



**Bridge Factors Factual Report Attachment 6 – FDOT Local Agency Program (LAP)
Manual Chapter 3 dated September 18, 2013**

Miami, FL

HWY18MH009

(9 pages)

CHAPTER 3 - LOCAL AGENCY CERTIFICATION AND PERFORMANCE MANAGEMENT

3.1 GENERAL

3.1.1 The Federal Highway Administration (FHWA) provides authority to the Florida Department of Transportation (Department) to approve project development and construction administration on delegated projects. The Department assigns some of this authority to qualified Local Agencies through the Local Agency Program (LAP). A Local Agency is defined as a unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has the responsibility for planning, construction, operation or maintenance of, or jurisdiction over a transportation facility. The term Local Agency includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization (MPO), an expressway or transportation authority, a special road and bridge district or a regional governmental unit. Certification is limited to the Local Agency and cannot be granted to a subunit or department of a Local Agency such as a Department of Public Works. Additionally, certification cannot be granted to a private corporation or nonprofit organization. State and federal agencies are generally exempt from the certification requirements of this section. However, a District may request a state or federal agency obtain certification or recertification as needed. A Local Agency whose expenditure of federal aid funds is limited to planning studies and activities that will not lead to construction do not need to be LAP certified.

3.1.2 The Department uses the LAP Certification process to determine that Local Agencies are qualified to administer federal-aid projects. The Department serves as the prime recipient of federal transportation funds. In accordance with 23 Code of Federal Regulation Part 635.105, the Department is the supervising agency; as such, it is responsible for authorizing performance of the work by the Local Agency of all Federal-aid projects. The Department is not relieved of supervision responsibility by certifying a Local Agency. The Department ensures LAP projects receive adequate supervision and inspection and are developed according to approved plans and specifications. The Department final inspects and accepts all LAP projects.

3.1.3 A Local Agency benefits from certification by gaining the ability to obtain federal reimbursement for eligible project activities. The Local Agency may administer the project with its own forces or hire a consultant or contractor as appropriate. In either case, the Local Agency controls the day to day management and operations of the project.

3.1.4 Each District is responsible for certification, recertification and certification removal. The District LAP Administrator may, on an as needed basis, assemble and consult with Department employees with expertise in the areas where LAP Certification is requested by the Local Agency. The District LAP Administrator will review the Local Agency's request and interview each Agency. The District LAP Administrator and Department employees with expertise in the areas where LAP Certification is requested will consider the Local Agency's past performance in delivering projects, current staffing, overall capability, and ability to comply with State and Federal requirements. Additionally, the District LAP Administrator will work with the District Title VI representative to conduct a sub-recipient compliance non-discrimination review of the Local Agency. Upon consideration of the input and advice from the Department's experts, the District LAP Administrator will make a recommendation to the District Secretary concerning the Local Agency's certification.

3.2 TYPES OF CERTIFICATION AND REQUIREMENTS

3.2.1 The Department grants two types of certification: full and project specific. Full certification is granted to Local Agencies with in-house staff that has five or more years experience in the project phases where certification is requested. Agencies with full certification are eligible to administer enhancement and transportation alternative projects and projects with more complex scopes. A full certification will remain in effect for a period of three years or until either party modifies or rescinds the certification. If the expiration date of the certification occurs during the course of a project, the certification will be considered to remain in effect until the project has been final accepted by the Department and FHWA. Only Local Agencies with full certification status may construct federal aid projects using force account. Force account work is limited to off-system projects, which are projects that are not located on the State or National Highway System. However, for projects on the State or National Highway System with costs up to \$500,000.00, construction work may be done via force account with a recommendation from the District Construction Engineer and the approval of the Director, Office of Construction. Local Agencies interested in force account should review **Chapter 24** of this **Manual** and **23 CFR 635.201-205, Subpart B - Force Account Construction**.

3.2.2 Project-specific certifications are granted to Local Agencies that do not have a continuous stream of projects and that have limited in-house staff expertise. This certification is limited to low risk enhancement, transportation alternative projects, or other less complex projects with District approval. The project specific certification is limited to the specific project or projects for which certification is granted and requires a recertification each time the Local Agency requests an additional project. Additionally, this certification is limited to work on off system highways, unless approval is provided by the District Program

Management Engineer.

3.2.3 The following areas of certification are available to Local Agencies:

- Planning
- Design
- Construction/Construction Administration

3.2.4 Local Agencies seeking certification in these areas must demonstrate their level of knowledge, skills, ability, and project experience. The required experience referenced in **Table 1** is necessary whether the services will be performed by the Local Agency's own forces or by a consultant or contractor. In the case of projects produced by consultants and contractors, contract management, administration and procurement skills, knowledge and processes are critical. These skills and processes are necessary to secure and ensure adequate oversight of consultants and contractors. In either case, a public employee must be in responsible charge for each project. This person is expected to be able to perform the following duties and functions:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects
- Maintain familiarity and control of day to day project operations, including project safety issues
- Make or participate in decisions concerning changed conditions or scope changes that require change orders or supplemental agreements
- Visit and review the project on a frequency that is commensurate with the magnitude and complexity of the project
- Review financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse
- Direct project staff (including both Local Agency or consultant staff) to carry out project administration and contract oversight, including proper documentation
- Monitor the qualifications, assignments and on-the-job performance of the agency and consultant staff at all times during the project

3.2.5 The Local Agency's certification package may include consultant staff used to augment Local Agency forces; however, this does not relieve the Local Agency of its responsible charge obligations. It should be noted the services of a consultant in this capacity are not eligible for federal reimbursement.

