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Project Construction and Contract Administration Project Management Supervising Agency Requirements (Responsible Charge)

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Necessary supervision and inspection must be provided to ensure contract satisfaction in order to receive Federal-aid funds



There is a saying, “You don’t get what you ‘ex’-pect, but what you ‘in’-spect,” which is why the Federal Highway Administration, or FHWA, places importance on construction project supervision. Why is this important? Because agencies must satisfy certain project supervision requirements in order to receive Federal-aid highway construction funds.

These requirements follow good business practice by having the agencies close to the work safeguard the public’s interests as they supervise completion of a project. Simply stated, an agency must provide necessary supervision and inspection to ensure contract satisfaction and that the public gets what it is paying for.

Federal regulations stipulate that the State department of transportation, or DOT, is the first-line supervising agency. The State DOT must provide an “engineer in responsible charge” to oversee construction project administration.

In some cases, the State DOT will arrange for a local public agency, or LPA, having

jurisdiction over a highway, to complete the construction work. This means assigning the LPA some supervising agency responsibilities. The LPA may use a contractor or its own staff to complete the work. Most often, contractors are hired and, depending on the situation in your State, an LPA may contract for the construction itself or through the State DOT.

To enter into such an arrangement, an LPA must meet certain conditions and get State DOT and FHWA approval in advance. The State DOT maintains overall project responsibility, and oversees the LPA and any consultant staff based on some consideration of experience with Federal-aid projects.



Each State DOT should clarify project supervision responsibilities through agreements with the LPA.

So what are the conditions for an LPA to assist as a supervising agency?

- You must include all Federal requirements in the contract and ensure compliance.

- You must be adequately staffed and equipped to complete the work to the satisfaction of the contract. In other words, you must perform project administration, including inspecting the construction. Consultant engineers and inspectors may be hired to assist with this, but cannot make critical project decisions that are best made by the agency on the public's behalf.
- You must provide an “employee in responsible charge” of each project, including projects that employ consultants. This must be a full-time employee of the LPA, although he or she does not have to be an engineer nor dedicated full time to a project.

Let's look in more detail at the LPA



employee-in-responsible-charge requirement. This person supervises all project administration activities and coordinates with the State DOT based on

the assignment of responsibilities. The employee in responsible charge typically performs the following activities:

- Maintains familiarity with day-to-day project operations, including safety issues
- Approves contract changes based on the arrangement with the State DOT
- Performs field reviews with a frequency appropriate to the project size and complexity, including a final inspection to compare against the plans and specifications
- Reviews project financials to ensure that safeguards are in place to minimize fraud, waste, and abuse
- Directs staff to carry out project administration and ensures it is done satisfactorily

Next, let's consider what it means to be adequately staffed to perform project administration according to the contract.



The contract includes the plans and specifications for building the project, as well as provisions for controlling the project's cost, schedule, and quality; as well as for complying with other laws. An LPA, as an assisting supervising agency, provides necessary personnel to make sure the project is built per the contract. The LPA's employee in responsible charge will oversee project administration by these personnel, whether they are from the LPA or a consultant.

For example, when we talk about managing project costs, these activities include approving contractor payments and contract modifications or change orders. Managing the schedule includes overseeing a project's completion within the contract time and proper handling of any time extensions. Managing the project's quality includes supervising inspection and other quality assurance activities, including materials testing. Demonstrating contract compliance means maintaining good documentation.



This includes keeping records, such as measured field quantities for payment; certifications of material quality; field diaries as a general project record; environmental permits and commitments; and other

documentation to show observance with other Federal, State, and local requirements in the contract.



Let's use an example to help clarify. Say we have an LPA project, called Deficient Bridge Replacement in Hometown, USA, with a small bridge crossing Founders Creek and about a mile of asphalt pavement resurfacing on either side. Based on an agreement with FHWA, the DOT evaluated Hometown and approved it to act as an assisting supervising agency. The DOT assigned an engineer in responsible charge, Sue, to work with Hometown's employee in responsible charge, Bill, who is not an engineer, to arrange supervision and inspection for the project. Bill is the county manager, so his involvement with the project is part time, enough to maintain responsibility for important decisions and the outcome. Using the DOT's approved consultant selection process, Hometown hired a qualified consultant, Construction Management Inc. (CMI), to do the construction engineering and inspection under Bill's supervision. Sue and Bill specified necessary staffing for CMI to adequately supervise and inspect the project, which includes:

- A project engineer to act as the owner's field representative, supervising other field inspection staff and ensuring the contract obligations are met and all documentation is completed in a timely manner. The project engineer will confer with Sue and Bill before making decisions reserved for the agency, such as progress payments, change orders, and time extensions.

- Qualified inspectors to check the contractors work against the plans and specifications, including earthwork, drainage, paving, bridge and work zone traffic control. They will keep field diaries and measure the work completed for progress payments. CMI also coordinates with certified State DOT lab technicians testing the project materials before paying the contractor. In this case, the State DOT is providing the testers and lab for the project, but this can also be contracted.

Bill is in regular contact with CMI and visits the project weekly or when critical activities occur. He coordinates important decisions with Sue. Sue also comes out about once a month, especially when there are more significant change orders to review.

Of course, this is only a simple example and your project may differ based on its particular needs for supervision. Let's review the core requirements for an LPA to assist as a supervising agency:

- You must include all Federal requirements in the contract and ensure compliance.
- You must provide an employee in responsible charge to oversee project administration and coordinate with the State DOT on important decisions. Hired consultants cannot act in this role. You must provide adequate staff to ensure the project is built according to the contract.
- You can use consultant personnel to assist with this, such as field inspectors, office staff, testers, and engineering analysis.



You should always check with your State DOT or FHWA division office for specific policies and procedures in your State.

Additional Resources

- Federal regulations addressing construction, including Section 105 on supervising agency requirements
http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=9278b79aa6b692bc0e795fdc362b9eaf&tpl=/ecfrbrowse/Title23/23cfr635_main_02.tpl
- FHWA guidance covering contract-related issues common to supervising a construction project
<http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>
- 2011 FHWA memo defining "responsible charge" and examples of duties related to supervising agencies
<http://www.fhwa.dot.gov/federalaid/110804.cfm>
- Law requiring agency to be "adequately staffed and suitably organized" to deliver Federal-aid projects
<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title23/pdf/USCODE-2011-title23-chap3-sec302.pdf>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00024 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.