

## Chapter 4 Guidelines for Capital Construction Projects

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This chapter contains guidance associated with capital construction projects.

*Note:* These guidelines are provided as an overview. More detailed requirements must be obtained from federal, state, or local agencies. This is not intended as an exclusive list.

### Capital Construction Project Requirements

There are numerous requirements and detailed processes that must be followed when developing and building capital construction projects with grant funds, particularly when using Federal Transit Administration (FTA) funds.

Prior to receipt of FTA funds for construction projects, your organization will be responsible for and must complete the requirements and conditions summarized in [Chapter 1](#) as well as the following items:

- A submittal of the construction project to the Statewide Transportation Improvement Plan (STIP).
- An environmental impact analysis under the National Environmental Policy Act (NEPA).
- A Disadvantaged Business Enterprise (DBE) plan for a construction project-specific goal if it is not included in your organization's goal.

*Note:* Any construction project funded in whole or in part with grant funds distributed by the Washington State Department of Transportation (WSDOT) must be in compliance with the **Americans with Disabilities Act (ADA)**, including the standards and guidelines in the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG). More information about the ADAAG is available at [www.access-board.gov](http://www.access-board.gov) or by contacting your WSDOT community liaison.

### WSDOT's Role in Capital Construction Projects

WSDOT is responsible for ensuring that grantees follow FTA and state requirements associated with the receipt of grant funds for capital construction projects. Limited technical assistance is provided.

*Note:* For state funded capital construction projects, WSDOT must provide written approval before the construction phase begins. Grantees must submit a request for approval at least two weeks before construction begins.

### Grantee's Role in Capital Construction Projects

Grantees are responsible for carrying out the project described in the grant agreement and complying with federal and state requirements. The grant-funded project is defined by its

scope, schedule and budget. Changes to the scope, schedule and budget require WSDOT approval as outlined in [Chapter 1](#).

The grant-funded project scope is detailed in the grant application and grant agreement. In some cases, only part of the project's overall scope is eligible for grant reimbursement.

WSDOT requires grantees to reach project-schedule milestones, which are used to track progress. With mutual agreement, these milestones can be adapted to suit the particular complexities of the project. In some cases, grantees have achieved some project milestones before they receive grant funds. Some of these activities may also occur simultaneously. Here is a list of project schedule milestones:

- Design (30, 60, 90 and 100 percent).
- Environmental documentation development, including Washington State Executive Order 05-05 compliance.
- Permit acquisition.
- Land acquisition and right of way certification.
- Utilities.
- Contract advertisement, bid acceptance and award.
- Construction (25, 50 and 75 percent).
- Operationally complete (i.e., commissioned).
- Site inspection by WSDOT.
- Asset management plan or facility maintenance plan.
- Project closeout.

The agreement budget is based on the grantee's estimates and available grant funding resources.

All reimbursements for grant-funded activities must occur within the grant agreement project period. FTA-funded projects may have pre-award authority. Contact WSDOT to determine if pre-award authority applies to your project.

**Note: Pre-award authority:** Grantees must meet NEPA requirements as supported by an FTA-approved and documented record of decision, along with FTA's announcement of award, and the inclusion of the project in the STIP before any costs can be reimbursed for land acquisition, building materials and construction. By contrast, pre-award authority for architectural and engineering (A&E) and project-management costs are eligible project expenses along with FTA's announcement of award and the project's inclusion in the STIP.

Capital construction project costs outlined in the grant agreement and associated with preliminary engineering, project level environmental assessment and documentation, final design, real estate purchases, and construction are eligible for grant reimbursement. Scope, schedule and budget development; corridor planning; alternatives analysis; major investment

studies; and corridor-analysis costs do not qualify as eligible capital construction project expenses.

For FTA-funded projects, eligible costs must also comply with Federal Cost Principles as outlined in the Office of Management and Budget (OMB) requirements codified under 2 CFR Part 200, or Federal Acquisition Regulation (FAR) Part 31.

For FTA-funded projects, the grantee is also responsible for the following:

- Written standards of conduct
- Self-certification
- Third-party-contracting capacity
- Audits
- Fraud

Chapter 3 of FTA Circular 4220.1F provides details for each of these requirements, available at [www.fta.dot.gov/documents/c\\_4220\\_1f.pdf](http://www.fta.dot.gov/documents/c_4220_1f.pdf). At a minimum, grantees must also comply with the following six federal requirements in all procurements, including A&E and construction services:

- Comply with the Brooks Act for procurement of architectural and engineering services.
- A requirement for full and open competition.
- A prohibition against geographic preference, except A&E services.\* (*see note below*)
- Inclusion in contracts of all federal clauses required by Federal statute governing procurement for such services.
- Award to responsible contractors.
- For rolling stock, a five-year limitation on the contract performance period.

