

Engineering the Federal Aid Process

15th Statewide Local Bridge Conference

Procedures for Locally Administered Federal Aid Projects (PLAFAP)
October 21, 2008

Presenters Diane Kenneally, P.E. NYSDOT
Kenneth Rupert, P.E. NYSDOT



Contact Information

Diane L. Kenneally, P.E., Director, NYSDOT Local Programs Bureau (LPB)
Kenneth W. Rupert, P.E., Federal Aid Section, NYSDOT - LPB

Address
LPB – POD 5-2
50 Wolf Rd.
Albany NY, 12232
MO-LocalProgramsBureau@dot.state.ny.us
Phone (518) 485-9959
Fax (518) 457-9658

STIP/TIP PROCESS

STIP/TIP PROCESS

- What is an MPO?
- What is a STIP/TIP?
- Why does a project have to be listed in the STIP/TIP?
- What is the best way to get a project listed in the STIP/TIP?
- Is there another way to get a project listed in the STIP/TIP?
- My project is listed in the STIP/TIP. Why can't I get federal funds?

Metropolitan Planning Organization (MPO)

- policy board of an organization created to carry out the metropolitan transportation planning process
- develops a long-range regional transportation plan
- develops a short-range program of federally funded projects

Statewide Transportation Improvement Program (STIP)

- 4-year, statewide prioritized list of transportation projects
(Projects in additional years are only informational)
- TIPs must be included without change in the STIP
- updated every two years
- jointly approved by FHWA and FTA
- Inclusion in the STIP is required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Transportation Improvement Program (TIP)

- 4-year prioritized list of transportation projects for an MPO area
(Projects in additional years are only informational)
- updated on a cycle compatible with the STIP development and approval process
- approved by
 - the MPO
 - the Governor
- Inclusion in the TIP is required for projects in MPO areas to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Typical TIP/STIP Development Schedule

- July/August – Instructions & Allocations distributed
- August - January - Confirm all projects are fully and correctly listed in draft STIP/TIP
- April-June - MPO Planning & Policy Committees approve TIP
- July – NYSDOT assembles draft STIP
- August – 30-day public review of draft STIP
- September – NYSDOT submits STIP to FHWA and FTA
- October 1 – FHWA/FTA approve new STIP

Add Project to Draft STIP

■ Project Level Information

- PIN
- Description
- MPO(s)
- County(s)
- Responsible Agency
- Air Quality (Exempt, non-Exempt, Not Applicable)

Descriptions

- Descriptions describe
 - What the project is
 - Where the project is
- Descriptions should use terms that everyone involved in the project process and the general public can understand
- Federal earmarks should include the legislative language

POOR STIP DESCRIPTION = FUNDING DELAY

- STIP Description
 - MOF-RT 324; RT 265-BELMONT AVE

Add Project to Draft STIP (cont.)

- Phase Level Information (for each Phase)
 - Phase
 - Federal Fiscal Year (FFY)
 - Federal Fund Type(s)
 - Federal Amount(s) (\$)
 - Non-Federal Amount(s) (\$)

CHECK the draft STIP/TIP STIP Check List

- All federally funded project Phases listed in STIP?
(STIP recognizes 9 project Phases)
 - Scoping
 - Preliminary Design
 - ROW Incidentals
 - Detailed Design
 - ROW Acquisition
 - Construction
 - Construction Inspection
 - Miscellaneous
 - Operations

CHECK the draft STIP/TIP STIP Check List

- All Phases information listed correctly?
 - Federal Fiscal Year of obligation
 - Federal-Aid Fund Type(s)
 - Federal-Aid Fund Amount(s)
 - Match Amount(s)

Some Federal Aid Programs Available

- National Highway System (NHS)
- Highway Bridge Program (HBP)
- Safe Routes to School Program (SRTS)
- Transportation Enhancements Program (TEP)
- High Priority Projects Program (HPP)

Some Federal Aid Programs Available

- Highway Safety Improvement Program (HSIP)
- Congestion Mitigation and Air Quality Improvement Program (CMAQ)
- Transportation and Community and System Preservation Program (TCSP)
- Emergency Relief Program (ER)

National Project Funds Management

- FHWA Area of Concern/Focus
 - Unexpended Obligations
 - Release of Obligation
- Terms and Definitions

