan (LRP) will be published in the statewide newspaper and local newspapers as deemed appropriate, and provided to other affected agencies. Special efforts will be made to include these notices in minority newspapers and to reach other traditionally under-represented constituencies in accordance with Executive Order 12898 (Environmental Justice).
- Include a description of the Statewide LRP, a brief description of the types of eligible projects (including transit, bikeways, etc.), and a brief summary of the seven factors in 23 U.S.C. 135(c) that must be considered.
- The Statewide LRP will be available for review and comment at the MPO offices, PDD offices, AHTD District Offices, and on the AHTD web site.
- The notice will be presented in an easy to read format. Where appropriate, the notice will be provided in a multilingual format.
- At this time, the public will have the opportunity to comment, in writing within 15 days, on the planning process that is being developed.
- Comments should be addressed to the Assistant Chief Engineer for Planning.

Statewide Transportation Improvement Program

To provide for public involvement as an on-going activity through the Statewide Transportation Improvement Program (STIP) adoption process, the following steps will be taken:

- At the appropriate time, a notice will be published in the statewide paper and local newspapers as deemed appropriate, and provided to affected agencies (i.e., representatives of transportation agency employees, private providers of transportation, transit operators, etc.), indicating that the STIP is being considered for adoption and available for review at the PDD and AHTD District Offices and on the AHTD web site. Special efforts will be made to include these notices in minority newspapers and to reach other traditionally under-represented constituencies in accordance with Executive Order 12898

- (Environmental Justice). The STIP will also be placed in the MPO offices for information purposes only.
- A description will be included of the development of the STIP along with a brief description of the types of eligible projects (including transit, bikeways, etc.).
 - The notice should be presented in an easy to read format. Where appropriate, the notice will be provided in a multilingual format.
 - At this time, the public will have the opportunity to comment, in writing within 30 days, on the document that is being considered for adoption.
 - Comments should be addressed to the Assistant Chief Engineer for Planning.
 - Revisions to the STIP will be handled as follows:
 - ◆ Urbanized Areas - revisions will be made in accordance with procedures established by the MPO. When amendments are made to the TIP, they will be forwarded to the Department for inclusion in the STIP. The Department will provide documentation to the FHWA that the TIP and STIP contain identical project information.
 - ◆ Small Urban and Rural Areas
 - New Projects – revisions adding Federal-aid projects will be provided to the responsible local PDD for comment prior to submitting for FHWA or FTA approval. Any comments received will be addressed and resolved prior to requesting FHWA or FTA approval.
 - Revised Projects – revisions to state highway project funding, termini, scope of work or yearly schedule will not be necessary prior to project authorization by the FHWA or the FTA. If the project is listed in the STIP for any year, it will be moved to the current year upon submittal of an authorization request to the FHWA or the FTA. Revisions to projects involving local government funding will be coordinated with local government representatives prior to submitting an authorization request to the FHWA or the FTA.

MEMORANDUM OF AGREEMENT

WHEREAS, Section 771.107(b) of 23 CFR describes an Action;

WHEREAS, Section 771.115 of 23 CFR describes classes of Actions;

WHEREAS, Section 771.115(b) describes categorical exclusions as Actions that do not individually or cumulatively have a significant environmental effect and are excluded from the requirements of having to prepare an environmental impact statement or environmental assessment;

WHEREAS, Section 771.117(c) lists actions which meet the criteria for categorical exclusions outlined in Section 771.117(a) and which normally do not require any further NEPA approvals by the Federal Highway Administration;

WHEREAS, Section 771.117(d) lists other actions which may meet the criteria for a categorical exclusion but may only be designated a categorical exclusion after Federal Highway Administration approval; and

WHEREAS, Arkansas State Highway and Transportation Department (AHTD) and the Federal Highway Administration (FHWA) desire to concur in advance with the classification of those types of categorical exclusions in Section 771.117(d) which have no adverse environmental impacts;

THEREFORE, AHTD and FHWA mutually agree that an action which meets the following conditions is a categorical exclusion. If one or more of the conditions is not satisfied, a separate environmental document will be prepared for submission to FHWA for review and approval.

1. The action does not have any significant environmental impacts as described in 23 CFR 771.117(a).
2. The action does not involve unusual circumstances as described in 23 CFR 771.117(b).
3. The action does not involve the following:

The acquisition of more than minor amounts of temporary or permanent strips of right-of-way (less than or equal to one acre). Acquisition of right-of-way in excess of one acre will be considered on a case-by-case basis. Such acquisitions will not require substantial commercial or residential displacements.

