

### 13.1 General Discussion

The Federal Highway Administration (FHWA) through a Stewardship Agreement, delegates authority to the Washington State Department of Transportation (WSDOT) for approving project development and construction administration. WSDOT has the option of delegating some or all of this authority to qualified local agencies, state or federal agencies, or Tribal governments. This procedure permits an agency to retain more of the approval authority at the local level when developing FHWA assisted transportation projects. WSDOT delegates this authority through a Certification Acceptance (CA) program. The CA program does not eliminate any project development procedures. Benefits of CA to a local agency include savings in time and money since the agency has the authority to develop, advertise, award, and manage its own projects.

CA requires local agencies to commit sufficient staff and other resources to project administration to ensure that all applicable state and federal requirements are met, and that the work can be accomplished efficiently. Once an agency has been certified, the certification agreement remains in effect indefinitely unless rescinded due to lack of performance or modified by one of the parties.

A CA agency has the option of requesting that WSDOT or another CA agency administer any given project.

By agreeing to accept federal aid funds, the local agency understands its roles and responsibilities with respect to carrying out the federal aid program. WSDOT is permitted to delegate certain activities, under its supervision, to local agencies (cities, counties, private organizations, or other state agencies) under federal regulation 23 CFR 1.11 and 635.105; however, WSDOT accepts responsibility for delegated activities.

FHWA is required by federal legislation to conduct verification activities to assure that WSDOT and the local agencies' implementation of the federal highway programs conform with laws, regulations and policies. Similarly per FHWA's delegation, WSDOT is also required to conduct verification activities to assure that local agency federal aid projects are implemented in conformance with federal aid requirements.

Certification Acceptance requirements for the right of way program are addressed in Chapter 25.

**Note:** Local agencies are not delegated the authority to certify right of way.

### 13.2 CA Features

A certified agency is the approving authority for administering FHWA funded projects in the following project items:

1. Design.
2. Utility agreements.
3. Railroad agreements.
4. Standard consulting engineering agreements.
5. Public hearings, findings, and orders.
6. Advertisement (Requires WSDOT Approval of PS&E)
7. Award, and execution of construction contracts.

8. Construction administration.
9. Construction material testing and testing personnel.
10. Award of non-DBE non-FHWA oversight projects.

All of the above functions should be administered per the responsibilities outlined in the Agency's approved CA Agreement.

WSDOT and FHWA retain approval authority for the following:

### **WSDOT**

1. Design Deviations
2. Plans, Specification, and Estimate approval prior to advertisement.
3. Standard Specifications Division 1 changes.
4. Public Interest Findings (local force work, agency supplied materials, etc.).
5. NEPA Categorical Exclusions per MOU, Section 106 Consultation.
6. Implementation of the Civil Rights Program Requirements (DBE, Title VI, ADA, and EEO/OJT).
7. Tied Bids approval<sup>1</sup>.
8. Agency Certification Acceptance (CA) approval.
9. Project Final Acceptance.
10. Revisions to Agreements, when applicable.
11. Documentation/Project Management Reviews.
12. Concurrence in Award of DBE non-FHWA oversight projects.
13. Concurrence of unresponsive bids prior to award

### **FHWA**

1. Authorization of FHWA funds.
2. Approval of National Environmental Protection Act (NEPA) and Endangered Species Act (ESA) environmental documents other than NEPA Categorical Exclusions per MOU, Section 106 Consultation.
3. Right of way certification approval.
4. Approval of WSDOT's Civil Rights Programs (DBE, Title VI, EEO, ADA).
5. Buy America waiver approval.
6. Approval of the Local Agency Guidelines.
7. Projects of Division Interest (PoDIs) approvals per each project specific PoDI plan.

## **13.3 CA Requirements**

1. Projects must be administered in accordance with the Local Agency Guidelines.
2. Projects must be administered utilizing a Professional Civil Engineer registered in the state of Washington who is either on staff as a fulltime public employee or is a contracted fulltime employee designated as the agency's Engineer.
3. The agency shall have sufficient expertise and capability to perform and supervise the design, environmental, PS&E, and construction-administration phases of the project.