**Note:** FTA is considering a one-year pilot program that bases hiring preferences on geography. It was previously disallowed due to concerns about adverse impacts on competition. This will only affect construction contracts awarded or advertised in FY 2015. Based on the findings of this program, USDOT may provide further guidance regarding such restrictions.

*Governmental Sub-recipients of the State:* Each governmental sub-recipient may use state procurement procedures for its third-party contracts. Only the FTA Circular 4220.1F provisions identified above and USDOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”, 49 CFR Part 18, applicable to the state will apply to procurements by the state’s governmental sub-recipients.

*Private Nonprofit Sub-recipients of the State:* Only the FTA Circular 4220.1F provisions identified above and USDOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Educations, Hospitals, and other Non-Profit Organizations,” 49 CFR Part 19, will apply to a nonprofit sub-recipient of the state.

## Contract Methods and Delivery Strategies for Construction Projects

The contract method chosen for a capital construction project should best suit the organization's resources and the level of involvement desired. Elements of a capital construction project include:

- Developing design plans.
- Obtaining required permits.
- Property acquisition.
- Relocation of existing utility infrastructure.

Many of these activities may occur simultaneously or may require the completion of one element before the next can begin. Coordination and communication both internally and with designers, right of way land acquisition professionals, permitting agencies, and utility companies are essential for success.

There are many project delivery strategies for construction projects, such as completing the project with your own resources and staff, turnkey, design/bid/build, and design/build. The differences in these strategies are the amount of control and risk the grantee is willing to accept. The remainder of this chapter focuses only on the design/bid/build and design/build strategies.

### **Design**

Project design must meet the requirements in the Washington State *Standard Specifications for Road, Bridge, and Municipal Construction*. This publication is available at [www.wsdot.wa.gov/publications/manuals/m41-10.htm](http://www.wsdot.wa.gov/publications/manuals/m41-10.htm). Project teams wishing to use other design standards must submit a request to the WSDOT Public Transportation Division and obtain documented approval before design work commences. If design work is already underway before WSDOT awards grant funds, project teams must request documented approval for other design standards within two months after the grant agreement takes effect.

WSDOT recommends that a risk assessment be done prior to completion of the preliminary engineering phase.

**Note:** All design plans must be stamped by the appropriate professional engineer.

### **Permit Requirements**

Local organizations are responsible for obtaining and ensuring compliance with all applicable local, state and federal permits. Federal compliance does not signify compliance with applicable local and state permits. The local organization must work with others as appropriate to provide the required analysis to complete its responsibilities under local, state and federal requirements for permits.

Projects involving federal funds, permits or land are governed by a number of environmental requirements, including but not limited to:

- National Environmental Protection Act (NEPA) of 1969, 42 U.S. Code 4321, et. seq.

- Council on Environmental Quality Regulations for Implementing NEPA
- 40 Code of Federal Regulations (CFR), Part 1500, et. seq.
- Federal Highway Administration and Federal Transit Administration
- Implementing Regulations, 23 CFR, Parts 771, 772, and 774
- Environmental Impact and Related Procedures, 49 CFR, Part 622
- Section 7 of the Endangered Species Act (ESA), 50 CFR, Part 402
- Section 106 of the National Historic Preservation Act, 36 CFR, Part 800
- Presidential Executive Order 12898 – Environmental Justice
- Section 4(f) of the U.S. Department of Transportation Act of 1966, all proposed projects
- Environmental compliance, including [Governor's Executive Order 05-05](#)

For FTA-funded projects, federal law requires that final design may not begin prior to NEPA completion as denoted by an FTA record of decision (ROD), finding of no significant impact (FONSI), or a categorical exclusion (CE) determination.

For the purposes of capital construction projects, [Governor's Executive Order 05-05](#) requires the review of all capital construction projects and land acquisitions not undergoing Section 106 review under the National Historic Preservation Act of 1966. The Governor's Executive Order 05-05 process is not required in capital construction projects if it includes federal funding and is completing the Federal Section 106 environmental review process. WSDOT will require documentation confirming successful completion of the process.

If your project is subject to [Governor's Executive Order 05-05](#), you will need to include time and money in your project schedule and budget for compliance. Previous project teams have spent at least three to six months on this process.

### **Land Acquisition**

Acquisition of real estate for projects with federal funding must be carried out in accordance with provisions of Federal Law (Uniform Act, 42 USC 4601) and the regulations (23 CFR and 49 CFR).

In addition, the completion of the environmental process, receipt of a determination by FTA, and the development of the right of way plans are required before the project is ready to enter the acquisition phase.

