Staying Within the Lines When Using Federal Funds

April 20, 2021

Presented by Diane Sheesley, PE and Ruth McIntyre - TranTech Engineering, LLC for Peninsula Regional Transportation Planning Organization (PRTPO) and guests

Photos from Taylor Road in Kitsap County





Overview

- Setting up a New Project
- Working with Consultants and Contractors
- DBE Goals
- Specification Updates
- Advertisement and Award
- Construction Documentation
- Project Closeout
- Project Management Reviews and Audits

Setting up a New Project

- Getting Started
- Adding Projects to the STIP
- LAG Checklists
- Obligation Packages

Setting up a New Project-Getting Started

Add to 6-Year TIP

- City Council must adopt before July 1 each year RCW 35.77.010
- County Commissions adopt before December 31 each year RCW 36.81.121
- Can make updates at any time

Apply for Funding

- Most grant applications require projects be listed on 6-year TIP for eligibility

Add to STIP

- Project needs to be added to the Statewide Transportation Improvement Program (STIP) to obligate funding

More than one type of funding (State/Local/FHWA/FTA)





- When federal funds match federal funds
  - Housing and Urban Development (HUD) and Community Development Block Grants (CDBG)
  - This is rare
- When a project has FTA funds for design and FHWA for construction or vice versa
  - Work with Local Programs and FTA to determine requirements when they are different (Title VI language for example)
- FHWA funding reduces points on a TIB grant application

More than one type of funding (State/Local/FHWA/FTA) – Cont.



- Bureau of Indian Affairs (BIA)
- Federal Lands Access Program (FLAP) Grants
- Infrastructure Assistance Coordinating Council (IACC)
- FEMA and state match
  - In a declared state emergency, the agency match is usually lowered to 13.5% from 25%

Adding Projects to the STIP

When you have a Metropolitan Planning Organization (MPO)-*example: Puget Sound Regional Council (PSRC)*

- Contact your MPO

When you submit directly to WSDOT (RTPOs)

- Contact Nancy Huntley (huntlen@wsdot.wa.gov)

Washington State S. T. I. P.

2021 to 2024

(Project Funds to Nearest Dollar)

MPO/RTPO: Island RTPO N Inside Y Outside **January 14, 2021**

County: Island

Agency: Oak Harbor

Func Cls	Project Number	PIN	STIP ID	Imp Type	Total Project Length	Environmental Type	RW Required	Begin Termini	End Termini	Total Est. Cost of Project	STIP Amend. No.
05	7760(001)		WA-09192	04	0.480	CE	Yes	N. Oak Harbor St.	SR-20	1,122,313	

NE 7th Ave. Reconstruction

Street reconstruction, non-motorized facilities, & illumination. Project provides significantly improved access for pedestrian, bicycle and transit modes.

Funding

Phase	Start Date	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total
RW	2022	STP(US)	194,174		0	30,305	224,479
CN	2023	STP(US)	345,826		0	53,973	399,799
		Project Totals	**540,000**		**0**	**84,278**	**624,278**

Expenditure Schedule

Phase	1st	2nd	3rd	4th	5th & 6th
RW	0	224,479	0	0	0
CN	0	0	399,799	0	0
Totals	**0**	**224,479**	**399,799**	**0**	**0**

- https://wsdot.wa.gov/LocalPrograms/ProgramMgmt/STIP.htm

LAG Checklists

Preliminary Engineering

Checklists commonly used:

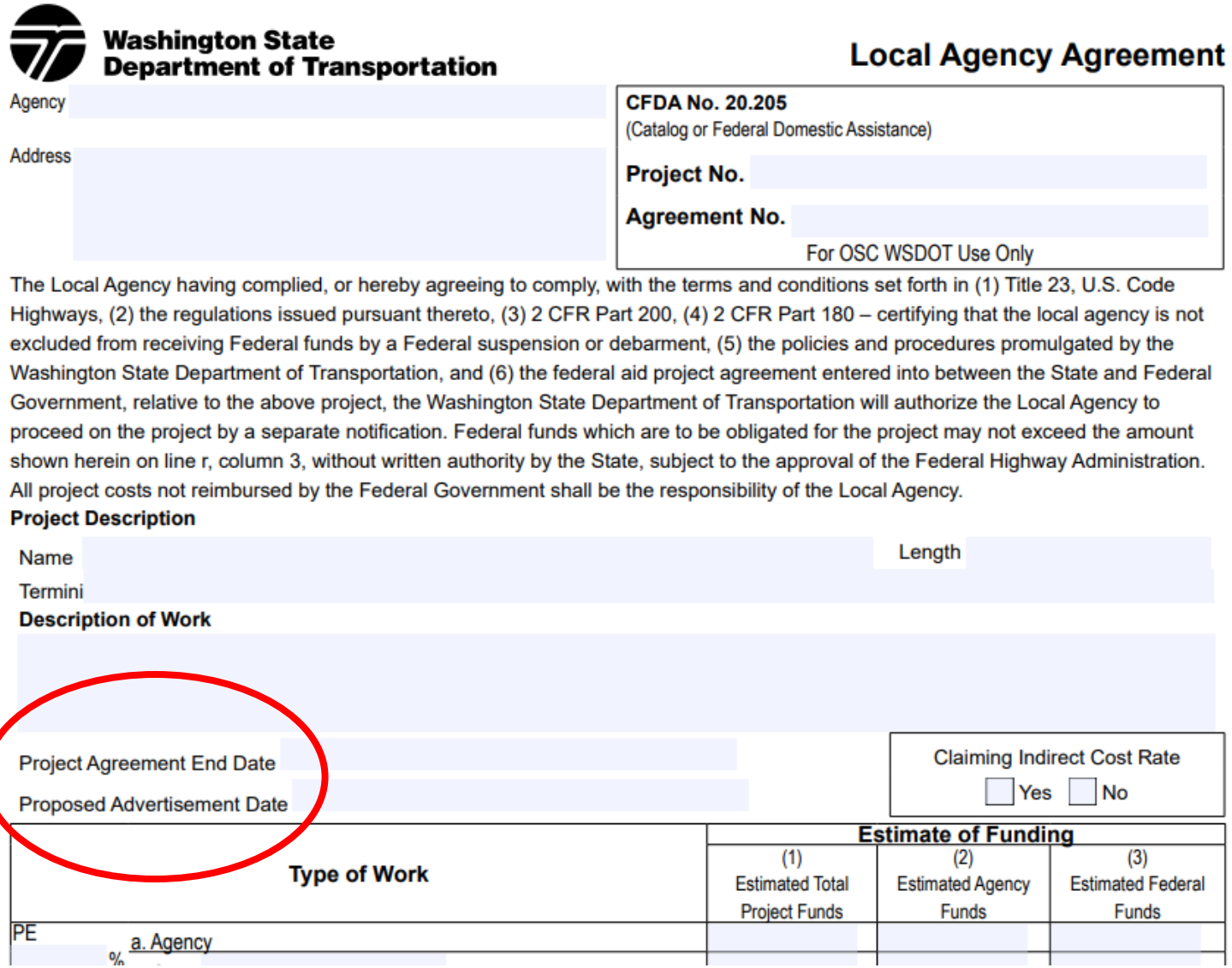
- Appendix 21.43 Authorization Package Checklist
- Appendix 14.52 Project Dev Checklist - Form 140-552
- ROW Plan Checklist 25.178 LAG Only
- Plan Prep Checklist 44.75 Form 272-070

Construction

Checklists commonly used:

- Project Management Review (PMR) Checklist 53.51 Use it to set up your final files Form 272-024
- Open Book Test
- Materials Certification 52.104 Form 140-574
- FORMS https://wsdot.wa.gov/forms/pdfForms.html

Obligation Packages



Washington State Department of Transportation

Local Agency Agreement

Agency

Address

CFDA No. 20.205
(Catalog or Federal Domestic Assistance)

Project No.

Agreement No.

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR Part 200, (4) 2 CFR Part 180 – certifying that the local agency is not excluded from receiving Federal funds by a Federal suspension or debarment, (5) the policies and procedures promulgated by the Washington State Department of Transportation, and (6) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name

Length

Termini

Description of Work

Project Agreement End Date

Proposed Advertisement Date

Claiming Indirect Cost Rate
Yes No

Type of Work	Estimate of Funding (1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE a. Agency %			

[Forms | WSDOT (wa.gov)]

[WSDOT Form 140-039 Local Agency Agreement (wa.gov)]

Obligation Packages

Project Agreement End Date – All projects are required to have a Period of Performance which includes both a begin date and an end date. A project's begin date is the date of FHWA authorization. Local agencies will be required to supply an estimated Project Agreement End Date for each federally authorized phase of a project. To ensure adequate time for the delivery of local projects, which are subject to state environmental requirements, substantial community involvement, eminent domain, and coordination with other local projects, WSDOT recommends when establishing the "Project Agreement End Date" local agencies consider:

- For **Planning Only** projects – WSDOT recommends local agencies estimate the end of the project's period of performance and add three years.
- For **Preliminary Engineering** (PE – design) and **Right of Way** (RW) – WSDOT recommends local agencies estimate when each phase will be completed and add three years to each, due to the complications that may arise with environmental requirements and approvals and negotiating right of way with property owners and railroads.
- For **Construction** (CN) – WSDOT recommends local agencies estimate when construction will be completed and add three years, to provide adequate time to acquire all the necessary paperwork, releases, and negotiate any claims for closure of the project.