The use of properties protected by Section 6(f), Land and Water Conservation Fund Act (16 U.S.C. 460L-4 to L-11).

APPENDIX C

Any work in farmlands where the Farmland Conversion Impact Rating form (Form AD-1006) indicates a total score of 160 or more.

Any work in which the entire project is on new location.

The use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303).

A determination of adverse effect by the State Historic Preservation Officer.

Any U.S. Coast Guard construction permits or any U.S. Army Corps of Engineers Section 404 permits other than Nationwide or general 404 permits.

Any work in wetlands other than projects approved by a Nationwide or general 404 permit.

Any work encroaching on a regulatory floodway (other than by bridge over the floodway) or any work adversely affecting the base floodplain (100 year flood) elevations of a water course or lake.

Construction in, across, or adjacent to the Buffalo National River, or any river designated as a component or proposed for inclusion in the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture.

Any change in control of access.

Any known hazardous material sites or previous land uses with potential for hazardous materials remaining within the project right-of-way.

Any work which may adversely affect federally listed endangered or threatened species or critical habitat.

The environmental analysis and review for all projects determined to be a categorical exclusion by the AHTD under this Memorandum of Agreement will be documented by AHTD (as per the attached AHTD internal procedures). The documentation will be available for FHWA review upon request.

(original signed by Marion Butler)

Arkansas Highway and Transportation Department

9-22-93

Date

(original signed by Carl G. Kraehmer)

Federal Highway Administration

9-22-93

Date

**AHTD CATEGORICAL EXCLUSION
DOCUMENTATION AND PROCESSING**

In accordance with the National Environmental Policy Act and Title 23 Part 771 the Arkansas Highway and Transportation Department has divided categorical exclusions into three tiers for documentation purposes.

Tier 1: This level of categorical exclusion requires no documentation other than memo approval by the Division Head, Environmental Division, and includes the following:

- a) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
- b) Transportation corridor fringe parking facilities.
- c) Approval for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant impacts.
- d) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
- e) Construction of bus shelter facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for project bus traffic.
- f) Construction of 3R type projects which require only minor amounts of additional right-of-way.
- g) Transportation enhancements as defined in 23 U.S.C. 133.
- h) Property acquisition for wetland mitigation.

Tier 2: This level of categorical exclusion requires documentation prepared by the Environmental Division and approved by the Assistant Chief Engineer for Planning and includes the following:

- a) Modernization of a highway by reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, or climbing).
- b) Bridge rehabilitation, reconstruction or replacement, or the construction of grade separations to replace existing at-grade railroad crossings.

APPENDIX C

- c) Construction of new truck weigh stations or rest areas.
- d) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is consistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support traffic.
- e) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is consistent with existing zoning and where there is no significant noise impact on the surrounding community.
- f) Acquisition of land for hardship or protective purposes; advance land acquisition loans under Section 3(b) of the Urban Mass Transit Act. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a categorical exclusion only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.
- g) Construction of scenic overlook.

Tier 3: This level of environmental documentation includes any project which would otherwise be a Tier 1 or Tier 2 project but does not satisfy one or more of the conditions listed in the body of this Memorandum of Agreement.

For any Tier 3 project, a separate categorical exclusion will be prepared by the AHTD and submitted to the FHWA for review and approval.

On a monthly basis, the Environmental Division will submit to the FHWA a list of all Tier 1 and Tier 2 Categorical Exclusions documented for the month. The documentation will be maintained by the Environmental Division and will be available for review.

CRITERIA FOR DETERMINING WHEN TO OFFER A PUBLIC HEARING

The following procedure outlines the criteria for determining when to offer or hold public hearings:

TIER 1 CATEGORICAL EXCLUSION

This type of Categorical Exclusion is documented by memorandum approved by the Environmental Division Head. An opportunity for a public hearing will not be offered.

TIER 2 CATEGORICAL EXCLUSION

This type of Categorical Exclusion is documented by memorandum approved by the Assistant Chief Engineer for Planning. An opportunity for a public hearing will not be offered.

