

FEDERAL-AID-PROJECTS

CONTRACT ADMINISTRATION MANUAL

5-591.120

The purpose of this section is to provide guidelines for administering projects that have Federal-Aid funding. Section 1305 of the Transportation Equity Act for the 21st Century (TEA-21) amends Section 106 of Title 23 - United States Code (USC), Project Approval and Oversight, to provide revised provisions for oversight of Federal-aid highway projects. Section 1601 of the TEA-21 replaces existing Section 117 of Title 23, Certification Acceptance (CA) with the HIGH PRIORITY PROJECTS PROGRAM, thus eliminating CA.

Amended Title 23 USC, Section 106 provides considerable flexibility to individual States and Federal Highway Administration (FHWA) division offices in reaching agreement on “responsibilities” for design, plans, specifications, estimates, right-of-way certification statements (part of PS&E), contract awards, and construction inspections/final acceptance of Federal-aid highway projects. It is important to realize the “responsibilities” refers only to the project actions noted in the preceding sentence. These are the same project actions for which States could assume responsibility under Title 23 USC, Section 106 prior to TEA-21.

Similar to past implementation of Section Title 23 USC, Section 106, States cannot assume responsibility for other Federal actions required under laws outside of Title 23 Code of Federal Regulations (CFR) (as an example, MEPA). Further, general Title 23 CFR requirements that apply to all projects, such as metropolitan and statewide planning procurement of services or contracts, disadvantaged business enterprises, wage rates, etc., continue to apply to projects where the State has assumed the responsibilities noted. There is no specific discussion in amended 23 USC, Section 106 of responsibilities that can be assumed by the States. However, amended Section 106(c)(4), which is a general requirement not relating to specific projects, indicates that FHWA may not assume any greater responsibility than the FHWA permitted under Title 23 on September 30, 1997, except upon agreement between FHWA and the State.

Considering the language in revised Section 106(c)(4), that all States continue to have the opportunity to assume the responsibilities noted for the same types of Interstate projects as were allowed under Title 23 USC, Section 106 prior to TEA-21, these being: 1) all 3R projects and 2) new/reconstruction projects less than \$1 million in cost. All federally funded Design-build, Best Value, and Major Bridge projects (as defined in the Minnesota Stewardship Agreement) will be handled as Full Oversight Projects. These projects are not limited to a specific road system and will include the Interstate, NHS and Non-NHS projects.

As of January 1, 2001 all new and active projects will be administered by the following:

All formerly PS&E and FAP projects:	Use FFO procedures
All formerly MAP projects:	Use SAFO procedures
All Formerly MTP projects:	Use SLAFO procedures

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FULL FEDERAL OVERSIGHT PROJECTS (FFO): **(Formerly PS&E/FAP)**

New or Reconstruction Projects on the Interstate system over \$1 Million and all Design Build and Major Bridge Projects: For new Construction/Reconstruction projects (see Table 1 page FFP-9) with construction costs greater than \$1 million, all project activities will be developed with full FHWA oversight and approval as shown in Table 1 (see end of section). Upon agreement by the FHWA Construction and Contract Administration (FHWA/CCA) Engineer and the Mn/DOT Project Liaison Engineer, large or complex rehabilitation projects will also be considered for full FHWA oversight. All Federal-aid Design Build projects will be full oversight.

Contract Awards: All FFO Projects will have the contract award approved and obligated by the FHWA prior to the Start of construction.

Processing Contract Changes (Supplemental Agreements): Contract Changes will be processed by either Major or Minor contract change processes. These processes are listed below. Time extensions will be addressed with all contract changes.

I. Major Contract Changes: Major Contract Changes are defined as changes to the plans and/or provisions and all major extra work that will significantly increase the cost of the project; alter termini, character, or scope of the work; or incorporate an experimental product or feature. All Major contract changes and major extra work must have approval by the FHWA in advance. More specifically, major contract changes and extra work include, but are not necessarily limited to, those changes that meet any of the following criteria:

1. "Significant cost" is defined as a Supplemental Agreement, Change Order, or overrun exceeding \$100,000.
2. Revisions to the project termini including changes in the project limits.
3. Changes in "character" of the work including those that affect items such as environment, EEO provisions, right of way activities, and labor provisions.
4. Changes in "Scope" of the work including additions, deletions, or relocations of bridges and/or other major structures; revisions to the structural section above the sub-base; revisions to the geometric design of the mainline roadway, ramps, frontage roads or cross roads; and other features that are specifically defined in the project scope.
5. An experimental product or feature.
6. Termination of a Contract.