Note: Any costs incurred after the "Project Agreement End Date" are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted within 60 calendar days after the Project Agreement End Date or they become ineligible for federal reimbursement.

Obligation Packages

- Preliminary Engineering
- Right-of-way
  - No Right of Way Verification Training
  - Right of Way (ROW) training & education for local public agencies and consultants | WSDOT
- Construction

- Local Project Search (wa.gov)

Working with Consultants and Contractors

- Guidelines and Contract Types
- Preliminary Engineering
- Construction Engineering

Working with Consultants and Contractors

- Chapter 31 Local Agency Guidelines (LAG) Chapter 31 Using Consultants - Local Agency Guidelines M 36-63 (wa.gov)
- Preliminary Engineering
  - Consultant selection based on selection criteria (advertised) – keep records
  - A&E Contracts, qualifications-based selection
    - Cannot be based on cost
    - Solicitation Required (MRSC Roster not acceptable)
  - Agency completes Independent Cost Estimate (ICE) – Appendix 31.94 LAG

Reviewer A*							
Consultant	Points Avail	A	B	C	D	E	F
Criteria		Scores					
Ability to meet project schedule and staff availability	10	8	9	10	9	8	7
Team Experience on Similar Projects	30	25	28	25	27	26	14
Project Manager Experience on Similar Projects	30	28	26	20	25	30	20
Experience with FHWA funded projects	25	10	20	23	25	23	22
Sustainability	5	5	5	5	5	3	5
	Totals	76	88	83	91	90	68
*Have this for each reviewer, minimum 3 reviewers and combine scores for selection							

Working with Consultants and Contractors

RFQ: A&E Contracts

- Professional or technical expertise RCW 39.80 Chapter 39.80 RCW: CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES (wa.gov)
- Cannot be based on cost

Examples

- Architecture
- Engineering
- Surveying
- Landscape Architecture

RFP: Professional Services

- Purchased services
- Provided by a vendor
- Routine continuing and necessary services
- Cost can be considered

Examples

- Real estate consulting activities
- Material testing (no analysis or discipline report)
- Environmental planning
- Legal services
- Public involvement

Working with Consultants and Contractors

Types of Consultant Contracts

- Cost Plus Fixed Fee – Calculation of Fee Percentage (wa.gov)
- Specific Rates of Pay (Negotiated Hourly Rate)
- Lump Sum (rare on fed aid projects)
- Must use LAG contracts for FHWA funded projects:

Consultant agreements & indirect cost rate information for local agencies | WSDOT (wa.gov)

Working with Consultants and Contractors

- Construction
  - Contractor selected by low bid (lowest responsible bidder)
  - Follow guidelines, WSDOT Construction Manual, be fair
  - Sub-Contractor vs Professional Services (Direct Charge)
- Consultants and Contractors work together with Agencies as a team



