

To: Cities, Counties, and Consultants

Date: June 18, 2007

From: Office of Local Systems

Revision No.: 2007-04

Subject: Packet and I.M. Revision Notice

The [Project Development Information Packet](#) (Packet) is in the process of being phased-out. The Packet will be replaced by the Federal-aid Project Development Guide (Guide) and the new [Instructional Memorandums to Local Public Agencies](#) (I.M.s). Refer to these web pages for additional information concerning the phase-out and transition process.

This revision notice identifies the Packet documents that have been replaced and the corresponding new I.M.s that have taken their place. It also identifies any updates to existing I.M.s. All new or updated I.M. documents are included on the pages that follow this notice. Note: This document is designed for double-sided printing, therefore documents with an odd number of pages are followed by a blank page.

If you maintain a hardcopy of the Packet and / or I.M.s, and plan to continue doing so, we recommend you either: a) as individual Packet or I.M. documents are replaced or updated, remove the old document and place the corresponding new I.M. in numeric sequence in your binder; or b) wait until the Packet is completely replaced before printing a new hardcopy. Once complete, the Guide and / or the I.M.s will be available for download as a single PDF file for convenient printing.

If you have any questions concerning the phase-out of the Packet, the transition to the new I.M.s, or these revisions, please contact Charlie Purcell at Charlie.Purcell@dot.iowa.gov or 515-239-1532.

***** PLEASE NOTIFY ALL AFFECTED PERSONNEL OF THIS CHANGE *****

Document Title or I.M Number Revision Date	Summary of Significant Revision(s)
Packet Table of Contents June 18, 2007	The Packet Table of Contents has been modified to show which Packet documents have been replaced. It includes cross-references and links to the corresponding new I.M.s. where appropriate.
I.M. Table of Contents June 18, 2007	The I.M. Table of Contents has been revised to reflect an updated numbering system and revision dates, including the new I.M.s listed below. It also includes cross-references and links to existing County Engineers I.M.s and Packet documents, where appropriate.
Project Development Timeline, Packet General Information Section 11-01-01	This document has been replaced by I.M. 3.002 , Federal-aid Project Scheduling, which was previously published with Revision Notice 2007-01 , dated February 16, 2007. The replacement of the Project Development Timeline was mistakenly omitted from Revision Notice 2007-01.
County Engineers I.M. 3.31 Right-of-Way Acquisition August, 2004	This document has been replaced by I.M. 3.605 , Right-of-Way Acquisition, dated June 18, 2007. The new I.M. includes guidelines and procedures for an LPA to acquire right-of-way for State or Federally funded transportation projects. Topics addressed include right-of-way resources, acquisition procedures, and Federal-aid participation in right-of-way costs.
I.M. 3.650 Federal-aid Participation in Utility Relocations June 18, 2007	This I.M. is new. It provides a summary of the requirements and procedures for Federal participation in the cost of utility relocations on Federal-aid transportation projects, as specified in Title 23 of the Code of Federal Regulations, Part 645, Subpart A (23 CFR 645 A). Topics addressed include eligibility of utility relocations, utility agreements, and the procedures for obtaining Federal participation in utility relocations.
DBE Guidelines Packet General Information Section 03-22-05	This document has been replaced by I.M. 3.710 , DBE Guidelines, dated June 18, 2007. The new I.M. includes guidelines and procedures to comply with the Disadvantaged Business Enterprise (DBE) requirements on locally let construction contracts and consultant contracts that will be reimbursed with Federal funds.

PROJECT DEVELOPMENT INFORMATION PACKET

for Local Public Agency Federal-Aid Projects

Please Note: The Packet is in the process of being phased-out. Most of the detailed guidance currently contained in the Packet documents will be transferred to the new Instructional Memorandums for Local Public Agencies (I.M.s). Eventually, the Packet will be completely replaced with a new, more concise document called the “Federal-aid Project Development Guide.” The Guide will summarize the Federal-aid project development process and reference the new I.M.s where appropriate to provide additional details concerning specific parts of the process.

If a Packet document has been replaced it is shown below in light grey text along with a cross-reference to the corresponding new I.M. In all new I.M.s, references to existing Packet documents have been replaced with references to the new I.M. that has taken or will take its place. If the referenced new I.M. is not yet complete, the web page will redirect the user to the appropriate existing Packet document(s).