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The Project Engineer will send a draft of the Supplemental Agreement (“Standard” or Part A & Part B) to the FHWA for approval. The FHWA will prepare Form 1365 and submit it to Mn/DOT Office of Construction and Innovative Contracting (Mn/DOT OCIC) for further processing.

II. Minor Contract Changes: Are all changes and extra work not defined as Major Contract Changes. Although these changes require written FHWA approval, approval will be performed at the time of Final Acceptance of the project. The work can be advanced prior to that approval. Mn/DOT OCIC will submit a copy of each Supplemental Agreement (“Standard” or Part A & Part B) to the FHWA. Each copy will be stamped “Federal Participation Anticipated” or “Federal Non-Participation” as appropriate.

III. Time Extensions: Time extensions will be addressed with all contract changes. Major Contract Time extensions require FHWA approval. The Project Engineer will notify the FHWA as soon as practical that a time extension is required for a project. The Project Engineer is responsible for writing the justification request and submitting it to the FHWA for approval. This approval will be performed at the time of approval of a Major Contract Change or at Final submittal.

IV. Contract Claims: A Contract Claim involving legal issue, or a settlement based on a legal opinion or is resolved through a Dispute Resolution Process will be handled in the same manner as a Major Contract Change. The Engineer must notify the Mn/DOT OCIC Claim Engineer and FHWA of a claim of this type.

Construction Inspections: The FHWA is responsible for coordinating, conducting and preparing construction inspections and reports.

The following are the types of construction inspections that may be conducted:

1. A Process Review/Product Evaluation (PR/PE) is a comprehensive review to evaluate procedures and controls. The purpose of a PR/PE is to provide oversight of construction and materials management activities, determine compliance with requirements on a statewide or district-wide basis and make recommendations to enhance the process/product being evaluated.
2. An Inspection In-depth is a thorough on-site review to evaluate a specific contract item, combination of items, or major phase of a project. Inspections in-depth may be accomplished on an individual project basis or on several projects with the findings summarized as a statewide or district-wide review.
3. A Project Inspection is an on-site review to evaluate activities, the quality and progress of the work, and if appropriate, to follow up on findings from previous inspections.

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Final Inspections: The FHWA will perform final Inspection on all Full Federal Oversight projects.

Final Acceptance: The FHWA will be responsible for the Final Acceptance on all Full Federal Oversight projects.

Experimental Features: The Project Engineer must contact the Director of Mn/DOT Office of Research Services to coordinate inclusion of an experimental feature into a construction project. The use of an experimental feature that has not been included in the project plans is a Major Contract Change. Refer to "Experimental Features Procedures-For the Use of Experimental Features on Minnesota Highway Construction Projects" for implementation procedures. The FHWA Construction and Contract Administration Engineer will be responsible to approve the use of experimental features.

STATE ADMINISTERED FEDERAL OVERSIGHT (SAFO): **(Formerly MAP)**

All other Interstate and National Highway System (NHS) projects: Mn/DOT will assume all responsibilities in accordance with Section 106 of Title 23 USC. (See Table 1 at the end of this section) This applies to all design activities, Plans and Specifications approvals, concurrence in awards, construction inspection, contract changes, final acceptance and maintenance activities. As such, Mn/DOT acts as the Federal agent for those actions listed above precluding the need for FHWA approval or concurrence, except those actions that require FHWA approval outside of Title 23 USC (i.e., National Environmental Policy Act (NEPA), Title VI of the Civil Rights Act, Fair Housing Act, and the Uniform Relocation Assistance and Land Acquisitions Policies Act).

Contract Awards: All SAFO projects will have the contract award approved by Mn/DOT OCIC Pre-Award Unit.

Processing Contract Changes: All contract changes and extra work as defined previously under FFO will be approved by Mn/DOT OCIC as outlined in Section 5-591.350: Contract Changes.

Major Contract Changes: Major Contract Changes are defined as changes to the plans and/or provisions and all major extra work that will alter the termini, character and scope of the work or incorporate an experimental product or feature. All Major contract changes and major extra work must have approval by the FHWA/CCA Engineer in advance. More specifically, major contract changes and extra work include, but are not necessarily limited to, those changes that meet any of the following criteria:

1. Revisions to the project termini including changes in the project limits.

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2. Changes in "character" of the work including those that affect items such as environment, EEO provisions, right of way activities, and labor provisions.
 3. Changes in "Scope" of the work including additions, deletions, or relocations of bridges and/or other major structures, revisions to the structural section above the sub-base, revisions to the geometric design of the mainline roadway, ramps, frontage roads or cross roads and other features that are specifically defined in the project scope.
 4. Termination of a Contract.