Terms and Definitions As Defined by FHWA

- Active Project
- Inactive Project
- De-obligate
- Withdraw

Preliminary Engineering – 10 year limit

- 23 CFR 630.112(c)(2)
- Federal Authorization (FA) of PE (Preliminary Engineering) to ROW Acquisition, or Construction
- Process Review – Findings Oct. 2007
- Status – today
- Impacts to project Sponsors

Authority

- Public Law 109-59 – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) <http://www.fhwa.dot.gov/safetealu/index.htm>
- FHWA-NYSDOT SAFETEA-LU Agreement
- Chapter 2 of the PLAFAP Manual

Roles & Responsibilities

FHWA's authority and oversight roles are defined in:

- 23 USC & 23 CFR
- FHWA/NYS DOT SAFETEA-LU Agreement, our authority for delegation
- Chapter 2 of the Procedures for Locally Administered Federal Aid Projects

Procedures for Locally Administered Federal Aid Projects (PLAFAP)

- Two volume set
 - Volume 1 - Guidelines
 - Volume 2 – Appendices
- Available on the WWW at
 - <https://nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects>
- Available on Website
 - Manual Update Schedule
 - FHWA Resources Tab – Checklists, Guides, Reports
 - Related Issues – e.g. Scour Critical POAs

Major Manual Updates

- PMP – Project Management Plan (Chapter 2)
- CMP – Construction Management Plan (Chapter 12)
- ROW – Regional ROW Certification (Chapter 11)
- Construction Contract Requirements (Chapter 12)
- Construction Contract Close-out (Chapter 15)
- Project Close-out (Chapter 17)

Chapter 12 Construction Contract Requirements

15TH Statewide Conference on Local Bridges
October 2008

Local Programs Bureau
Diane L. Kenneally, P.E., Director
Kenneth W. Rupert, P.E.



Engineering the Federal Aid Process

Chapter 12 Organizational Rewrite

- Revisions
 - Fillable forms
- Planned Distribution
 - September 2008 – Distribute for review
 - Counties, Towns, Villages, Cities, Consultants, AGC, NYSDOT
 - November 2008 – Distribute by EI

Contract Requirements

- Federal Aid (FA) highway contracts must comply with 23 CFR
- Sponsors must understand that the acceptance of FA funding brings with it Federal rules and requirements
 - Sponsors may have to change their normal contracting practices to use FA funds

Importance of Chapter 12

- If a Sponsor follows and complies with Chapter 12 - Contract Requirements
- It's much easier to comply with Chapters
 - 13 Affirmative Action Requirements
 - 14 Advertisement, Letting and Award
 - 15 Administer Construction Contracts

Chapter 12 Summary

- Construction Contracts must address or include
 - Lowest responsible bidder format
 - Construction Management Plan
 - Federal requirements prevail over local requirements
 - No Residency Requirements are allowed
 - Alternate Bid Processes must be clearly described
 - Wicks Law
 - Warranties are not generally allowed

Chapter 12 Summary

- Contract documents must include
 - Disclosure of Lobbying Activity requirement for contractors
 - Non-Collusive Bidding requirements
 - DBE and EEO provisions
 - FHWA 1273 requirements
 - Prevailing Wage Rate information
 - Buy America requirements
 - Changed Condition & Disputed Work provisions
 - Federal Retainage provisions

Bidding Requirements

- Construction Contracts must be awarded to lowest responsible bidder
 - Sponsor must comply with FA competitive bidding requirements
- Federal requirements prevail over normal local bidding requirements/practices
 - Contracts cannot include residency requirements or other provisions that may restrict competition. Even if such provisions are normally included in the Sponsor's other contracts

Bidding Requirements

- Alternate Bidding formats are allowed
 - Format must be fully & clearly stipulated in bid documents
 - Must maintain competitive bidding process
- Non-Collusive Bidding Requirements
 - Bidders must certify that no collusive bidding occurred

Construction Management Plan

- Sponsor must have a written Construction Management Plan (CMP)
 - CMP must be approved by NYSDOT prior to contract award
 - Examples of acceptable CMPs are available upon request

Construction Management Plan

- CMP should address
 - Contract Administration
 - Labor Relations
 - Inspection – how, who, qualifications
 - Materials inspection & acceptance
 - EEO compliance
 - Close out

Construction Management Plan

- CMP should address
 - Documentation
 - Order-on-Contract procedures
 - Subcontractor approvals
 - Records Retention
 - Federal requirements, and how they will be addressed (compliance)
 - Who is responsible for implementing the CMP
- CMP should be finalized (staffing, contact information, and any other information unavailable before letting) at the Pre-Construction meeting and made part of the contract documents.