Disadvantaged Business Enterprise (DBE) Goals

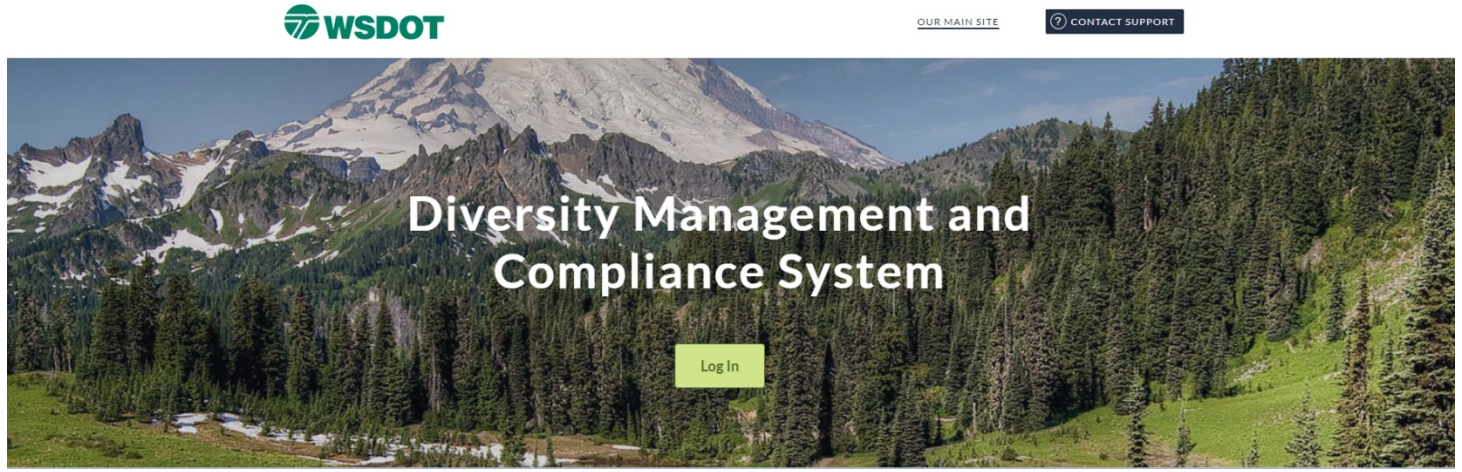
- Where and When Goals Apply
- Reporting
- How Goals Are Set



DBE Goals

- Replaced UDBE goals
  - November 2020-no more “U” (underutilized)
- Applies to Preliminary Engineering and Construction
  - $100,000 contracts and over (used to be $300,000 for A&E Contracts)
  - Agency needs to request goal through its Local Programs Engineer for all FHWA funded projects **before advertising.**
- Agencies should expect higher goals from here on
  - More businesses qualify as DBE’s in Washington State than UDBE’s so the goals are set proportionately higher

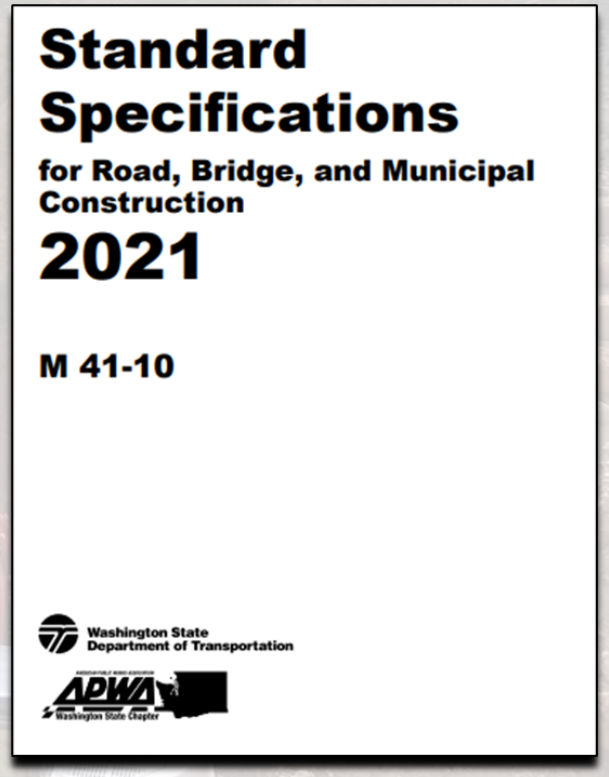
DBE Goals, continued



- Diversity Management and Compliance System (DMCS) – recording and checking your project - [WSDOT Automated Compliance Audit Process for Prime Contractors (wa.gov)]
- During construction
  - Commercially Useful Function – [WAC 326-02-030:]
  - Trucking Forms (new in 2019) - [Microsoft Word - DBEProgramChanges.docx (wa.gov)]
- A new parity study is underway - How goals are set

Specifications Updates

- Timelines
- How Specifications are Updated
- Recent(ish) Specifications



Specifications Updates

- September: yearly Specifications updates
  - Need Local Programs (LP) approval to use through December with FHWA funds
  - With FHWA funds may no longer use prior book January-March

	2020				2021		
	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Spec Update Issued	★						
LP Approval to use through Year End							
New 2021 Specifications in Use							

- Local Agency Specifications
  - Two APWA committees write specifications for FHWA and non-FHWA funded projects
  - https://wsdot.wa.gov/partners/apwa/Division_1_Page.htm
  - https://wsdot.wa.gov/partners/apwa/Division_5_Page.htm

