

Chapter 3

Becoming Certified to Administer FHWA Projects

3.1 General Discussion

Certification Acceptance (CA) is a program in which the Federal Highway Administration (FHWA) delegates authority to the Montana Department of Transportation (MDT) for approving project development and construction administration. MDT has the option of delegating some or all of this authority, but not responsibility, to qualified local government agencies. This procedure permits a local government agency to retain more of the approval authority at the local level when developing Federal-aid assisted transportation projects. The CA program does not eliminate any project development procedures. CA authorizes agencies to develop, advertise, award, and manage their own projects which may result in time and money savings.

CA requires local government agencies to commit sufficient staff and other resources to project administration to ensure that all applicable state and federal requirements are met, and that the work can be accomplished efficiently. Certification will be made on a project level basis and not blanket certification. Local government agencies should begin with smaller scoped projects to demonstrate their ability to administer federally funded projects.

All projects will be implemented by CA local agencies on a cost reimbursement basis. Federal-aid funds will not become available until Project Specific Agreements (PSAs) are fully executed, MDT issues a letter of authorization, and all contract conditions have been met. Actual eligible expenses must be paid out of local agency funds until federal/state reimbursement occurs upon completion of the project or project phase as agreed to in the PSA and other appropriate agreement items established by MDT.

Local government agencies can choose to be reimbursed quarterly with either a 25% retainage option or issuance of a bond option as agreed to in the PSA and other appropriate agreement items established by MDT to limit MDT risk. Along with these options, MDT would need to make sure an MDT Project Manager is available to oversee the project and have direct contact with the consultant, if a consultant is used. MDT will require error and omissions insurance from local government agencies if they provide the services.

A CA local agency has the option of requesting that MDT administer any given project or phase.

3.2 Certification Acceptance Features

Programs eligible for CA include STP-U, CMAQ, TA, and local road projects using locally secured congressionally directed funds. A certified agency is the approving authority for the following project elements:

- a. Location and design
- b. Utility agreements
- c. Railroad agreements
- d. Standard consulting engineering agreements in accordance with MDT's approved

consultant design procedures

- e. Public hearings, findings, and orders in accordance with MDT’s approved public involvement procedures
- f. Plans, specifications, and estimates
- g. Tied bids
- h. Advertisement and award of construction contracts
- i. Construction administration, and
- j. Construction material testing and testing personnel.

FHWA and MDT retain approval authority for the following:

- a. Authorization of Federal-aid funds
- b. Environmental requirements for NEPA and ESA (Endangered Species Act) Section 106 of the National Historic Preservation Act of 1966 and Section 4(f)
- c. Right-of-way certification
- d. Final Inspection
- e. Equal employment opportunity programs
- f. Disadvantaged Business Enterprise (DBE), and
- g. Nonstandard Consultant Agreements, when applicable.
- h. Advertising periods of less than three weeks only in rare cases and must have justification

3.3 Certification Acceptance Requirements

- a. Projects must be administered in accordance with this manual
- b. Projects must be administered by a Professional Civil Engineer registered in the state of Montana who is either on staff as a public employee or is a contract employee designated as the agency’s Engineer.
- c. The agency shall have sufficient expertise and capability to perform and supervise the design, environmental, PS&E, and construction-administration phases of the project.
- d. The local agency must have designated an official approving authority for all MDT-delegated project approvals. This authority (e.g., agency executive or policy body) must officially approve each project step for which it is the approving authority, as identified in the agreement. Local agency must have a full-time employee of the agency in responsible charge of each federal-aid project, including those that employ consultants for design and

construction services.

3.4 Application for Certification Acceptance (CA)

Modified CA Status (Individual Project Approval): Modified CA status refers to the local agency having administration/approval authority limited:

1. To a specific project
2. To a specific project phase or phases

Approval to implement a project under Modified CA status will require submittal of a plan developed by the agency and approved based upon review by MDT. The project plan shall address how each of the following phases of the work will be performed:

1. Financing approvals - accounting/billing capabilities
2. Development of plans, specifications, and estimates
 - a. Consultant involvement, selection, and monitoring
 - b. Approval of contract documents
3. Advertising and award or use of local agency forces
4. Contractor or local agency monitoring and documentation, and
5. Final acceptance and records review.