This Table of Contents will remain in place until the Packet is completely phased-out.

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• Introduction (PDF)	09-02-04
• FHWA Authorization Basics (PDF)	09-04-02
• Glossary of Terms (PDF)	09-04-02
• Project Development Timeline (Replaced by I.M. 3.002)	N/A
• Critical Path Memorandum for Project Development (Replaced by I.M. 3.005)	N/A
• DBE Guidelines (Replaced by I.M. 3.710)	N/A
Flow Charts	Revision Date
• Flow Chart Legend and Abbreviations (PDF)	09-02-04
• Chart 1 – Project Development Process Overview (PDF)	09-06-05
• Chart 2 – LPA / DOT Agreement Process (PDF)	02-24-06
• Chart 3 – Concept Statement Process (PDF)	12-01-05
• Chart 4 – Design Exception Process (PDF)	11-01-01
• Chart 5 – Early ROW Acquisition Process (PDF)	09-02-04
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• Chart 6A – Environmental Assessment / FONSI Process (PDF)	09-02-04
• Chart 6B – Environmental Impact Statement / ROD Process (PDF)	09-02-04
• Chart 6C – Section 106 Process (PDF)	09-02-04
• Chart 6D – Section 4(f) Process (PDF)	09-06-05
• Chart 6E – Farmland Protection Policy Act Process (PDF)	09-02-04
• Chart 7 – Preliminary Plan Process (PDF)	11-01-01
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• Chart 9 – Utility Relocation or Railroad Work Federal-aid Authorization Process (For Railroads, see I.M. 3.680 ; for Utilities, see I.M. 3.650)	N/A
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• Sample Pollution Prevention Plan (PDF) (Word)	12-06-02
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- Locally Procured Federal-aid Contract Requirements N/A
- Pre-Award Checklist and Certification N/A
- Post-Award Checklist and Certification N/A
- Supplemental Agreement for Locally Procured Federal-aid Contracts..... N/A
- Forms Packet* N/A

* These forms are not included in the Project Development Information Packet itself. However, for convenience, this self-extracting executable file is provided. It contains current versions of bid / quote documents and the construction forms used for local federal-aid contract procurement process.

Appendix A – Instructional Memorandums (I.M.)Revision Date

- I.M. 3.131 Design and Submittal of Preliminary Bridge and Culvert Plans ([PDF](#))May-03
- I.M. 3.15 Highway Improvements in the Vicinity of Airports or Heliports ([PDF](#)) Dec-02
- I.M. 3.210 Design Criteria – New Construction or Complete Reconstruction ([PDF](#)).....May-03
- I.M. 3.213 Traffic Barriers (Guardrail and Bridge Rail) ([PDF](#)) Nov-01
- I.M. 3.214 3R Guidelines ([PDF](#))May-03
- I.M. 3.216 Economic Analysis (Benefit-to-Cost Ratio) ([PDF](#))..... Oct-01
- I.M. 3.218 Design Exception Process ([PDF](#)) Dec-02

Revision NoticesNotice Date

- Revision No. 01-2002 ([PDF](#))03-26-02
- Revision No. 02-2002 ([PDF](#))05-03-02
- Revision No. 03-2002 ([PDF](#))06-03-02
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- Revision No. 02-2003 ([PDF](#))03-10-03
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Instructional Memorandums To Local Public Agencies Table of Contents



Note: Some of the I.M.s listed below are not yet complete. Incomplete I.M.s are shown in light grey text. Some of the incomplete I.M.s will be based on existing I.M.s that will be renumbered. Other incomplete I.M.s will be based on content that is currently part of the [Project Development Information Packet](#). Still other incomplete I.M.s will include entirely new content. Where applicable, a reference and link to the existing I.M. or Packet document is provided.