Specifications

- Division 1 – General Requirements (the ‘Legal’ Stuff)
  - With FHWA funding all changes must be approved by Local Programs
- Divisions 2-8 – Unit Bid Item Specifications
  - Can add project specific special provisions without approval, but with FHWA funding need to give three alternatives or approved equal and provide Public Interest Finding (PIF) 140-050.pdf (wa.gov) to WSDOT – approval no longer required per FHWA revisions
  - Agency supplied materials; sole source etc. add PIF to file to document
- Division 9 - Materials

Recent(ish) Specifications

- Liquidated Damages - https://wsdot.wa.gov/.../DesignLiquidatedDamagesCalculationSheet.xlsm
- Recycled Materials – 2015 legislation Recycled Concrete Usage in Aggregate Materials (wa.gov)
  - RCW 70.95.805 and 70.95.807 recodified as 70A.205.700
- Fabrication Inspection Costs
  - more reports recently of girders coming from Minnesota and other states with private inspection required
- Change Orders and Minor Changes
  - APWA specification with fill in
- Dispute Review Board Disputes Review Board Three-Party Agreement (wa.gov)
- HMA and Pervious local agency specifications

Break!

> What's the difference between an introverted and an extroverted engineer?
>
> An introverted engineer looks at his shoes when he's talking to you; an extroverted engineer looks at your shoes when he's talking to you.



Photo by Dan Cook on Unsplash

Advertisement and Award

- Advertisement
- Responsible Bidder Requirements



Advertisement

- Title VI language in advertisement
- Affidavit in file
- 3 week bid period (2 weeks with PIF in file – stay tuned for changes here coming soon to a LAG manual near you)
- Within 6 weeks of CN obligation
- Spec fill-ins – bidder questions and others



STATE OF WASHINGTON -- KING COUNTY

--ss.

383884 No.

CITY OF PUYALLUP

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

BC:MILWAUKEE RIVER BRIDGE

was published on

04/16/20 04/23/20

The amount of the fee charged for the foregoing publication is the sum of $625.80.

JENNIFER A BARNES 96738 NOTARY PUBLIC COMM EXPIRES 10-24-23 STATE OF WASHINGTON

Subscribed and sworn to before me on

04/23/2020

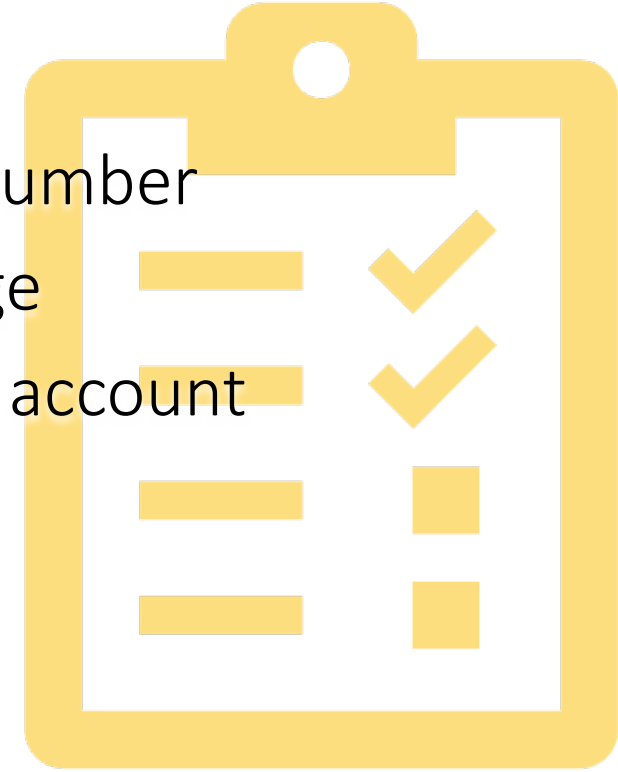
Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

Responsible Bidder Requirements

RCW 39.4.350 – APWA GSP 1-02.14

- Be a registered contractor
- Have a current Unified Business Identifier (UBI) number
- Have industrial insurance/workers' comp coverage
- Have an Employment Security Department (ESD) account
- Have a state excise tax registration number
- Not be disqualified from bidding under RCW 39.06.010 or 39.12.065(3)



Responsible Bidder Requirements, Continued

- Not have any apprenticeship violations, if applicable
- Certify through a sworn statement or an unsworn declaration under penalty of perjury that they are not a willful violator of labor laws in reference to RCW 49.48.082 within the past three years
- Completed L&I approved training
  - or have completed three or more public works projects and maintained a valid business license in Washington for at least three year
- Checklist
  - Examples on MRSC website