Contract Requirements

- Wicks Law
 - Building construction contracts must have separate contracts for the
 - General Construction
 - Plumbing
 - H/V/AC
 - Electrical
 - Previously applied to all building projects greater than \$50,000

Contract Requirements

- Wicks Reform 2008 (S6807C/A9807C)
 - Effective for all contracts advertised on or after July 1, 2008
 - Establishes 3 project value thresholds based on geographic areas
 - > \$3 million
 - Bronx, Kings, New York, Queens and Richmond Counties
 - > \$1.5 million
 - Nassau, Suffolk and Westchester Counties
 - > \$.5 million
 - All other Counties
 - Projects meeting these thresholds must have separate contracts for plumbing, H/V/AC and electrical work

Contract Requirements

- Wicks Law Revision
 - Projects not meeting the thresholds and not let with separate contracts
 - Bidders must submit with their bid a sealed list of Subs that will do Plumbing, H/V/AC and Electrical trade work
 - The successful low bidder's sealed list will be opened
 - Bound to then use those listed subs
 - Unless there is a legitimate construction need for change
 - Sealed lists are returned to unsuccessful bidders
 - Applies to all public building contracts, regardless of value (even less than \$500,000)

Contract Requirements

- Wicks Law Revision
 - Allows political subdivisions (municipalities) with populations over 50,000 to prequalify bidders
 - Provides criteria that may be considered during prequalification
 - Must be a minimum of 5 prequalified bidders on a list
 - Allows state and local agencies to waive the Wicks Law and use PLAs (Project Labor Agreements)
 - If it provides best work at lowest price
 - Requires specific apprentice provisions and requirements
 - Requires primes to pay subs within 7 days (instead of 15 days) of receipt of payment from the public owner for all contracts
 - Provides for interest on late payments.

Contract Requirements

- Warranties
 - Warranties that apply to overall workmanship after contact acceptance are not generally allowed on FA contracts
 - Standard manufacturer's or suppliers warranties on equipment or materials are allowed

DBE, EEO & FHWA 1273

- All FA contracts must include:
 - DBE provisions and participation goals
 - Different than the State M/WBE program
 - FA contracts cannot have M/WBE provisions
 - EEO requirements
 - Employment goals for minorities and women
 - FHWA 1273
 - Various required provisions, including non-discrimination, affirmative action, wage requirements and more
- More Civil Rights discussion in Chapter 13

Prevailing Wage Rates

- FA Contracts must include current Federal and State requirements for prevailing wages
- Current NYSDOL prevailing wage information is available online at www.labor.state.ny.us

Buy America Provisions

- Applies only to steel and iron products
 - See Appendix 12-2.2, or
 - Suggest Sponsor use NYSDOT Buy America provisions
 - §106-11 of Standard Specifications

Changed Conditions and Disputed Work

- Standardized Changed Conditions Clauses must be included in contract **verbatim**
 - See 23 CFR 635.109 or §104-03, §104-04 and §104-05 of Standard Specs for required language
- Dispute Resolution and Disputed work Provisions should be included in contract
 - See Appendix 12-2.4
 - Or, sponsor may use their own Dispute procedures if they comply with Federal requirements **and** are approved in advance by FHWA

Retainage

- 49 CFR 26.29 was issued in July 2003
- Provided 3 retainage options for use on FA Projects:
 - **Hold no retainage** from primes
 - prohibit primes from holding retainage from subs.
 - **Hold no retainage** from primes
 - allow primes to withhold retainage from subs
 - require primes to make prompt and full payment of any retainage held within 30 days after sub's work is satisfactorily completed.
 - **Hold retainage** from primes
 - provide for prompt and regular incremental acceptances of portions of the prime contract
 - pay retainage to primes based on these acceptances
 - require the prime to pay all retainage owed to the sub for satisfactory completion of work within 30 days after payment to the prime.