No.	Subject	Revision Date	Written To
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2.030	Transfer of Farm-to-Market Funds to the Local Secondary Road Fund	April 12, 2007	Counties
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2.050	Procedure to Change a County Secondary Road Construction Program (see I.M. 3.11 , dated March 2003)	N/A	Counties
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	Attachment B - Advance Local Project Resolution (see attachment to I.M. 3.11 , dated March 2003) (Word)	N/A	Counties
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	Attachment C - Resolution for Establishing Speed Limits (Word)	March 2002	Counties
2.220	Establishing and Signing Area Service B and Area Service C Roads	January 2004	Counties
	Attachment A - Area Service "B" Ordinance (Word)	March 2002	Counties
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No.	Subject	Revision Date	Written To
2.230	Signing for Low Cost Stream Crossings	June 2002	Counties
	Attachment A - Resolution for Low-Water Stream Crossing (Word)	June 2002	Counties
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3.020	Project Development Outline -- Farm-to-Market Funding (FM)	February 2002	Counties
3.030	Project Development Outline -- Local Funding (L)	February 2002	Both
3.050	In-Kind Contributions	April 12, 2007	Both
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3.110	Environmental Data Sheet Instructions (see Packet, Index No. 6, Environmental Datasheet Instructions)	N/A	Both
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3.112	FHWA Environmental Concurrence Process (see Packet, Index No. 6, NEPA Project Classification Process)	N/A	Both
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	Attachment B - Environmental Assessment / FONSI Process (see Packet, Flowcharts, Chart No. 6A – Environmental Assessment / FONSI Process)	N/A	Both
	Attachment C - Environmental Impact Statement / ROD Process (see Packet, Flowcharts, Chart No. 6B – Environmental Impact Statement / ROD Process)	N/A	Both
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	Attachment D – Sample Consultant Contract (Word)	August 29, 2006	Both
3.310	Federal-aid Participation in In-House Engineering Costs (see Packet, Index No. 2, In-House Engineering Guidelines and Steps to Utilize Federal-aid for In-House Engineering)	N/A	Both
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3.405	Preliminary Plans (see I.M. 3.12 , dated June 2002)	N/A	Both
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	Attachment B – Preliminary Plan Checklist (see Packet, Index No. 7, Preliminary Plan Checklist)	N/A	Both
	Attachment C – Preliminary Plan Process Flowchart (see Packet, Flowcharts, Chart No. 7 – Preliminary Plan Process)	N/A	Both
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3.510	Check and Final Bridge or Culvert Plans	February 16, 2007	Both
	Attachment A – Bridge or Culvert Plan Supplementary Checklist	February 16, 2007	Both

No.	Subject	Revision Date	Written To
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	Attachment B – FHWA Authorization of Right-of-Way Costs Flowchart	June 18, 2007	Both
	Attachment C – Early Right-of-Way Acquisition Process Flowchart	June 18, 2007	Both
3.640	Utility Accommodation and Coordination	N/A	Both
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	Attachment B – FHWA Authorization of Utility Relocation Costs Flowchart	June 18, 2007	Both
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	Attachment A – Notification and Agreement of Maintenance Work in Railroad Right-of-Way (Word)	May 1, 2007	Both
	Attachment B – Notification of Construction Work in Railroad Right-of-Way (Word)	May 1, 2007	Both
	Attachment C – Work on Railroad Right-of-Way Flowchart	May 1, 2007	Both
3.680	Federal-aid Projects Involving Railroads	May 1, 2007	Both
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3.705	Local Letting Process – State or Local Funded (see I.M. 3.41 , dated September 2005; I.M. 3.42 , dated March 2002; and I.M. 3.43 , dated September 2002)	N/A	Both
3.710	DBE Guidelines	June 18, 2007	Both
3.720	Local Letting Process – Federal-aid	April 12, 2007	Both
	Attachment A – Pre-Award Checklist and Certification	April 12, 2007	Both
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	Attachment C - Supplemental Agreement	April 12, 2007	Both
	Forms Packet *	N/A	Both
	* The documents included in the Forms Packet are not actually a part of I.M. 3.720 or its attachments. However, for convenient download, these documents are bundled together in a self-extracting executable file (forms.exe).		
3.730	Iowa DOT Letting Process (see I.M. 3.44 , dated September 2005)	N/A	Both
	Attachment A – Iowa DOT Letting Process Flowchart (see Packet, Flowcharts, Chart No. 12 – DOT Pre-letting Process and Chart No. 13 – DOT Post-letting Process)	N/A	Both
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3.770	Paving Point Requirements	N/A	Counties
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3.810	Federal-aid Construction by Local Agency Forces (see Packet, Index No. 3, Force Account Construction Guidelines and Steps to Utilize Federal-aid for Force Account Construction)	N/A	Both
3.870	Farm-to-Market Voucher Process	N/A	Counties