Verify Responsible Bidder Status

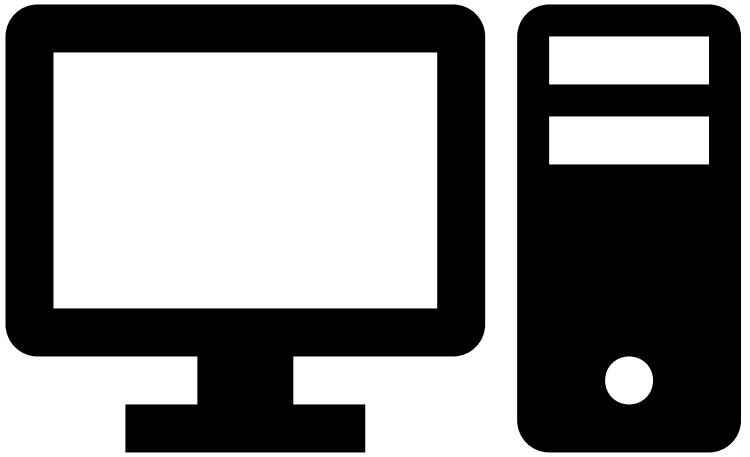
Print these items with the date on them for the file:

- Contractor, Tradesperson, or Business Verification
  - Verify a Contractor, Tradesperson or Business (wa.gov)
  - UBI number
  - Industrial Insurance/Workers Comp status
  - Contractor training status
- Debarred Contractors List
  - System for Award Management (sam.gov)
- Department of Revenue Tax Registration
  - Washington State Department of Revenue
- Employment Security Department – can request letter

Construction Documentation



Paper?



Electronic?

Construction Documentation Begins With COMMUNICATION!



Graphic courtesy of Jeff Gubbe WSDOT Construction Trainer

- Establish “Rules of Engagement”
  - Who you gonna call??
  - First contact establish Emergency Call list. Keep it up to date.
- Email subject lines
  - consistent subject lines help prevent email avalanches
- Submittal format and Transmittal (ie: electronic only)
- Time for response – establish at start

Get it Organized

- Files can be set up to follow the PMR checklist
- Your agency CA agreement tells you who signs what for FHWA funded projects. Make sure to follow it.
- If using FHWA funds, copy the important stuff (stuff on PMR checklist) and place the copies in your file for easy auditing.
- Materials files are best if set up by Bid Item. Can you find everything from a single day paving in 5 minutes or less?

Project Documentation Tracking

- **ROM –** use to record RAM/QPL material approval
  - See LAG Manual 52.107 for allowed modifications to acceptance actions
  - Do you know the difference between approval and acceptance?
- **RFI Log**
- **Change Order Log –** always address time
- **Submittal Log**
- **Certified Payroll** – track each SUB/Prime each week
- **DBE Tracking**
- **Contractor Information Log –** use the one in the PMR Checklist-just put it in the file and check the boxes as you go. Easy button.

Local Agency Project
Prime & Subcontractor Information

Agency Name	Federal ID Number	Contact	Date

Project Title

	Name	Amount	Date of Request to Sublet 421-012	DBE	Fed. Aid Certification 420-004	Statement of Intent to Pay Prev. Wages F700-029-000	Wage Rate Interview 424-003	DBE Review 272-051	Affidavit of Wages Paid F700-007-000	Payroll
Prime										
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
	Total Amount Sublet $		% of Contract Sublet = (Maximum 70%)							

Payroll: Certified by the contractor ☐ Yes ☐ No Checked and initialed by the agency ☐ Yes ☐ No

How often were payrolls reviewed

Notes

WSDOT Form 272-024
Revised 07/2015

Page 5 of 13

Get a letter from the contractor accepting the TCP in the contract, now required. Ask them to send it prior to or bring to the precon meeting.

Changes need to be approved by WSDOT in some cases.

Documentation of Traffic Control

Pictures

The Contractor's signing must adhere to the approved Traffic Control Plans

Document the Contractor's traffic control activity & condition of signs and devices

ıcorporate PROWAG
nts (SS1-10.2(1)A)