Retainage

- Sponsors must comply with 49 CFR 26.29
 - NYSDOT will
 - Not require local Sponsors to eliminate retainage on FA contracts (like NYSDOT did)
 - Advise Sponsors of the Federal requirements
 - Require Sponsors to meet one of the three retainage options
 - Assure that the Sponsor's contract documents are in compliance with this CFR prior to contract advertisement

Retainage

- For Option 3
 - Hold retainage from primes
 - Provide for prompt and regular **incremental** acceptances
 - Release retainage to primes based on these acceptances
- What is **incremental**?
 - Annually?
 - At milestone points?
 - As defined by the Sponsor?
- Understand
 - Goal of 49 CFR 26.29 is to pay subs in a timely manner for completed work, including the release of any retainage held.
 - Traditional retainage provisions are viewed to cause a delay in payment to subs, particularly when the overall contract extends beyond when a sub completes their work.

Retainage

- 49 CFR 26.29 also states that:
 - (a) there must be a contract clause to require primes to pay subs for satisfactory performance of their contracts no later than 30 days from each payment made to the prime, and
 - (b) you must ensure prompt and full payment of retainage from the prime to the sub within 30 days after the sub's work is satisfactorily completed, and you must use one the three cited options to comply with this requirement.
- Therefore, the **incremental** release of retainage is tied to the satisfactory completion and payment of work
 - **Not an arbitrarily defined time or period.**

Other Provisions/Contract Compliance

- Like the Wicks Reform 2008 revision, there are several other recent law or regulation revisions that also impact Local Let FA contracts
 - NMUTCD
 - High Visibility Apparel
 - OSHA 10 Hour Training
 - Worker Notification
 - SPOTA Bill

NMUTCD

- New York State has adopted the National Manual of Uniform Traffic Control Devices (NMUTCD)
 - Effective September 13, 2007
 - Replaces the NYS MUTCD
 - Adopted NMUTCD plus NYS Supplement
 - Effective March 19, 2008
 - NYS Supplement Revision #1 was issued
 - Applies to all public highways in NY State
 - **Including any and all local streets and highways**

High Visibility Apparel

- 23 CFR 634 *Worker Visibility*
 - Requires all workers within the right of way of a FA highway to wear high-visibility apparel meeting the requirements of ANSI 107 Class 2
 - Applies at all times, not just during construction
 - Includes municipalities, utilities, etc.
 - Regulation is effective November 24, 2008
 - Effective start of the 2008 construction season for NYSDOT construction contracts
 - Effective April 1, 2008 for all NYSDOT employees

OSHA 10 Hour Training

- An amendment to NYS Labor Law 220-h was signed into law on July 17, 2007 (S1537)
 - Requires successful completion of an OSHA 10 Safety Training course by all prevailing wage workers **prior** to a worker performing any work on a project
 - Applies to public works contracts greater than \$250,000
 - Effective for all contracts advertised on or after July 18, 2008

OSHA 10 Hour Training

- All contractors and subcontractors must attach proof of course completion to the first certified payroll for initial employees, and
- On succeeding payrolls for any new or additional employees
 - Proof may include
 - Copies of course completion card
 - Training roster, attendance record or other documentation from the certified trainer
 - Other valid proof
 - A certification by the employer that employees have completed the course **will not be sufficient**

Worker Notification Law

- Amendment to NYS Labor Law 220-3-a (S6240/A9052)
 - All contractors and subcontractors must provide written notice to all prevailing wage workers of the prevailing wage rate(s) for their particular job classification **on each pay stub**
 - Post a notice at each public work project that includes the
 - Telephone number and address of the NYSDOL
 - Rights of an employee to contact NYSDOL if they are not receiving proper prevailing wage
 - Poster is available at www.labor.state.ny.us
 - Effective February 24, 2008

SPOTA Bill – Payroll Records

- Public works owners must
 - Collect and maintain payroll records for 5 years after completion of the work
 - Designate in writing the name of a individual in their employ who is responsible for
 - Collecting payrolls
 - Name of the individual must be posted in a conspicuous location at the project site
 - Make the contractor's filing of payrolls with the owner a condition of payment
- Provides for up to felony charges for failing to file payrolls or willful underpayment of wages

Engineering the Federal Aid Process

Chapter 15 Administer Construction Contracts

15TH Statewide Conference on Local Bridges
October 21, 2008

Local Programs Bureau
Diane L. Kenneally, P.E., Director
Kenneth W. Rupert, P.E.