No.	Subject	Revision Date	Written To
Chapter 4 – Systems Classification And Identification			
Section 4.0 -- General			
4.010	Procedures to Modify the Secondary Road Route Numbering System	September 2002	Counties
4.030	County Road Vacations	September 2002	Counties
	Attachment A - Resolution for Road Vacation Public Hearing (Word)	September 2002	Counties
	Attachment B - Notice of Public Hearing (Word)	September 2002	Counties
	Attachment C - Resolution to Vacate a County Road (Word)	September 2002	Counties
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4.210	Modification of the Farm-to Market (FM) System	March 2002	Counties
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4.220	Farm-to-Market Review Board Advisory Opinions on Proposed Jurisdictional Transfers	April 2002	Counties

INSTRUCTIONAL MEMORANDUMS

To Local Public Agencies



To: Counties and Cities	Date: June 18, 2007
From: Office of Local Systems	I.M. No. 3.605
Subject: Right-of-Way Acquisition	

Contents: This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to acquire right-of-way for State or Federally funded transportation projects. Topics addressed include right-of-way resources, acquisition procedures, and Federal-aid participation in right-of-way costs. This I.M. also includes the following attachments:

- [Attachment A](#) – Compensation Estimate Procedures
- [Attachment B](#) – FHWA Authorization of Right-of-Way Costs Flowchart
- [Attachment C](#) – Early Right-of-Way Acquisition Process Flowchart

Resources

There are numerous Federal and State laws and regulations concerning the acquisition of real property for a transportation projects. The primary Federal law is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). The Federal regulations that implement the Uniform Act are found in Part 24 of Title 49 of the Code of Federal Regulations ([49 CFR 24](#)). There are also a number of State laws that pertain to transportation projects. The rules that implement the requirements of these laws are found in 761 Iowa Administrative Code, Chapter 111, Real Property Acquisition and Relocation Assistance ([761 IAC 111](#)).

Because of the number and complexity of the Federal and State laws and regulations pertaining to right-of-way acquisition, the Iowa DOT Office of Right of Way has provided the [Local Public Agency Manual](#) (LPA Manual) to assist local agencies. The LPA Manual provides detailed guidance, forms, documents, and other information for nearly all aspects of the right-of-way process.

Please Note: This I.M. only supplements the information contained in the LPA Manual. LPA staff responsible for right-of-way acquisition should become thoroughly familiar with both this I.M. and the LPA Manual. In addition to the LPA Manual, several other publications and brochures for use by LPAs are available on the [Iowa DOT Office of Right of Way web page](#).

Besides these publications, the Office of Right of Way, Property Management Section has several Local Public Agency Coordinators (LPAC) that are available to assist LPAs with their right-of-way acquisitions. Before beginning any right-of-way activities, the Iowa DOT strongly recommends contacting the appropriate LPAC for assistance. To contact the appropriate LPAC, call the Property Management Section at 515-239-1300 or refer to the [Local Public Agency Coordinators web page](#).

Acquisition Procedures

General

For projects that receive either Federal or State funding assistance in any part of the project, the LPA shall follow the procedures outlined in the [LPA Manual](#). The procedures in the LPA Manual are designed to ensure compliance with both the Federal and State laws. In addition, because the State laws always apply and are very similar to the Federal laws, the Iowa DOT recommends that locally funded projects also follow the procedures in the LPA Manual.

Unless specified otherwise in the project agreement between the LPA and the Iowa DOT, the LPA is responsible to ensure that all right-of-way acquisition activities for the project comply with the applicable Federal and State requirements. To comply with these requirements, it is essential for the LPA to have staff qualified in these procedures, or hire a qualified consultant to provide these services. For more information concerning these qualifications, refer to the “Qualifications of Right of Way Personnel” section in Chapter 1 of the LPA Manual or the appropriate LPAC.

Valuation of Right-of-Way

In general, acquiring right-of-way will require appraisals that are prepared and reviewed by qualified appraisers. However, for minor, uncomplicated acquisitions that do not exceed \$10,000, an alternative valuation method

referred to as the Appraisal Waiver or Compensation Estimate may be used. This method is described in Chapter 3 of the [LPA Manual](#). Additional information and instructions are provided in [Attachment A](#) – Compensation Estimate Procedures.