TIER 3 CATEGORICAL EXCLUSION

This type of Categorical Exclusion is documented by letter and submitted to the Federal Highway Administration (FHWA) for approval. A determination to offer a public hearing will be made using the following process:

- The Environmental Division will send a memorandum to the Roadway Design and Right of Way Divisions requesting their recommendations about whether a public hearing should be offered. The recommendations of these Divisions to the Environmental Division should be based on their determination of the overall environmental impacts of the project.
- The Environmental Division will evaluate the recommendations and make a summary recommendation to the Assistant Chief Engineer for Planning. The Assistant Chief Engineer for Planning will make the final determination of whether a public hearing is offered.

ENVIRONMENTAL ASSESSMENT

An Environmental Assessment is prepared for any project for which the significance of the environmental impact is not clearly known. The Assessment is submitted to the FHWA for review and approval. If public involvement activities have identified no controversial or substantial changes or issues, a public hearing will not be considered; otherwise an opportunity for a public hearing will be offered.

ENVIRONMENTAL IMPACT STATEMENT

When the project scope requires the preparation of an Environmental Impact Statement, the Statement is fully coordinated with the FHWA and submitted for approval. The scoping process will include early public involvement opportunities as well as location and design public hearings.

ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT
PROJECT DEVELOPMENT
AND
PUBLIC INVOLVEMENT/PUBLIC HEARING PROCEDURES

INTRODUCTION

It is the policy of the Arkansas Highway Commission to utilize an interdisciplinary approach in the identification, evaluation and resolution of social, economic, and environmental issues in all phases of project development. An Interdisciplinary Staff approach provides a review of the System Planning Process for impact on the area involved and provides a thorough evaluation of each project from the early location stage through design. The staff has representatives of the social, economic, environmental, engineering and civil rights disciplines and is qualified to identify and make objective knowledgeable recommendations for solutions to problem areas of social, economic, and environmental (SEE) concerns. Due to their many responsibilities, the Interdisciplinary Staff is established to afford the continuous involvement required. The Interdisciplinary Staff, under the management of and responsible to the Assistant Chief Engineer for Planning, will provide a direct method of close coordination between members of the staff and those who are responsible for project development. The Interdisciplinary Staff is charged with the responsibility of anticipating areas of SEE conflict, ensuring that they are resolved, and assisting in orderly project development.

Under the general direction of the Interdisciplinary Staff, public involvement will be fully incorporated into all phases of project development utilizing the following procedures.

**PUBLIC INVOLVEMENT/PUBLIC HEARING
PROCEDURES**

I. The Arkansas Highway and Transportation Department places high value and priority on public involvement throughout project development. In keeping with this goal and pursuant to 23 U.S.C. 128, 40 CFR parts 1500-1506 and Executive Order 12898, the AHTD has developed the following procedures to carry out a public involvement/public hearing program.

II. Opportunities for Public Involvement/Public Hearing.

A. Early Public Involvement

1. Preliminary Public Involvement Session - The preliminary public involvement session will be used to achieve early public involvement on such projects as determined by the Interdisciplinary Staff to have potentially significant social, economic and environmental (SEE), or other impacts. It will be held as early in the preliminary engineering stage as feasible, and will utilize either the information trailer or a local demographic point of focus such as the courthouse, city hall, or other location. A letter of inquiry will be sent to local governmental entities and the regional or metropolitan planning organization indicating the general nature of the proposed work. The time, location, and nature of the preliminary session will be described in news releases by local print and broadcast media. The Planning and Research Division will assist in contacting local governmental entities and developing a timetable; the EEO Section will furnish lists of minority organizations and minority community leaders to the Public Affairs Officer; and the Public Affairs Officer will assist with news releases and documentation of the Session. Special effort will be made to involve culturally diverse, elderly and low-income stakeholders early in the planning process and during project development. The preliminary session affords the public an opportunity for early involvement, and allows the AHTD to have local contact and visibility. At this stage of project development, the AHTD may not know which level of environmental documentation is appropriate, and it is possible that projects which might have been considered as EA or EIS levels of documentation could be downgraded as a result of the data gathered at the preliminary session.
2. Public Information (PI) Open House - Once the basic nature of a project is determined, a PI Open House may be used to gather more specific public comment and data relative to the project and potential SEE impacts. The Planning and Research Division, the Environmental Division and the EEO Section determine an overall timetable for an Open House, the best locations for an Open House, and the local contact persons to be notified about the

Open House schedule; the EEO Section identifies EEO/Title VI concerns in the project area; and the Public Affairs Officer may assist with the overall documentation of the listening sessions and the development of news releases. As appropriate, project specific questionnaires will be used for recording public responses, and acquiring information about SEE issues and problems. A PI Open House would ordinarily be used in the preliminary engineering phase prior to the Location Public Hearing (or combined Location/Design Hearing) on major projects which have been determined to require EA or EIS documentation.