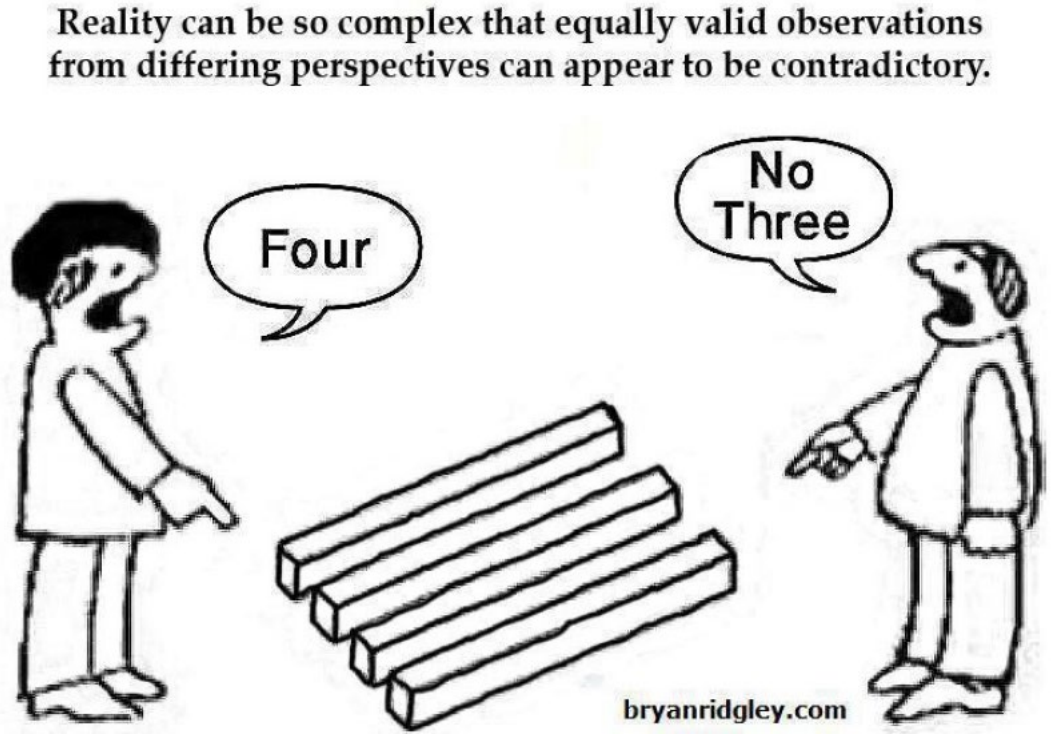


Slide courtesy of Jeff Gubbe WSDOT Construction Trainer

Change Orders

Who, What, Where, When, Why, How

- Description
- Reason for change
- Location
- Quantities
- Plan sheets
- Justification
- Time impacts



Payment to the Contractor

The Office Engineer & Staff:

- Keep the Project Ledger
- Use Progress Estimate process to make monthly payments to prime.
- There must be a source document for each ledger entry marked “paid” or “eligible for payment”



Inspectors provide source documents

- Do not get behind on your PAPERWORK!
- Date and initial all checks and approvals, leave fingerprints

Prompt Pay Law (RCW 39.76.011)

Requires payment no later than 30 days after installation or completion of Work.

Allows withholding of payment for unsatisfactory performance as long as the following conditions are met:

- Written notification of deficient work to contractor within 8 days of installation/completion of work
- Payment is made within 30 days of satisfactory completion of previously deficient work

Project Closeout

- Substantial Completion
- Physical Completion
- Final Acceptance
- Notice of Completion
- Document Retention and Archiving

Project Closeout

- Substantial completion – full unrestricted use of the roadway
  - Quit counting working days – Liquidated Damages if over working days
  - Punchlist items can remain
  - Landscaping can remain if APWA special utilized and full and unrestricted use
  - Walkthrough with Local Programs – ADA compliance
- Physical completion – Contractor has left site
  - Paperwork or documentation may still be outstanding (ex. affidavits of wages paid or Prevailing wage statements/classification)
- Final acceptance
  - All documentation submitted
- Notice of completion
- Document retention and archiving



Project Closeout

- Retainage is not held on federally funded projects (RCW 60.28.011), therefore does not need to be released
- Notice of Completion Notice of Completion of Public Works Contract (F215-038-000) (wa.gov) filed by agency with:
  - Employment Security Department
    - publicworks@esd.wa.gov (360) 890-3499
  - Labor & Industries
    - ContractRelease@LNI.WA.GOV (855) 545-8163 option #4
  - Department of Revenue
    - PWC@dor.wa.gov (360) 704-5650
- Notice of Completion is for any project over $35,000
  - This should be every federally funded project
  - It is not worth it to get federal funding for small projects
- Final Contract Voucher - 134-146.pdf (wa.gov)