Chapter 15

- Revised December 2007
- Further Revisions to Chapter 15 and the Appendix scheduled to commence Fall 2008

Chapter 15

- Administer Construction Contracts
 - Construction Supervision
 - Pre-Construction Phase
 - Construction Phase
 - Contract Documentation
 - Contract Closeout
 - References

Construction Supervision

Pre-Construction Phase

Pre-Construction Phase

- RLPL must meet with the Sponsor before construction starts
 - Review and update the Construction Management Plan (CMP)
 - Coordinate any NYSDOT oversight responsibilities
 - For some projects, the Regional Construction group may appoint a construction liaison

Pre-Construction Conference

- The Sponsor must hold a pre-construction conference with the Contractor and NYSDOT to discuss schedule and construction issues
 - A NYSDOT representative (RLPL or Construction Liaison) must attend
 - RLPL should describe their role in routine checks for compliance and discuss level of NYSDOT's involvement.
 - The CMP should be updated to include within, or by reference, the QA/QC at this time.

Materials QC/QA Objectives

- Compliance with Federal Regulations
- NYSDOT Guidelines
- FHWA approved Local Processes and/or procedures

Federal Regulations

- 23 CFR 637
 - Strong QA program
 - Qualified personnel
 - QC by contractor, QA by owner

NYSDOT Guidelines

- Procedures for Locally Administered Federal Aid Projects Manual
- NYSDOT Steel Construction Manual (SCM)
- NYSDOT Standard Specifications

Definitions

- Quality Control (QC)
- Quality Assurance (QA)
- Steel Fabricator
- Fracture Critical Members (FCM)

Definitions

- Quality Control (QC)
 - Monitor, Assess and Adjust
 - Ensure Quality of Final Product

Definitions

- Quality Control (QC)
 - Material Testing
 - Inspection Activities
 - Corrective Action

Definitions

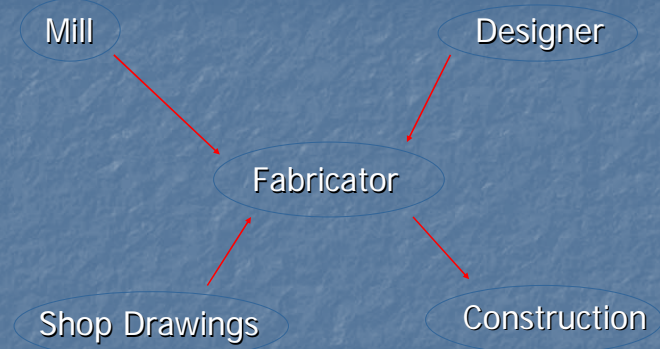
- Quality Assurance (QA)
 - Agency Acceptance
 - Compliance with Specifications

Definitions

- Quality Assurance (QA)
 - Verification Sampling
 - Testing
 - Inspection

Definitions

- Quality Assurance
 - By Owner
- Quality Control
 - By Contractor



Definitions

- Fracture Critical Members/Bridge
 - Steel
 - Tension
 - Non-Redundant

Materials QC/QA

- For projects (or segments) on the SHS or NHS
 - Materials must be supplied in accordance with the NYSDOT Standard Specs
 - NYSDOT will perform off-site materials QA as it does for State let projects
 - The Sponsor must assure that the Contractor has provided the RLPL with the names and addresses of manufacturers and fabricators requiring off-site QA
 - The RLPL will notify Materials, Structures, etc.

Materials QC/QA

- For Projects **off** the SHS or NHS
 - Sponsor or their Engineer should develop a QA/QC plan to ensure satisfactory work
 - QA/QC plan should reflect complexity of work
 - For large complex projects, QA/QC plans should be equivalent to NYSDOT's
 - For simple projects, Sponsor should require the manufacturers, vendors, contractors and engineer to certify materials, workmanship and design conform to specifications

Materials QC/QA

- For projects **off** the SHS or NHS
 - NYSDOT may be able to assist Sponsor with inspection support
 - NYSDOT inspection can be provided if there is no additional cost to State
 - NYSDOT or Consultant services may be available for a cost if agreed to in project agreements
 - For simple projects, Sponsor should require the manufacturers, vendors, contractors and engineer to certify materials, workmanship and design conform with specifications