### **Utilities and Third-Party Coordination**

Utilities and third parties often need extensive lead time to reasonably schedule the work and obtain the materials necessary for relocation of its facilities.

## **Conducting Procurement for Construction Projects**

As soon as WSDOT notifies your organization of a grant award, you may begin exploring procurement options.

The scope of the requirements may differ depending on the type of funding awarded.

## **FTA-Funded Procurement Requirements**

**Note:** The procurement must meet FTA standards, regardless of the method chosen.

Grantees awarded FTA funds must have established procurement policies and processes in compliance with FTA Third Party Contracting Requirements identified in FTA Circular 4220.1 F and all applicable state laws. The methods of solicitation and selection allowed are as follows:

- Micro-purchases only for construction contract amounts less than \$3,000.
- Small purchase procedures only for construction contracts less than the simplified acquisition threshold (currently \$150,000).
- Sealed bids where:
  - There is complete, adequate and realistic specifications or purchase descriptions.
  - Two or more responsible bidders are willing and able to compete.
  - The procurement lends itself to a firm, fixed-price contract; and the selection can be made primarily on the basis of price.
  - No discussion with bidders is necessary after the receipt of offers.
- Competition proposals.
- Noncompetitive proposal (sole source) procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4220.1F §9.h.

For any FTA-assisted, third-party construction contract exceeding \$100,000, FTA's Buy America requirements will apply unless FTA waives the requirements. See Chapter 3 for specific information regarding Buy America requirements for iron, steel and manufactured products.

**Note:** MAP-21 includes veteran's preference for employment on transit-construction projects.

## **Types of Contracts Allowed**

There are two main methods to contract for professional services:

1. **Procurement by Competitive Proposal/Request for Proposals (RFP)** – The competitive proposal method of procurement is normally conducted with more than one offerer (e.g., design consultant, design manager). This method of procurement is generally used when conditions are not appropriate for the use of sealed bids.
2. **Procurement of Architecture and Engineering (A&E)** – When contracting for A&E services, use competitive proposal procedures based on the Brooks Act as defined in 40 U.S. Code Section 541. Professional services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping

and services which require performance by a registered or licensed architect or engineer. This qualifications-based procurement method can only be used for the procurement of A&E services. These requirements apply except to the extent any state adopts or has by statute adopted a formal procedure for the procurement of A&E services. The Brooks Act requires a qualifications-based procurement method for the selection of A&E firms. Price is excluded as an evaluation factor, and negotiations are conducted with the most qualified firm only.

When developing a contract for professional (A&E) services, grantees should review the 54 mandatory procurement standards listed in FTA Circular 4220.1F Appendix B.19 and determine the provisions that apply to the particular procurement. In addition, to receive federal funds, grantees must determine which of the 31 federal statutes and regulations presented in Appendix A.1 of the FTA Best Practices Procurement Manual (BPPM) apply to the project. Finally, make sure the required terms and conditions (clauses, etc.) are included in the advertisement.

The procurement process for professional services is a multi-step process for an FTA-funded project. Refer to Chapter 6.5 of the FTA BPPM.

### **Procurement Steps for Construction Contracts**

For the procurement of contractors, the most common method of procurement is by sealed bid/invitation for bid. These services must be procured in a manner that conforms to applicable state and local law, the requirements of FTA Circular 4220.1F relative to the method of procurement used, and all other applicable federal requirements.

FTA-funded construction contracts require certain provisions. These provisions are discussed in Chapter 6 of the FTA BPPM.

FTA-funded projects must exclude geographical preference in the selection of construction contracts.

Grantees must ensure all contractors or sub-contractors are eligible to receive federal funds and are not debarred or suspended from participating in an FTA-funded project. Grantees are urged to check the Excluded Parties List System at <https://www.sam.gov/portal/public/SAM/> before awarding a third-party contract.

## **Maintaining Procurement Records**

When state or federal grant funds are used for facilities procurement, all pertinent procurement records must be maintained in a procurement file. Regardless of the process used to construct the facility, the complete procurement file must be maintained for six years beyond the useful life of the facility, depending on the type of structure. Contact WSDOT's Capital Programs Manager for assistance on determining the useful life of a facility constructed with grant funds. Review the "Procurement File Contents" checklist in [Appendix E](#) for details on which documents must be retained.

## **Capital Construction Grant Reimbursement Requests**

WSDOT will reimburse grantees for the state and/or federal percentage shares identified in the scope of work of the agreement or the total funds awarded for the project, whichever is less.