A local agency seeking to operate under modified CA procedures must submit two copies of the Certification Acceptance Qualification Agreement and their Table of Organization to the MDT. A "Certification Acceptance Qualification Agreement" form is enclosed and is available through MDT. After receiving the CA Qualification Agreement, MDT will conduct a structured interview with the local agency administrators to determine whether the agency is capable of administering an FHWA-funded project. Areas of consideration will be a determination of past performance, current staffing, overall capability, and knowledge of FHWA and state requirements.

Based on the interview, the MDT will consider the following options on a case-by-case basis:

1. Permit full administration of the project by the local government agency;
2. Allow limited local agency administration on the project;
3. Allow local agency administration up to a maximum dollar limit;
4. Allow local agency administration of specific project phases (PE, IC, RW, CN or CE); or
5. Deny Certification Acceptance.

Probationary CA

Reduced delegation of authority of a CA agency to a project or phase of a project as the result of poor past performance as evidenced by either a PMR or Documentation Review. Continuation in a Probationary CA status, reinstating to Modified CA status, or complete removal of CA status will be reviewed on a project-by-project basis as evidenced by a PMR or Documentation review.

If MDT becomes aware of a significant issue during project development or implementation, MDT will conduct an investigation and develop a plan for successful completion of the project

that could include removing CA status of the local agency with MDT resuming oversight and approval authority through completion of the project and subsequent projects.

3.5 Certification Acceptance Compliance

MDT will consult and advise the CA agency concerning the project-management procedures to be followed. The level of this assistance will depend on the nature of each project and the demonstrated capabilities of the local agency. In addition, MDT will annually select projects for an in-depth procedural review as required by Internal Audit guidelines. Typical procedural review questions and documents to be examined during this review are listed in Chapter 21.

The local agency may lose CA status or be placed on probationary CA if problems are identified during project management reviews or documentation reviews by the MDT staff or:

- During an audit by a Federal, State or Local Auditor, or any audit conducted under the Single Audit Act.
- During final project inspections.
- If the qualifications and experience of the agency staff are significantly downgraded.

If a vacancy occurs in the positions described in the PSA as “Approving Authority,” MDT must be notified and may schedule a meeting with the replacement to review qualifications.

The loss of CA status and reinstatement conditions will be outlined in a letter from the MDT LAG Certification Liaison.

3.6 Appendices

3.6.1 Certification Acceptance Qualification Agreement

3.6.2 Certification Acceptance Interview Form

Appendix 3.6.1 Certification Acceptance Qualification Agreement

AGENCY _____ AGENCY NO. _____

The agency agrees to comply with the following requirements when developing all Federal Highway Administration (FHWA) projects under _____ CA status:

1. Adherence to the Local Agency Guidelines and all policies and procedures promulgated by the Montana Department of Transportation (MDT) which accomplish the policies and objectives set forth in Title 23, U.S. Code, Highways, and the regulations issued pursuant thereto.

2. The overall approval authorities and conditions will be as follows:

a. The designs and environmental documents will be reviewed and approved by the following state of Montana registered Professional Civil Engineer.

Position Title Only

b. The hearing’s findings (if required) will be reviewed and approved by the following official or officials and conducted in accordance with MDT’s approved procedures.

Position Title or Titles Only

c. The contract plans, specifications and estimate of cost will be reviewed and approved by the following state of Montana registered Professional Engineer.

Position Title or Titles Only

d. Agreements will be signed by the following responsible local official:

(1) Railroad _____
Position Title Only

(2) Utility _____
Position Title Only

(3) Consultant _____
Position Title Only

(4) Technical Services _____
Position Title Only

- e. The award of contract will be signed by the following responsible local official.

Position Title Only

- f. The Local Agency and any consultant(s) and/or contractor(s) it may employ will design the project to MDT Geometric Design Standards for Urban and Developed Areas and to serve design year traffic.
- g. The contract administration will be supervised by the following state of Montana registered Professional Civil Engineer who is an employee of the local agency.