3.2.6 **Table 1** describes the certification areas the Local Agency staff must meet to be certified in the area indicated.

Table 1: Certification Areas and Requirements	
Certification Area	Minimum Qualifications
Planning	Employees with knowledge of the Metropolitan Planning Organization planning processes; experience with planning studies; and projects of a nature similar to those the agency intends to develop. American Institute of Certified Planners certification is accepted, but not required.
Design	Experience in design with various types of projects, particularly projects of a nature similar to those the Local Agency intends to design with federal funds. Professional Engineer registration is required if the Local Agency intends to design a project with its own forces.
Construction/ Construction Administration	Local Agency staff with experience in providing construction oversight. The Local Agency has a quality assurance process in place and a process for contract compliance, Equal Opportunity, Disadvantage Business Enterprise wages and payrolls. An approved design-build procedure is required if the Local Agency will administer a design-build project. Any inspection and oversight work on the State Highway System and National Highway System must comply with the qualifications of work group 10 of Chapter 14-75 of the Florida Administrative Code .

3.2.7 The Department does not delegate the **National Environmental Policy Act (NEPA)** class of action determination, environmental certification or right of way certification. Consequently, NEPA class of action determination, environmental, and right of way phases are specifically excluded from the general certification discussion as these areas are addressed on a project-by-project basis. The Director of Transportation Development, in consultation with the District Environmental Administrator and the District Right of Way Manager will determine the method of delivering these phases and the Local Agency's level of involvement. The District Environmental Administrator and Right of Way Manager will consider the minimum qualifications contained in **Table 2** to determine the Local Agency's involvement.

Table 2: Certification Areas and Requirements	
Activity	Minimum Qualifications
Environmental	This work group requires a professional engineer, a natural scientist, and a social scientist. The professional engineer must be registered with the Florida State Board of Professional Engineers, must have managed, and completed at least one Project Development and Environment (PD&E) study or similar study, including roadway design and environmental engineering. This experience must include conducting environmental studies for transportation projects involving highway projects and public involvement issues. The natural scientist must have a four-year university or college degree and experience in a natural science such as ecology, biology, environmental science, or wildlife management and have completed at least one PD&E study or similar study in a natural science area such as defined above. The social scientist must have a four-year university or college degree and experience in a social science such as psychology, sociology, statistics, political science, geography, urban planning demographics, archeology, or economics and have

	<p>completed at least one PD&E study or similar study in a social science area such as defined above. A member of the Local Agency must have completed the Department PD&E process training.</p>
<p>Right of Way</p>	<p>Acquisition, Negotiation, Closing, and Order of Taking Qualification Requirements: Consultants employed by a Local Agency are required to be registered with the Florida Real Estate Commission and, at a minimum, have one real estate broker and one real estate salesperson licensed by the State of Florida, Department of Business and Professional Regulation. These employees each must have at least three years of demonstrated experience in transportation acquisition projects. Although employees of a Local Agency are statutorily exempt from the registration requirement with the Florida Real Estate Commission, similar qualifications should be considered when evaluating the expertise and capabilities of the Local Agency's Right of Way program.</p> <p>Relocation Assistance Qualification Requirements: Consultants performing this type of work requires a minimum of one full time employee with a minimum of three years of demonstrated current experience in administering and providing relocation assistance for transportation projects under the provisions of the <i>Uniform Relocation Assistance and Real Property Acquisition Policies Act and 49 C.F.R., Part 24</i>. Local Agency employees performing similar right of way activities should possess comparable qualifications.</p>

3.3 APPLICATION DEVELOPMENT AND REVIEW PROCESS

3.3.1 The Local Agency will complete the ***Local Agency Certification Qualification and Administrative Operations Checklist (Form No. 525-010-43)***. This form serves as the table of contents for the Local Agency's certification submittal. The form contains a list of the policies and procedures the Local Agency provides for certification. If the Local Agency elects to use the Department's procedures as its own, the Local Agency must provide the District LAP Administrator with an approval from its Board documenting this action. The Local Agency should review the Department's procedures to identify where specific references to Department staff and structures exist. These references represent conflicts that must be addressed by the Local Agency. Where these conflicts exist the Local Agency will provide the District LAP Administrator with its process for addressing these conflicts.