Construction Supervision

Construction Phase

Construction Inspection

- Construction supervision and inspection are the responsibility of the Sponsor
 - The sponsor or their designee will perform detailed inspections
 - 23 CFR 635.123 requires inspections with frequency appropriate for the work being performed
 - Inspections must verify that
 - Materials meet the specs
 - Project is built in accordance with plans & specs
 - Quantities are documented sufficiently to allow payments

Construction Inspection

- NYSDOT Oversight
 - NYSDOT role is oversight, spot checking, verifying compliance, limited technical & administrative assistance
 - Will include field visits and office reviews of documents
 - Expect a more active inspection role for projects on the SHS or NHS
 - Level of oversight
 - For complex projects – weekly or even daily visits
 - For simple projects – maybe only one visit
 - RLPL will determine necessary level of oversight

Financial Integrity Review and Evaluation (FIRE)

- FHWA – A formal evaluation of program activities at the project level.
 - A QA function
 - To determine whether payments were made consistent with applicable laws and regulations and that the payments were for services actually performed/received.
- NYSDOT – MO Construction Quality Assurance Report
 - A QA function
 - To review the overall quality of the construction activities on a project.

Disputed Work

- If Contractor files a claim or a dispute
 - Sponsor will notify RLPL
 - RLPL may provide guidance, but will not act as arbitrator or mediator
 - If Sponsor reaches settlement, the settlement must be reviewed and approved by NYSDOT prior to reimbursement

Contract Documentation

Contract Documentation

- Records must be created and maintained to document that the contract was administered in compliance with the contract provisions and specifications, including compliance with
 - Prevailing Wages
 - Civil Rights
 - Safety
- Costs for undocumented or improper work cannot be reimbursed with FA funds

Contract Documentation

- Records must be available at the project field office and be available for inspection by the RLPL or FHWA staff
 - If records are to be kept off-site, it must be noted at the pre-construction meeting and documented in the CMP

Contract Documentation

- The Sponsor may use
 - NYSDOT MURK procedures and forms, or
 - Their own procedures and documents provided that adequate records are kept
- Lack of adequate documentation could result in the withdrawal/repayment of FA funds from the entire project

Inspection Records

- Sponsor must create and maintain adequate inspection records to document acceptance of materials and work
 - Quality and Quantity
- Must indicate
 - Work was accomplished
 - Checks and tests were made
 - Results of the checks and tests
 - Payments made

Inspection Records

- MURK 1L *Daily Work Report* or similar form with the same level of information and detail may be used
- MURK 2LL *Engineer's Daily Diary* or similar form with the same level of information and detail should be used to document general conditions and overall activities if multiple activities are underway

Inspection Records

- CEES (Computerized Engineer's Estimate System)
 - NYSDOT developed computer application
 - Being replaced by SiteManager
 - 2008 -- pilot projects
 - 2009 -- all new projects
 - CEES projects will continue in CEES
 - CEES will disappear over next 3-5 years
 - For Local Lets, we are exploring options to
 - Consider other software applications
 - Spreadsheet Murk reports.

Change Orders

- Change Orders (aka Orders-on-Contract) are processed for
 - Change of project scope or limits
 - Increase or decrease of contract pay items
 - Add new or modified pay items for new work
 - Adjust payments due to contract provisions

Change Orders

- Change Orders must provide sufficient explanation to document
 - Work is necessary
 - Consistent with the Design Approval Document
 - Consistent with specifications
 - Within scope and intent of State/Local Agreement

Change Orders

- **All** Change Orders must be reviewed by NYSDOT
 - Region 11 has special procedures for the review and approval of NYCDOT change orders
- Some Change Orders require **prior approval** of NYSDOT
 - Significant* changes of any project on NHS
 - Significant* changes within contract scope & limit
 - Any changes outside contract limit
 - If the total net value of changes exceed contingent amount in State/Local agreement.