Position Title Only

- h. Construction administration and material sampling and testing will be accomplished in accordance with the MDT *Construction Manual* and the *Local Agency Guidelines*.
3. The agency agrees that they have the means to provide adequate expertise and will have support staff available to perform the functions being sub-delegated. The support staff may include consultant or state services.
 4. The agency agrees that the signature on each project prospectus and local agency agreement will be consistent with section 2 above.
 5. The agency agrees that all projects implemented under Certification Acceptance shall be done on a cost reimbursement basis, and only federal-aid eligible project costs appropriately identified as STPU expenditures will be reimbursed by the State. Local government agencies can choose to be reimbursed quarterly with either a 25% retainage option or issuance of a bond option as agreed to in the PSA and other appropriate agreement items established by MDT to limit MDT risk.
 6. All projects under Certification Acceptance shall be available for review by FHWA and the state at any time and all project documents shall be retained and available for inspection during the plan development and construction stages and for a three-year period following acceptance of the project by MDT.
 7. Approval of the local agency certification by MDT may be rescinded at any time upon local agency request or if, in the opinion of MDT, it is necessary to do so. The rescission may be applied to all or part of the programs or projects approved in the local agency certification.

Mayor or Chairman _____
Date

MONTANA DEPARTMENT OF TRANSPORTATION

Approved By:

(Insert Appropriate Staff) _____
Date

Reviewed for Legal Content: _____

_____ **Date**

Appendix 3.6.2 Certification Acceptance Interview Form

Agency: _____ Date: _____

Interview Conducted By:

Agency Representatives:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Table of Organization

(Get copy from agency and review duties, requirements, and personnel currently in position.)

Function:

Position Responsible:

| | |
|---|-------|
| Transportation Planning Documents *Statewide Transportation Improvement Program (STIP), Long-range Plan (where applicable) & Metropolitan TIP (where applicable) | _____ |
| Funding Plan | _____ |
| Local Certification Coordinator | _____ |
| PSA Authority | _____ |
| Fiscal Management/& Accounting Controls | _____ |
| Environmental Coordinator: | _____ |
| Right of Way Coordinator | _____ |
| Utility Coordinator | _____ |
| Civil Rights Compliance | _____ |
| Consultant Administration | _____ |
| Project Design Management | _____ |
| PS&E Approval | _____ |
| Advertising and award | _____ |
| Construction Project Manager | _____ |
| Materials Inspecting and Testing | _____ |

- Materials Certification _____
- Final Change Order Approval _____
- Construction Responsible Charge _____
- Project Files _____

Consultants

For what areas does the agency expect to use consultants?

- Environmental
- Design
- PS&E Preparation
- Right-of-Way Appraisal
- Right-of-Way Yes _____ No _____ Negotiation
- Right-of-Way Yes _____ No _____ Relocation
- Construction Administration
- Construction Inspection
- Surveying
- Sampling and Testing

Does local agency have written procedures for the selection of consultants that are consistent with MDT's approved procedures? Yes ___ No ___

Comments:

If consultants are used, how will agency monitor and control the consultant's work?

Remind agency that they will be in control of the consultant's work.

Right-of-Way

Does the agency have procedures approved by MDT for:

Right-of-Way Acquisitions

Relocation

Procedures for Ad, Award, and Execution of Contract

Position Responsible for:

- Assembly of PS&E Package _____
- Approval to Advertise _____
- Award of Contract _____
- Execution of Contract _____

General Questions about Administration

Who evaluates and approves design exceptions?

Describe accounting/ledger system:

Does the local agency have:

- An acceptable accounting system and internal control policies;
- Sufficient financial resources to complete the work on time;
- Adequate and proper justification for the various rates, including federally approved Indirect Cost Rate charged to perform work and the respective cognizant agency;
- The ability to track allowable and unallowable charges separately within their accounting system;
- And knowledge of FHWA's cost eligibility and documentation requirements?