Time Extensions: Time extensions will be addressed with all Contract Changes. The Project Engineer will notify Mn/DOT OCIC as soon as practical when a time extension is required for a project. Mn/DOT OCIC is responsible for approval of all time extensions. See Section 5-591.340: Contract Time Extensions for detail approval procedures.

Contract Claims: A Contract Claim will be treated in the same manner as a Contract Change except for any claim involving a legal issue or settlement based on a legal opinion or is resolved through a Dispute Resolution Process. The Project Engineer must notify the Mn/DOT OCIC Claims Engineer for assistance/approval. See Section 5-591-350: Claims for detail approval procedures. The Project Engineer will send a copy of the approved contract claim to FHWA/CCA Engineer for information purposes.

Construction Inspections: Mn/DOT OCIC is responsible for coordination of construction inspections. The State Construction Engineer may delegate the inspection responsibilities (coordinating, conducting, and preparing construction inspections and reports) to the appropriate Mn/DOT construction personnel

The following are the types of construction inspections that may be conducted. The same construction inspections described in the FFO section apply to SAFO projects.

Final Inspections: A final inspection is required for all SAFO projects. Final Inspection for SAFO projects is the responsibility of the Mn/DOT OCIC Construction Standards Engineer. The final inspection will be accomplished during an on-site review conducted at or near the completion of the work.

Final Acceptance: Final Acceptance for SAFO projects is the responsibility of both the Mn/DOT District Office and Mn/DOT Office of Financial Management/Financial Operations Project Accounting. Copies of all Supplemental Agreements, Change Orders and Authorization forms (i.e. FHWA-1365 Records of Authorization to Proceed with Major Contract Revision) are to be included with the Final Acceptance package along with a copy of the Final Inspection Report.

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Experimental Features: The Project Engineer must contact the Director of Mn/DOT Office of Research Services to coordinate inclusion of an experimental feature into a construction project. The use of an experimental feature that has not been included in the project plans is a Contract Change. Refer to “Experimental Features Procedures-for the Use of Experimental Features on Minnesota Highway Construction Projects” for implementation procedures. The FHWA Construction and Contract Administration Engineer will be responsible to approve the use of experimental features.

STATE/LOCAL ADMINISTERED FEDERAL OVERSIGHT (SLAFO): **(Formerly MTP)**

NON-NHS Projects: Mn/DOT will be the responsible agency for day-to-day oversight and administration of all Non-NHS Projects similar to a manner as FHWA is for the above section: **Full Federal Oversight Projects.** These projects will be listed on routes OFF the NHS system. The FHWA role will be that of stewardship of these projects. As such, FHWA will assist Mn/DOT in the use of Process Review/Product Evaluation (PR/PE), Inspections or other similar type of methods to ensure compliance with Federal law and regulations.

Under this program the State will be directly responsible for performing day-to-day oversight and compliance reviews with all federal laws and regulations under these projects. Projects that include any portion on the NHS will be reviewed prior to advertising the construction project or sooner with FHWA Construction and Contract Administration Engineer for the appropriate oversight procedures

Contract Awards: All State/Local Administered Federal Oversight Projects will have the contract award approved by Mn/DOT OCIC Pre-Award Unit. With only prior approval by both FHWA and Mn/DOT, a local agency may perform day-to-day inspection and management of a project constructed off the Interstate and on the NHS by Delegated Contract Process (DCP), MnDOT shall maintain the role of project oversight in these case.

Processing Contract Changes: All contract changes and extra work as defined previously under FFO will be approved by Mn/DOT OCIC as outlined in Section 5-591.350: Contact Changes and may request additional funding obligation authority from FHWA .

Major Contract Changes: Major Contract Changes are defined as changes to the plans and/or provisions and all major extra work that will alter the termini, character and scope of the work or incorporate an experimental product or feature. All Major contract

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changes and major extra work must have approval by the FHWA/CCA Engineer in advance. More specifically, major contract changes and extra work include, but are not necessarily limited to, those changes that meet any of the following criteria:

1. Revisions to the project termini including changes in the project limits.
2. Changes in "character" of the work including those that affect items such as environment, EEO provisions, right of way activities, and labor provisions.
3. Changes in "Scope" of the work including additions, deletions, or relocations of bridges and/or other major structures; revisions to the structural section above the sub-base; revisions to the geometric design of the mainline roadway, ramps, frontage roads or cross roads and other features that are specifically defined in the project scope.
4. Termination of a Contract.

Time Extensions: Time extensions will be addressed with all Contract Changes. The Project Engineer will notify Mn/DOT OCIC as soon as practical that a time extension is required for a project. Mn/DOT OCIC is responsible for approval of all time extensions. See Section 5-591.340: Contract Time Extensions for detail approval procedures.