To receive reimbursement, submit a completed reimbursement request signed by your financial manager or another authorized representative to the WSDOT Public Transportation Division along with copies of the contractor invoices and all other required documents. See [Appendix A](#) for sample reimbursement request forms and detailed instructions. A completed reimbursement request must have the following information or documents:

- Construction project manager-approved invoices from contractors supplying material and/or labor for construction activities and services.
- Completed financial reports and progress reports as required.

**Note:** For FTA-funded projects, the common grant rules require that any progress payments for construction contracts be made on a percentage-of-completion method.

## **Local Matching Funds and Match Requirements**

The match requirement for each project varies depending on the level of matching funds, if any, identified in the grant application. If the agreement has only one project, the specific local match for the project is identified on the first page of the agreement. In the case of multiple projects, refer to the scope of work and budget in the agreement for the local matching ratio for each project.

### ***Eligible Funds to be Used as Match***

Federally funded capital construction projects generally require a 20 percent match. The local match must be cash, and may not be derived from sources that place any restrictions on the services provided with the equipment or place a lien on the equipment.

For federally funded facilities projects, compliance with ADA or the Clean Air Act remains at 90 percent of net project costs (10 percent match) of the equipment or facilities, attributable to compliance (incremental cost).

## **Disadvantaged Business Enterprise Requirements**

Any construction contract funded either in whole or in part with USDOT funds is subject to the DBE regulations in 49 CFR Part 26.

It should be noted that a contract funded entirely with local or state funds and with no federal funds is not subject to the DBE requirements under this rule.

Refer to [Chapter 1](#) for additional information on DBE requirements.

## **Managing the Constructed Facility**

Once the constructed facility is completed and accepted, grantees are expected to ensure it is used for the purposes described in the grant agreement and is properly maintained. The information below provides guidance on properly managing the grant-funded facility.

### ***Maintaining a Facility***

Grantees are required to maintain facilities purchased and/or renovated with grant funds based on the contractor's recommendations and industry best practices. This typically consists of developing and implementing a preventative maintenance program. In

establishing the preventative maintenance program, grantees should refer to any owner's manuals provided by the contractor for components (e.g., fueling pumps; vehicle lifts; and heating, ventilation and air-conditioning units) installed at the facility.

### **Transit Systems Must Have an Asset Management Plan**

This section only applies to transit systems. However, WSDOT considers the preventive maintenance practices described in the transit asset management plan (AMP) to be best practices for all grantees.

As a condition of receiving state funds, public transit systems must have an AMP certified by WSDOT.

**Note:** Further guidance on the AMP has been published in a separate document. Contact WSDOT for more information. Newly formed transit systems can find guidance for developing an AMP at [www.wsdot.wa.gov/transit/assetmanagement/plan.htm](http://www.wsdot.wa.gov/transit/assetmanagement/plan.htm).

### **Other Grantees Must Have a Facility Maintenance Plan**

In order to meet this requirement, grantees must submit a written facility maintenance plan for WSDOT's approval. At a minimum, the plan must cover all elements of the facility purchased with federal or state grant funds. Current capital construction grantees must submit their plans to WSDOT by Oct. 1, 2015. New capital grantees must submit their plan prior to the occupancy of the constructed facility.

### ***Insuring the Facility***

Facilities and equipment purchased with state or federal grant funds must be insured in compliance with state law. WSDOT must be listed as the loss payee in the event of a total loss. Grantees that self-insure must provide WSDOT with a declaration of self-insurance including a description of how the self-insurance pool is funded. For insurance requirements, refer to the "Loss or Damage of Project Equipment" section of the grant agreement.

### ***Facilities Involved in an Incident***

Grantees are responsible for repairing any damage to grant-funded facilities. All damage should be repaired as quickly as possible. WSDOT must be notified in writing within five business days if the facility sustains disabling which results in one or all of the following:

- Total loss.
- Temporary (more than 10 business days) closure of the facility.
- Service operations being significantly hampered or reduced.

The written notification provided to WSDOT must include the following:

- The nature of the incident.
- The level of damage to the facility.
- Whether the damage resulted in a total loss of the facility and intentions regarding replacement of the facility.
- A copy of any accident or incident report on file with local law officials.

- A copy of any reports of investigations conducted or sponsored by your organization.

Grantees are not required to notify WSDOT if the facility sustains minor damage resulting in only cosmetic-related repairs.

If the damage to the facility results in a total loss, the insurance proceeds are required to be paid directly to WSDOT. Grantees that do not intend to replace the facility will receive a proportionate share of the insurance proceeds, per the terms of the grant agreement, provided that WSDOT finds the grantee is in compliance with the grant agreement.

Grantees that intend to replace the damaged facility must replace it with a similar structure/facility. Contact your WSDOT community liaison to initiate and arrange for the distribution of the insurance proceeds.