B. Public Hearings

1. Hearing Requirements

- a. A corridor public hearing and a design hearing will be held, or an opportunity afforded for those hearings, with respect to each Federal-aid highway project that requires the processing of an EIS.
- b. A single combined corridor and highway design public hearing will be held, or the opportunity for such a hearing afforded, for other Federal-aid projects when it is determined that a public hearing is in the public interest.
- c. Additional hearing opportunities will be provided when there has been (1) a significant change in the proposal; (2) substantial unanticipated development in the area affected; (3) an unusually long lapse of time since last hearing; or identification of significant social, economic and environmental effects not mentioned at previous hearings.

2. Opportunity for Public Hearings - The requirements for public hearing may be satisfied by publishing a notice of opportunity for public hearing. The procedure for requesting a public hearing will be explained in the notice. The deadline for submission of a request may not be less than 15 days after the date of publication of the notice. Upon receipt of any request, the AHTD may attempt to resolve the issues informally. Otherwise, the AHTD will promptly set a time and place of the public hearing, and give due notice thereof, as prescribed herein.

Requests for a public hearing under this paragraph will be granted unless the AHTD determines that the issues raised are not significant or there is no valid interest to be served by a hearing. The AHTD will make such a determination in writing, and communicate the reasons therefore to all requesting parties. Comments received as form letters or petitions may be

acknowledged as a group to the person or organization responsible for the form letter or position.

3. Public Hearing Procedures

a. Notice of public hearing:

- (1) When a public hearing is to be held, a notice of public hearing will be published at least twice in a newspaper having general circulation in the vicinity of the proposed undertaking. Current AHTD practice is to publish the notice of public hearing in the form of a legal notice and as a display advertisement. The notice should also be published in any newspaper having a substantial circulation in the area concerned, such as foreign language newspapers, minority newspapers, and local community newspapers. The first of the required notices will be from 30 to 40 days before the date of the hearing, and the second will be from 5 to 12 days before the date of the hearing. The timing of additional notices is optional.
- (2) In addition to publishing a formal notice of public hearing, the AHTD will mail copies of the notice to appropriate news media, the State's resource, recreation and planning agencies, and appropriate representatives of the Departments of Interior and Housing and Urban Development. The AHTD will also mail copies to other Federal agencies and local public officials, public advisory groups and agencies who have requested notice of hearing; and other groups or agencies, who, by nature of their function, interest, or responsibility, the AHTD knows or believes might be interested in or affected by the proposal. The AHTD will establish and maintain a list upon which any Federal agency, local public official, public advisory group or agency, civic association or other community group may enroll upon its request to receive notice of projects in any area specified by that agency, official, or group.
- (3) Each notice of public hearing will specify the date, time, and place of the hearing. The notice will advise the public that the place for the hearing is accessible for disabled citizens. The notice will contain a description of the proposal including flood plain or wetland encroachments, if any. To promote public understanding, a map or other drawing will be included as part of the notice. The notice of public hearing will specify that maps, drawings, and other pertinent information developed by the AHTD and written views received as a result of previous coordination will be available for public inspection and copying.

APPENDIX D

- (4) Notices of public hearing will indicate that relocation assistance programs will be discussed.

b. Conduct of public hearings:

- (1) Public hearings will be held at a place and time generally convenient for persons affected by the proposed undertaking. Public hearings will be either an open forum format which enables individuals to submit formal testimony on an individual basis or the traditional auditorium format which provides an opportunity for formal comments before an audience of other interested listeners.
- (2) Provision will be made for submitting written statements and other exhibits in place of, or in addition to, oral statements at a public hearing. The procedure for submitting statements will be described in the notice for the public hearing and at the public hearing. The final date for receiving statements or exhibits will normally be 10 days after the public hearing.
- (3) At each corridor public hearing, pertinent information about location alternatives studied by the AHTD will be made available. At each single combined corridor and highway design public hearing and at each separate design public hearing, information about design alternatives by the AHTD will be made available.
- (4) Responsible officials of the AHTD will be present at public hearings as necessary to conduct the hearings and to respond to questions.
- (5) The State-Federal relationship of the Federal-aid highway program will be described by an appropriate brochure, pamphlet, or statement or by other means.
- (6) AHTD staff will be available to explain the relocation assistance program and the payments that are available.
- (7) AHTD staff will be available to explain the project's purpose, need, and consistency with the goals and objectives of any local urban or regional planning as appropriate.
- (8) AHTD staff will be available to explain the social, economic, environmental, and other impacts of the project as appropriate.