3.3.2 The Local Agency will only submit an update of its staffing to the District LAP Administrator when it seeks recertification. The District LAP Administrator and the necessary Department experts will review the application and interview the Local Agency to determine the Local Agency's level of certification. If any information is missing from the application or additional details are needed, the Local Agency will submit this documentation in the timeframe requested by the District LAP Administrator.

3.4 NOTIFYING THE LOCAL AGENCY OF CERTIFICATION AND ALTERNATIVES

3.4.1 The District LAP Administrator will notify the Local Agency of the certification decision by letter or by e-mail. If the Local Agency has been certified, the letter should state the certification type and any special conditions. If certification has been denied, the letter should state the reasons. A Local Agency denied certification can reapply after correcting the stated deficiencies. The reapplication will only contain information addressing the deficiencies, unless there have been changes in the previously submitted information.

3.4.2 The following options are available to Local Agencies that cannot meet certification requirements associated with the project. A Local Agency may enter into an inter-local agreement with a certified Local Agency to administer a project on its behalf. The Local Agency may also request the Department to enter into a Memorandum of Agreement to administer a project on its behalf. The request does not obligate the Department or other Local Agency to administer the project.

3.5 RECERTIFICATION AND CERTIFICATION REMOVAL

3.5.1 Each Local Agency is required to recertify after a period of three years. During the recertification process, the District LAP Administrator and the Task Team shall focus evaluation on the Local Agency's past performance and staffing changes. As part of the recertification process, the Local Agency completes a sub-recipient compliance non-discrimination review. Recertification provides an opportunity for the Department and the Local Agency to evaluate their partnership. Additionally, as a part of the recertification review process a Local Agency may be recertified to a different certification type or have the certification removed. The Department and the Local Agency should determine what aspects of the Local Agency's efforts are working well, what needs to be improved and whether the LAP certification should continue.

3.5.2 A Local Agency's certification may be removed for failure to comply with State and Federal regulations, the requirements of this Manual, and the Local Agency Program Agreement. The certification removal may also occur for unsatisfactory performance, which includes, but is not limited to: failure to deliver projects, and failure to meet the commitments of the LAP program. The District LAP Administrator and District Program Administrator/Engineer will recommend certification removal to the District Secretary. The recommendation will include performance reports and documentation of any factors relevant to the decision. A Local Agency may review the certification removal by requesting a meeting with the District Secretary.

3.6 PERFORMANCE MANAGEMENT

3.6.1 Performance management is a tool used to enhance the efficiency and effectiveness of the Local Agency Program. Performance management is used to assess risk, track performance, and acknowledge exemplary performance. When the Department certifies a Local Agency and enters a LAP Agreement, a commitment is made to deliver the subject project. The Department is a results-driven organization and measures the progress made towards this commitment. Consequently, Local Agencies are evaluated in the following areas:

- Overall Performance
- Project cost, scope, and schedule
- Communication and Cooperation
- Invoicing
- Each Project Phase
- Construction/Administration
- Equal Opportunity Contract Compliance

3.6.2 Local Agencies are evaluated on a project-by-project basis. The evaluations are used to provide information about oversight needs and aid in determining the outcome of the recertification process. The District LAP Administrator completes the evaluation based on input from the project managers. Once the District LAP Administrator completes the evaluation, the evaluation is reviewed and signed by the District Program Management Administrator/Engineer. Evaluations are submitted to the Local Agency's Responsible Charge or designee as part of the project closeout process. The Department provides the evaluation to the Local Agency no more than 30 days after final acceptance. Performance evaluations are completed using the ***Local Agency Project Administration Evaluation Form (525-010-29)***.

3.6.3 Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Local Agency failed to develop the project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the project was brought in-house by the Department. A rating of Satisfactory Performance means the Local Agency developed the project in accordance with applicable federal and state regulations, standards and procedures, with minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Local Agency developed the project in accordance with applicable federal and state regulations, standards and procedures, without District involvement/oversight.

3.6.4 The District should determine which functions can be further delegated to Local Agencies that continuously earn Satisfactory and Above Satisfactory evaluations. The

delegation process should be linked to a program level quality assurance review. The District LAP Administrator and District Program Administrator/Engineer in consultation with the Local Agency will agree to which functions can be further delegated and the frequency of review during the quality assurance review process.

3.6.5 Efforts should be made to assist a Local Agency earning an unsatisfactory evaluation to improve its performance to a satisfactory level. If the District exercises due diligence in assisting the Local Agency improve its performance and the Local Agency continues to earn Unsatisfactory results, the District should change the Local Agency's certification type if applicable or initiate certification removal.

3.7 TRAINING

Training will be included in periodic Local Agency Program Workshops and on the LAP training page at:

<http://www.dot.state.fl.us/projectmanagementoffice/LAP/LAPTraining.shtm>

3.8 FORMS

- Form No. 525-010-43, Local Agency Certification Qualification and Administrative Operations Checklist
- Form No. 525-010-29, Local Agency Project Administration Evaluation Form