Change Orders

- ***Significant**
 - As defined in NYSDOT Standard Specifications §104-04 Significant Changes in the Character of the Work
 - Character of work differs materially in kind or nature
 - 25% increase or decrease of a major item
 - 200% increase of a minor item
 - Variation of Composite Item, Fixed Quantity Item, or Lump Sum Item
 - Or, as otherwise defined in the contract documents (must be in accord with 23 CFR 635)

Change Orders

- Minor changes **do not** require prior approval of NYSDOT
 - Minor changes within contract scope and limits
 - Non-significant quantity increases or decreases
 - Non-Significant new items of work
 - Changes within contingent contract agreement amount

Time Extensions

- Submitted by Contractor shall be subject to approval of the Sponsor
 - Must be fully justified and documented by Contractor
- The Sponsor must submit all Time Extensions to the RLPL, regardless of project type
 - Time Extensions that extend the work into another construction season require the approval of the RLPL
 - Time extensions may require the processing of a Supplemental Agreement to the State/Local Agreement

Subcontractor Approvals

- Under FA guidelines, the prime Contractor must perform with its own organization not less than 30% of the original contract bid
 - Excluding any items designated as Specialty Items in the bid documents
 - Different than NYSDOT contracts which require 50% to be completed by prime

Subcontractor Approvals

- Each Subcontractor must be approved by the Sponsor prior to the Sub starting work
 - Subcontractor approval process is the same process as described for Primes in Chapter 14
 - Sponsor must check Subcontractor's status for
 - Federal debarment
 - NYSDOL debarment
 - Eligibility with NY Dept. of State to perform work in NY
 - 3 lists to check on the internet
 - Web addresses listed on page 7 of Chapter 15

Subcontractor Approvals

- Sponsor should notify RLPL of Subs eligibility
 - By note, memo, e-mail, etc.
 - RLPL may assign Sponsor to judge Sub eligibility
- For contracts on the NHS
 - Sub must have a current CCA-1 NYS Uniform Contracting Questionnaire on file

Buy America

- Steel and iron products must be of domestic origin
 - Incidental uses of foreign steel are allowed
 - 1/10 of 1% of total contract value or \$2500, whichever is greater
 - Waivers to allow the use of foreign steel or iron products must be submitted to and approved by FHWA prior to installation
 - Project schedule is not a basis for a waiver
 - Failure to comply could result in the withdrawal of FA funds from the entire project

Civil Rights Reporting

- The Sponsor is responsible for monitoring the Contractor's performance in meeting the EEO and DBE requirements

Civil Rights Reporting Software

- NYSDOT has replaced Champ with EBO
 - NYSDOT no longer requires Contractors to maintain their Champ licenses
 - EBO is not available for use by local Sponsors at this time
 - Some local Sponsors may ask Contractors to continue reporting in Champ
 - In those cases, the Contractor must maintain their Champ license and pay any applicable Champ maintenance fees

EEO Reporting

- The Sponsor must submit
 - Form AAP-33LL *Employment Utilization Report* monthly to the RLPL for the previous month
 - Form FHWA 1391 *Federal-Aid Construction Contractors Annual EEO Report* annually to the RLPL
 - A "snapshot" for last full payroll period in July
 - Payroll period cannot include any days in August
 - Submitted no later than 3rd Friday in August
 - In no work is performed that week, enter "no work" on Form 1391

DBE Reporting

- The Sponsor must report
 - Any significant revisions to the DBE Utilization plan, including
 - Significant reduction of quantities or agreed payment amounts for work scheduled to be completed by DBEs
 - Deletion or substitution of a DBE firm
 - Accompanied by
 - An amended AAP-20LL *DBE Utilization Worksheet*
 - A revised AAP-19 *Schedule of Utilization*

DBE Reporting

- The Sponsor should insure that work scheduled to be completed by a DBE is completed by the DBE
 - Not the prime Contractor or another Subcontractor
- If a DBE performs added work or OOC work beyond the original schedule, the added participation should be reported and credited.