APPENDIX D

(9) At each public hearing, the AHTD will announce or otherwise explain that, at any time after the hearing and before the location or design approval related to that hearing, all information developed in support of the proposed location or design will be available upon request for public inspection and copying.

c. Public hearing documentation:

(1) The AHTD will prepare a verbatim written transcript of the oral statements recorded or written comments received at each public hearing and submit a copy of the transcript to the FHWA Division Administrator within a reasonable period after the public hearing, together with:

- (a) A certification that a required hearing or hearing opportunity was offered.
- (b) Copies of, reference to, or photographs of, each statement or exhibit filed in connection with a public hearing.
- (c) Final Environmental document.
- (d) A summary and analysis of views received concerning the project.

State and Federal Regulations, Directives, Manuals and Operating Guides

- 23 U.S.C.
- 49 U.S.C.
- 23 CFR
- 49 CFR
- AASHTO Guide for the Design of Pavement Structures
- AASHTO Guide for the Development of Bicycle Facilities
- AASHTO LRFD Bridge Design Specifications
- AASHTO Policy on Geometric Design of Highways and Streets
- AASHTO Roadside Design Guide
- AASHTO Standard Specifications for Highway Bridges
- AHC Regulations for Access Driveways to State Highways
- AHTD Accounting Manual
- AHTD Brochure on Procedures for Acquiring R/W When Federal Funds are Utilized
- AHTD Design and Construction Memoranda and Orders as Disseminated
- AHTD Drainage Manual
- AHTD Geometric Design Criteria for Non Freeway Resurfacing, Restoration and Rehabilitation Projects
- AHTD Manual of Field Sampling and Testing Procedures
- AHTD Manual for Preliminary Engineering Surveys
- AHTD Resident Engineer's Manual
- AHTD Standard Drawings for Box Culverts
- AHTD Standard Drawings for Highway Construction
- AHTD Standard Specifications for Highway Construction
- Arkansas Geological Commission, Arkansas Minimum Standards for Property Boundary Surveys and Plats
- FHWA Labor Compliance Manual
- FHWA Manual on Uniform Traffic Control Devices
- U.S.G.S. Water Resources Circular No. 11

PROJECT STATUS FOR LETTING OF

FHWA OVERSIGHT PROJECTS

JOB NO.	DESCRIPTION	FAP/FUNDING	PLANS REC'D.	ENV. REVIEW	ROW STATUS TR. - ACQU. - LEG.	RR	CLEAR BY	UTILITIES TOT. - EST. - W.O.	COMMENTS

* FHWA conditional authority required.

FEDERAL-AID STATE OVERSIGHT PROJECTS

JOB NO.	DESCRIPTION	FAP/FUNDING	PLANS REC'D.	ENV. REVIEW	ROW STATUS TR. - ACQU. - LEG.	RR	CLEAR BY	UTILITIES TOT. - EST. - W.O.	COMMENTS

* Conditional Authority Required

NON-FEDERAL AID PROJECTS

JOB NO.	DESCRIPTION	FAP/FUNDING	PLANS REC'D.	ENV. REVIEW	ROW STATUS TR. - ACQU. - LEG.	RR	CLEAR BY	UTILITIES TOT./EST./W.O.	COMMENTS

* Conditional Authority Required

**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
CONSTRUCTION INSPECTION REPORT**

Interim ____ Semi-Final ____

AHTD Oversight ____

FHWA Oversight ____

Job Name:		Date:
Job No:	FAP No:	
County:	Route:	Resident Engineer:
Contractor:		
Work Order Issued:	Contract Time Limit:	
Date Work Began:	Time Charged to Date:	
Date Work Substantially Complete (Time Charges Stopped):		
Inspection Party:		
Remarks:		
<hr/> District Engineer		

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
FINAL CONSTRUCTION INSPECTION REPORT