If consultants are used, does the local agency have:

- A system to ensure the overhead rate of the consultant was calculated in accordance with FARs;
- A review system to ensure invoices submitted by the consultant are in compliance with FARs and the contract.

Environmental Considerations:

Does the local agency understand that to comply with NEPA and MEPA, they must identify resources present in the area and fully assess potential for adverse social, economic, and environmental impacts? Does the agency have procedures approved by MDT to carry out the necessary analyses?

Does the local agency understand the necessary environmental permits and clearances that may be required for the project? (Clean Water Act 404, SPA 124, Construction General Permit for Stormwater, Biological Opinion, etc.)?

Does the local agency understand which permits need to be held solely by the contractor, jointly with the contractor, and solely by the agency?

Does the local agency environmental assessment team, at a minimum, have the following staff available for project development: an environmental engineer, a biologist, a historian/archaeologist?

Construction Administration

Who will verify payroll _____

Describe materials testing and approval process:

Describe change order review and approval process:

Describe processes for project diary and inspectors' daily work report keeping:

Who is responsible for tracking contract time assessment?

Describe processes used to track and pay for bid items:

Describe process for consent of subcontractors:

Describe process for managing and resolving contractor disputes and claims:

Who is responsible for the following components of the finalization process?

Final Records

Final Materials Certification

Final Labor Certification

Final Estimate

Final Forms (e.g. Certification of Completion)

How will agency handle administration of more than one contract at the same time?

How will agency handle inspection of multiple operations of a project at the same time (e.g., traffic control, dirt work, electrical, paving, structure)?

How will agency respond if project engineer and/or inspector are unable to be on job site due to illness, etc.? Who will handle control of project if needed person cannot be there?

What are the procedures for the preconstruction conferences?

Who is responsible for ensuring permit requirements are being met?

Does Agency Have These Necessary Manuals & Publications?

| | |
|--|--------------|
| Local Agency Guidelines | Yes___ No___ |
| AASHTO — Policy on Geometric Design of Highways and Streets | Yes___ No___ |
| MDT Construction Administration Manual | Yes___ No___ |
| MDT Standard Specifications for Road & Bridge Construction | Yes___ No___ |
| MDT Supplemental Specifications for Road & Bridge Construction | Yes___ No___ |
| Item Master List | Yes___ No___ |
| MUTCD | Yes___ No___ |
| MDT Road Design Manual | Yes___ No___ |
| MDT Detailed Drawings | Yes___ No___ |
| MDT Utility Manual | Yes___ No___ |
| FHWA Real Estate Acquisition Guide for Local Public Agencies | Yes___ No___ |
| MDT Hydraulics Manual | Yes___ No___ |
| MDT Materials & Testing Manual | Yes___ No___ |
| MDT Geometric Design Standards | Yes___ No___ |
| MDT Public Involvement Handbook | Yes___ No___ |
| MDT Consultant Design Manual | Yes___ No___ |
| FHWA Division Office Environmental Procedures | Yes___ No___ |
| FHWA Project Development Book | Yes___ No___ |
| NHI Course Manual - Contract Administration Core Curriculum | Yes___ No___ |
| Montana Public Works Standard Specifications | Yes___ No___ |
| MDT Right-of-Way Manual (2 volumes) | Yes___ No___ |
| MDT CADD Standards Manual | Yes___ No___ |
| MDT Bridge Design Manual | Yes___ No___ |
| AASHTO Pavement Design Guidelines | Yes___ No___ |
| MDT Environmental Procedures Manual | Yes___ No___ |
| FHWA 1273 – Required Contract Provisions for Federal Aid Construction Contracts | Yes___ No___ |

Summary

Action to be taken by agency in following areas:

Comments From Reviewers

Recommendation of Review

___ Full administration by agency of all projects

___ Administration by agency for:

___ Preliminary Engineering

___ Right-of-Way

___ Incidental Construction

___ Construction

___ Construction Engineering

___ Administration by agency on a project-by-project basis

___ Administration by agency for projects up to \$_____

___Deny approval for certification acceptance

Concurrence by (Insert Appropriate Title)

(Insert Appropriate Title)

Date