Contract Claims: A Contract Claim will be treated in the same manner as a Contract Change except for any claim involving a legal issue or settlement based on a legal opinion or is resolved through a Dispute Resolution Process. The Project Engineer must notify the Mn/DOT OCIC Claims Engineer for assistance/approval. See Section 5-591-350: Claims for detail approval procedures. The Project Engineer will send a copy of the approved contract claim to FHWA/CCA Engineer for information purposes.

Construction Inspections: Mn/DOT OCIC is responsible for coordination of construction inspections. The State Construction Engineer may delegate the inspection responsibilities (coordinating, conducting, and preparing construction inspections and reports) to the appropriate Mn/DOT construction personnel

The following are the types of construction inspections that may be conducted. The same construction inspections described in the FFO section apply to SAFO projects.

Final Inspections: A final inspection is required for all SLAFO projects. Final Inspection for SLAFO projects is the responsibility of the Mn/DOT OCIC Construction Standards Engineer. The final inspection will be accomplished during an on-site review conducted at or near the completion of the work.

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Final Acceptance: Final Acceptance for SLAFO projects is the responsibility of both the Mn/DOT District Office and Mn/DOT Office of Financial Management/Financial Operations Project Accounting. Copies of all Supplemental Agreements, Change Orders and Authorization forms (ie FHWA-1365 Records of Authorization to Proceed with Major Contract Revision) are to be included with the Final Acceptance package along with a copy of the Final Inspection Report.

Experimental Features: The Project Engineer must contact the Director of Mn/DOT Office of Research Services to coordinate inclusion of an experimental feature into a construction project. The use of an experimental feature that has not been included in the project plans is a Contract Change. Refer to “Experimental Features Procedures-for the Use of Experimental Features on Minnesota Highway Construction Projects” for implementation procedures.

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SYSTEM	Interstate			NHS (non-I)	Non-NHS
Oversight	New or Reconstruction \$1million or greater (or by agreement)**	New or Reconstruction Less than \$1 million (or by agreement)**	State-Funded Projects	State Administered **	State Administered **
Governing Policy	Federal Highway Administration Policy	Federal Highway Administration Policy with Approval Actions Delegated to Mn/DOT	State Policy FHWA Design Stds.	Federal Highway Administration Policy with Approval Actions Delegated to Mn/DOT	State Policy
PROCEDURES	FFO	SAFO	SF	SAFO	SLAFO
ACTIONS					
Plans, Spec & Estimates Approval	FHWA	Mn/DOT	N/A	MN/DOT	Mn/DOT
RFP Approval - Design Build	FHWA	FHWA	N/A	FHWA	FHWA
Authorization	FHWA	Mn/DOT	N/A	Mn/DOT	Mn/DOT
Concurrence in Award	FHWA	Mn/DOT	N/A	Mn/DOT	Mn/DOT
Supplemental Agreement Approval	FHWA – Advance Approval for Major Changes – All others at Final Voucher (FHWA)	FHWA – Advance Concurrence for Major Changes -- All others at Final Voucher (Mn/DOT)	N/A	FHWA – Advance Concurrence for Major Changes – All others at Final Voucher (Mn/DOT)	Mn/DOT
Claims	FHWA				
Time Extensions	FHWA Advance Approval for Major Changes & Termination of Contract				

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SYSTEM	INTERSTATE			NHS (non-I)	Non-NHS
PROCEDURES	FFO	SAFO	SF	SAFO	SLAFO
ACTIONS					
Claims/ Termination	Mn/DOT/ FHWA Concurrence	Mn/DOT/ FHWA Advance Concurrence	N/A	Mn/DOT/ FHWA Advance Concurrence	Mn/DOT
Materials Certification	FHWA Acceptance by Mn/DOT	Mn/DOT Approval and Acceptance	N/A	Mn/DOT Approval and Acceptance	Mn/DOT Acceptance from LPA
Materials Certification - Design Build	FHWA Acceptance by Mn/DOT	Mn/DOT Approval and Acceptance	N/A	FHWA/Mn/DOT Acceptance from DB team	FHWA/Mn/DOT Acceptance from DB team
Project Inspections	FHWA Project, Inspections In-depth & included in PR/PE sampling	Mn/DOT Projects maybe Included in a FHWA PR/PE sampling	N/A	Mn/DOT Projects maybe Included in a FHWA PR/PE sampling	State Policy And Procedures
** All Federal-Aid Design Build Projects will follow the Full Federal Oversight (FFO) Procedures.					