AHTD Oversight _____

FHWA Oversight _____

Job Name:		Date:
Job No:	FAP No:	
County:	Route:	Resident Engineer:
Contractor:		
Work Order Issued:	Contract Time Limit:	
Date Work Began:	Time Charged to Date:	
Date Work Substantially Complete (Time Charges Stopped):		
Inspection Party:		
Remarks:		
<p>All mitigation commitments and requirements of the Section 404 permit within the impact assessment area have been constructed in substantial conformity with the plans and subsequent change orders.</p> <p style="text-align: right;">_____ Resident Engineer</p>		
Signature of City, County or State representative other than AHTD, who is accepting Project for Maintenance:	DE accepting AHTD Oversight Project:	
_____	_____	
Title:	DE submitting FHWA Oversight Project for acceptance:	
_____	_____	

FHWA Oversight Projects
Accepted:

State Construction Engineer

FEDERAL REQUIREMENTS FOR CONTRACTS

SUBJECT	U.S.C.	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Prohibition Against Use of Local Hiring Preferences (FHWA-1273 - Sec I-6)		635.117(b)		Yes	Yes	No	
Prohibition Against the Use of Convict Labor (FHWA-1273- Sec I-6)	23 U.S.C. 114(b)	23 CFR 635.117(a)		Yes	Yes**	No	**Prohibition only applies to projects on Federal-aid highways
Nondiscrimination (FHWA-1273 - Sec II)	23 U.S.C. 140, 23 U.S.C. 324, 49 U.S.C. 322, 42 U.S.C. 12101-12213, 42 U.S.C. 3601-3619	23 CFR 200, 23 CFR 230D, 23 CFR 635.17 28 CFR 35 29 CFR 1630 41 CFR 60 49 CFR 21, 23 28 CFR 50.3 49 CFR 25	·The Civil Rights Act of 1964, Title VI ·The Age Discrimination and Employment Act of 1967 ·The Age Discrimination Act of 1975 ·the American Disabilities Act of 1990	Yes	Yes	Yes	All contracts and subcontracts of \$10,000 or more.
Nonsegregated Facilities (FHWA-1273 - Sec III)		23 CFR 633A 41 CFR 60.1.8	Title VI	Yes	Yes	Yes	All contracts and subcontracts of \$10,000 or more.
Payment of Predetermined Minimum Wage (FHWA-1273 - Sec IV)	23 U.S.C. 113 , 40 U.S.C. 276(a),(c)	23 CFR 635.309(f), 29 CFR 1, 3, 5	Davis-Bacon Act Copeland Anti-Kickback Act	Yes	**	**	**All construction contracts on a Federal-aid Highway exceeding \$2,000

FEDERAL REQUIREMENTS FOR CONTRACTS

SUBJECT	U.S.C.	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Statements and Payrolls (FHWA-1273 - Sec V)	40 U.S.C. 276(a) & (c), 18 U.S.C. 874	23 CFR 635.118 29 CFR 3, 5	Davis-Bacon Act Copeland Anti-Kickback Act	Yes	**	**	**Same as above
Safety: Accident Prevention (OSHA compliance) (FHWA-1273 - Sec VIII)	40 U.S.C. 333	23 CFR 635.108 29 CFR 1926	OSHA	Yes	Yes	Yes	All construction projects.
False Statements Concerning Highway Projects (FHWA-1273 - Sec IX)	18 U.S.C. 1020	23 CFR 633A, 23 CFR 635.119		Yes	Yes	Yes	All construction projects.
Implementation of the Clean Air Act and Federal Water Pollution Control Act (FHWA-1273 - Sec X)	33 U.S.C. 1251 42 U.S.C. 1857	23 CFR 633A , 40 CFR 15		Yes	Yes	Yes	All contracts and subcontracts of \$100,000 or more.
Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (FHWA-1273 - Sec XI)		23 CFR 635.112(g) 49 CFR 29		Yes	Yes	Yes	Contracts and subcontracts of \$100,000 or more.