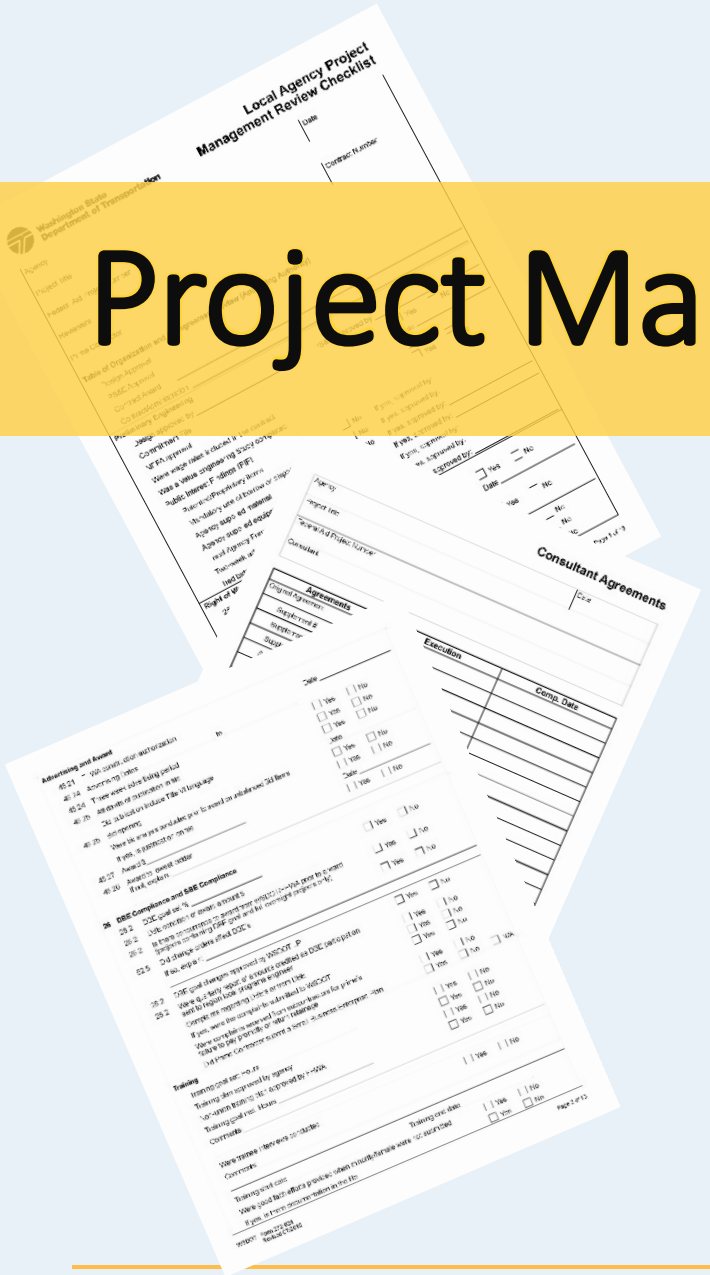
Project Closure

- When complete 60-day closure begins. Initiated by closure letter or final inspection
- Within 60 days of completion date – submit final bill
- LA Agreement end date – pay attention!
- Final inspection project walk through with LP region, will verify all ADA standards are met
- Will look for Physical Completion
  - No unfinished work, (I.E., barrels, flaggers, or Class A's still in place)
- Check that the project has the elements from the project description and that they are in the right place

Project Closure

- Administrative Review Letter from Local Programs
- Reconcile the billings, agency may still have a payment due or may end up paying back overpayments
- Depending on audit findings, may need to return funds
- Will give a record retention period – normally 3 years from final closure date

Project Management Reviews and Audits



Project Management Reviews and Audit Sample Findings

- CMO – Certification of Materials Origin
- Foreign Steel – declare on WSDOT Form 350-109
- Scale Certs
- Traffic Control
  - Need to be provided with advertised plans
  - If they are used without modification a letter adopting is a good idea

Project Management Reviews and Audit Findings

- Mobilization calculations - write them down, don't just pay
- DBE onsite reviews – do for each DBE on site, even if not part of COA
- Progress payments need certified payroll justification statement on each progress payment signed by the agency
- **BIGGEST NO NO! – Supplementing expired consultant agreements: "CAN.NOT.DO"**

Project Management Reviews and Audits

- Documentation check by Local Programs Region
- PMR – Each CA Agency once every 3 years-ish, LP HQ
  - Findings
  - Responses
- Routine Audit by the STATE Auditor on any local project with federal funds or any project over $1,000,000
- Your agency is responsible for performing a federal single audit performed in accordance with CFR Part 200.501 Audit Requirements – check with your agency accounting group

Thank You!



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