DBE Reporting

- DBE attainments are tracked based on payments to the DBE, not thru item bid prices
 - Bid price may differ from price paid to Sub
- The Sponsor must submit
 - Form AAP-21LL *Contractor Report of Contract Payments* monthly to the RLPL for the previous month

Commercially Useful Function

- A Commercially Useful Function (CUF) is when a DBE
 - Is responsible for the execution of a distinct element of contract work
 - Carries out its responsibilities by actually performing, managing and supervising the work as is normal to industry practice
- It is not a CUF if a DBE's role is limited to that of being an extra participant thru which funds are passed to gain the appearance of DBE participation
 - If the Sponsor notes that a DBE is not performing a CUF, the Sponsor should notify the RLPL who should then seek assistance from the Office of Civil Rights

DBE Workforce

- A DBE must
 - Employ a workforce that is separate and apart from that of the prime Contractor
 - The routine transfer of crews from one employee to the DBE is not allowed
 - Employees should not appear on the payrolls of the DBE and non-DBE firms
 - During wage rate interviews, employees should be asked who they work for
 - Shirt and hat logos from other project firms are an indicator of concern

DBE Supervision

- A DBE must
 - Control and Supervise their work
 - Forepersons/Supervisors of other firms should not supervise the DBE's workforce
 - Does not preclude routine communication or coordination between the DBE supervisors and other supervisors

DBE Equipment

- A DBE may supplement its equipment by renting or leasing equipment
 - No more than 50% of a DBE's equipment can be obtained from the prime Contractor or other Subs
 - In such cases, the DBE shall provide documentation indicating that the equipment could not be obtained at a lower cost from other customary equipment sources
 - Removable magnetic signs on equipment are an indicator of concern

Bridge Inspection Scheduling

- For bridge construction, reconstruction or rehabilitation projects
 - The Sponsor must notify the RLPL and the NYSDOT Regional Structures Engineer of the anticipated opening to traffic at least 30 days prior to opening
 - Applies to full bridges or portions of bridges in staged construction
 - Allows the Biennial Bridge Inspection to be scheduled
 - NYSDOT must inspect the bridge within 60 days after opening to traffic or contract acceptance, whichever occurs first.

Uncompleted Work Agreements

- UWA's allow the release of retainage (if withheld in accordance with CFR) when most, but not all, work is done
 - Less need if no retainage is withheld
- The Sponsor must notify the RLPL of all UWAs on all projects
- Recommend that Sponsors use NYSDOT UWA procedures
- NYSDOT cannot complete the project closeout until UWA is closed out

Record Retention

- All records must be retained in accordance with State and Federal retention schedules
 - Typically for a minimum of 3 years after State's final voucher submission to the FHWA
 - May be later than final payment to the Contractor
 - For projects on the SHS or NHS, NYSDOT policy requires records to be retained for 10 years
 - Record Retention should be addressed in CMP

Construction Contract Closeout

Final Inspection

- The Final Inspection must be done by the Sponsor
- The Sponsor must notify and schedule a Final Inspection with the RLPL
 - RLPL may arrange for a Regional Construction representative to attend

Final Inspection

- Should involve
 - Determining if construction work was done in compliance with contract provisions
 - Identifying deficiencies needing correction
 - Determining if there is excess property acquired which can be surplus
- For bridge projects, after Final Inspection, the Sponsor must provide the RLPL with as-built bridge plans

Final Inspection

- For projects on the SHS or NHS, the RLPL must participate
- For projects off the SHS or NHS, the RLPL will participate depending on issues such as:
 - Contract type
 - Contract size
 - Frequency and timeliness of previous visits

Construction Contract Closeout

- The Sponsor is responsible for closeout of the contract between the Sponsor and the Contractor
 - Sponsor should use their closeout procedures as described in CMP to
 - Collect necessary documents
 - Verify that all outstanding issues are resolved

Construction Contract Closeout

- Necessary documents
 - Contract Final Acceptance by Sponsor
 - Form CONR 193 *Material Certification*
 - Final Agreement between Sponsor and Contractor
 - Final Form AAP-33LL *Employment Utilization Report*
 - Final Form AAP-21LL *Contractor Report of Contract Payments*
 - Confirmation that all Change Orders and Time Extensions were processed
 - Releases for any Uncompleted Work Agreements
- Form FHWA-47 *Statement of Materials and Labor* has been discontinued and is no longer required
- The State /Local Agreement must be closed out in accordance with Chapter 17

References

- References and sources are provided for
 - CFR
 - MURK (CAM, CIM, S&H, CCM, MIM)
 - SCM
 - PCCM
 - Geotechnical Construction Manuals
- Chapter 15 Appendix provides copies of numerous forms

THE END

Diane L. Kenneally, P.E.
Kenneth W. Rupert, P.E.
MO-LocalProgramsbureau@dot.state.ny.us
(518) 485-9959