FEDERAL REQUIREMENTS FOR CONTRACTS							
SUBJECT	U.S.C.	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Certification Regarding the Use of Contract Funds for Lobbying (FHWA-1273 - Sec XII)	49 U.S.C. 322A	23 CFR 635.112(g) 49 CFR 20 49 CFR 29		Yes	Yes	Yes	Contracts and subcontracts exceeding \$100,000.
Buy America	STAA Section 165 ISTEA Section 1041(a) & 1048(b)	23 CFR 635.410		Yes	Yes	**Yes	**All construction projects funded under Title 23
Disadvantaged Business Enterprise	23 U.S.C. 140(b)	23 CFR 200 & 230B, C, D, 49 CFR Part 26 (DBE) 49 CFR Part 21 (Title VI)		**Yes	**Yes	**Yes	**Applicable as necessary to meet State DBE program goals
Indian Preference on Federal-aid Projects (Labor & Employment)	23 U.S.C. 140 42 U.S.C. 2000e-2i	23 CFR 635.117		**	**	**	**Any project meeting "guidance" criteria (see text)
Noncollusion Certification	23 U.S.C. 112	23 CFR 635.112(f)		Yes	Yes	No	
On-the-Job Training	23 U.S.C. 140(a),(b)	23 CFR 230A		Yes	**	**	**Projects designated by STA in setting State goals
Standardized Changed Conditions Contract Clauses	23 U.S.C. 112(e)	23 CFR 635.109		Yes	Yes	No	

FEDERAL REQUIREMENTS FOR CONTRACTS

SUBJECT	U.S.C.	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Drug -Free Workplace		49 CFR 29		**	**	**	DFW certification applies to direct recipients (not construction contractors)
Publicly Owned Equipment		23 CFR 635.106	OMB Circular A-87	Yes	Yes	No	
Contractor Purchased Equipment for State Ownership	23 U.S.C. 302	23 CFR 140 , 49 CFR Part 18 49 CFR Section 18.3		Yes	Yes	No	
Equipment Rental Rates		48 CFR Part 31	OMB Circular A-87 FAPG NS 23 CFR 635.120	Yes	Yes	No	
Foreign Contractor and Supplier Restriction		49 CFR 30		Yes	Yes	No	
Prohibition Against Convict Produced Materials	23 U.S.C. 114(b)(2)	23 CFR 635.417		Yes	**	No	**Prohibition only applies to projects on Federal-aid highways
Patented / Proprietary Products	23 U.S.C. 112	23 CFR 635.411		Yes	No	No	
State Preference	23 U.S.C. 112	23 CFR 635.409		Yes	Yes	No	

FEDERAL REQUIREMENTS FOR CONTRACTS

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

FEDERAL REQUIREMENTS FOR CONTRACTS

SUBJECT	U.S.C.	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Bonding and Prequalification		23 CFR 635.110		Yes	Yes**	No	** See limitations in text
Advertising for Bids	23 U.S.C. 112	23 CFR 635.112(d) (e) (f) (g) (h), 49 CFR 18.36		Yes	**	No	** See limitations in text
Bid Opening and Tabulation		23 CFR 635.113(a)		Yes	**	No	**See Text
Bid Analysis and Award of contract	23 U.S.C. 112	23 CFR 635.114		Yes	**	No	**See text
Contract Time		23 CFR 635.121		Yes	No	No	
Change Orders		23 CFR 635.120-121		Yes	No	No	
Claims		23 CFR 635.124		Yes	No	No	
Liquidated Damages		23 CFR 635.127		Yes	No	No	
Progress Payments		23 CFR 635.122		Yes	No	No	
Project Supervision and Staffing	23 U.S.C. 114 & 302	23 CFR 635.105		Yes	Yes	No	

FEDERAL REQUIREMENTS FOR CONTRACTS							
SUBJECT	U.S.C.	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"*	
				NHS	Non-NHS		
Subcontracting		23 CFR 635.116		Yes	No	No	
Suspension and Debarment		49 CFR 29		Yes	Yes	Yes	
Termination of Contracts		23 CFR 635.125		Yes	No	No	
Audits	23 U.S.C. 112(b) (2) (c)	49 CFR Subtitle A Part 90 48 CFR 31, Federal Acquisitions Regulations	OMB Circular A128	Yes	Yes	Yes	
Records Retention		49 CFR 18		Yes	Yes	yes	

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

*Non-highway construction contracts may include Transportation Enhancement Projects which are not located on highway right-of-way and are not linked to a Federal-aid highway project (i.e. the project would not exist without another Federal-aid project) Examples include bicycle trails, historic preservation, railroad station rehabilitation projects, etc. (see Mr. Ptak's November 12, 1996 memo.)

Source: 2000 FHWA Contract Administration, Core Curriculum Participants manual
May 4, 2000