<sup>1</sup> Appendix 44.82

4. The agency must notify the Region Local Programs Engineer within 30 calendar days of any changes to the personnel necessary to for the agency's CA expertise or capability in all phases of the project.
5. The agency must have designated an official approving authority for all WSDOT-delegated project approvals. This authority (e.g., agency executive or policy body) must officially approve each project step for which it is the approving authority, as identified in the agreement.

## 13.4 Application for CA

An agency applying to administer contracts under Certification Acceptance procedures must submit two copies of the Certification Acceptance Qualification Agreement and their Table of Organization to the Region Local Programs Engineer. A "Certification Acceptance Qualification Agreement" form is located at the end of this chapter and is also available through the WSDOT Region Local Programs Engineer.

After receiving the CA Qualification Agreement, the WSDOT Local Program's Project Development Engineer will conduct an interview with the local agency administrators to determine whether the agency is capable of administering an FHWA-funded project. Areas of consideration will be a determination of past performance, current staffing, overall capability, and knowledge of FHWA and state requirements.

Based on the interview, the Director, Local Programs will allow the agency to administer a project under a trial/mentoring status. Immediately following the completion of the project, a Project Management Review (PMR) will be performed to evaluate how the agency performs. A favorable PMR will result in the agency achieving CA status.

## 13.5 CA Compliance

The WSDOT Region Local Programs Engineer will consult and advise the CA agency concerning the project-management procedures to be followed. The level of this assistance will depend on the nature of each project and the demonstrated capabilities of the agency. In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines, WSDOT will perform procedural reviews on selected local agency ad-and-award projects.

These reviews will be:

- Project Management Reviews (PMR) performed by HQ Local Programs.
- Documentation Reviews performed by the Region Local Programs Engineer.

The agency may lose CA status, have its delegation of authority reduced on a project or phase of a project, or be placed on probationary CA. This may be the result of:

- A PMR or Documentation Review.
- An audit by the State Auditor.
- Final project inspection.
- The qualifications and experience of the agency staff are altered.
- A determination from any FHWA oversight activity.

If a vacancy occurs in the positions described in the CA Agreement as “Approving Authority,” the Region Local Programs Engineer shall be notified within 30 calendar days and will schedule an interview of the replacement person with HQ LP. The Local Agency may have its CA status restricted until the interview is completed.

The loss of CA status and reinstatement conditions will be outlined in a letter from Local Programs.

## 13.6 Non-CA Status

### Responsible Charge

When Local Agencies elect to use consultants for engineering services, the local agency, as provided under 23 CFR 635.105(b), shall provide a full-time employee of the agency to be in responsible charge of the project.

If an agency does not have CA status, the following two options are available for administration of a FHWA funded project

#### Option 1

The Region Local Programs Engineer acts as the CA for the agency and approves an agency to perform specific aspects of a project. An approved plan for the administration of the project is executed between the Region Local Program Engineer and the agency. This category allows projects of smaller sizes to be performed in part by the agency. The project plan shall address such issues as:

- Financing approvals – accounting/billing capabilities.
- Consultant involvement and monitoring. The agency must obtain the approval of the Region Local Programs Engineer prior to selection of a consultant.
- Development of design and design documentation.
- Development of plans, specifications, and estimates.
- Approval of contract documents.
- Advertising, award, execution of a contract. (Including the concurrence on non-responsive bidder)
- Contract oversight and documentation.
- Change order approval.
- Material approval.

#### Option 2

- CA Agency Administering a Project for a Non-CA Agency

A non-CA agency enters into a written Agreement with a CA agency to administer all aspects of the project. This requires approval by the Region Local Programs Engineer.

## 13.7 Forms

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| 140-550 | Certification Acceptance Qualification Agreement |
| 140-551 | Certification Acceptance Interview Form          |