Special Considerations for Federal-aid Projects

Before beginning any right-of-way activities on a Federal-aid project, there are several important points to consider:

1. All State and Federal laws pertaining to right-of-way acquisition still apply, even if no Federal funds are used for the costs of acquiring right-of-way.
2. If Federal participation is desired in the costs of any right-of-way activities, those activities may not begin until after written notification of FHWA Authorization is received from the Iowa DOT. The cost of any work that occurs prior to FHWA Authorization is not eligible for Federal participation. For more information, refer to the “Federal Participation in Right-of-Way Costs” section below.
3. Most right-of-way activities may not begin until after written notification of Environmental Concurrence is received from the Iowa DOT. However, a limited number of activities may begin prior to Environmental Concurrence. Refer to the subsections below for an explanation of both types of activities. For more information regarding the Environmental Concurrence process, refer to [I.M. 3.112](#), Environmental Concurrence Process.
4. Negotiations may not begin with a property owner until after the LPA has established and approved the amount of just compensation that will be offered. This amount shall not be less than the fair market value of the property, as determined by either an appraisal, or if appropriate, the Compensation Estimate method.

Right-of-Way Activities Allowed Prior to Environmental Concurrence:

1. Title search and property mapping necessary for completion of the Environmental Concurrence process.

In order to assess the potential environmental impacts of a project, it may be necessary to obtain some of this information. Such work may be conducted as part of the other preliminary engineering work associated with the environmental reviews or studies.

2. Preparation of cost estimates, property descriptions, and appraisals.

While this is allowed, the LPA should exercise caution in performing this work. Since the outcome of the Environmental Concurrence process may affect the project’s right-of-way needs, such work should only be completed on those parcels that are common to all of the project alternatives currently being considered. In addition, preparing appraisals too far in advance of Environmental Concurrence may require the LPA to update or reappraise by the time negotiations may begin, thereby adding unnecessary time and expense. In all cases, such work completed shall not be given any consideration in selecting the preferred project alternative.

3. Early Acquisition.

Under certain circumstances, negotiation and acquisition of right-of-way for Federal-aid projects may begin prior to receipt of Environmental Concurrence. These circumstances are limited to two specific situations: 1) hardship acquisitions, and 2) protective buying. For additional information concerning these situations, refer to the “Advanced Acquisitions” section in Chapter 2 of the [LPA Manual](#).

To request approval to proceed with early acquisitions, follow the process shown in [Attachment C](#) – Early Right-of-Way Acquisition Process Flowchart. The early acquisition request shall also include the following:

- A cover letter or e-mail that includes the Iowa DOT project number and a general description of the project.
- If available, right-of-way plan sheets showing the parcels to be acquired, identified by property owner name or parcel number.

- For each parcel requested, include a description that includes the property owner's name, address, and parcel number (if right-of-way plans have been developed).
- If Federal-aid reimbursement will be requested for the costs of early acquisitions, a cost estimate that includes the acquisition and any related incidental costs for each parcel.
- For each parcel requested, include a copy of page 2 of the Concept Statement ([Form 517001](#)) with questions 9.a-9.e completed, as they pertain to that parcel. To complete these questions, refer to [I.M. 3.105](#), Concept Statement Instructions. For more information regarding potential historic properties, refer to [I.M. 3.112](#), Environmental Concurrence Process and [I.M. 3.114](#), Cultural Resource Regulations.
- For each parcel that is requested on the basis of hardship to a property owner, include a written request, signed and dated by the property owner, that a) demonstrates a hardship on the basis of health, safety, or financial reasons; and b) documents an inability to sell the property because of the proposed project, at a fair market value, and within a time frame that is typical for other properties that will not be impacted by the project.
- For each parcel that is requested on the basis of protective buying, include sufficient documentation to demonstrate that development of the property is imminent and such development would limit future development of the proposed project (e.g., development would result in significantly higher costs to acquire the property).

Right-of-Way Activities Not Allowed Prior to Environmental Concurrence:

1. Negotiations with affected property owners (except as part of an approved early acquisition).

As part of the public involvement process, affected property owners should be made aware of possible impacts to their property. However, such contacts may not include any discussions concerning the details of a possible acquisition, such as the amount of compensation or other terms of a potential offer.

2. Acquisition of any property rights (except as part of an approved early acquisition).
3. Relocation of persons or businesses (except as part of an approved early acquisition).

Federal Participation in Right-of-Way Costs

To request Federal participation in right-of-way costs, follow the process illustrated in [Attachment B](#) – FHWA Authorization of Right-of-Way Costs Flowchart. Additional details and guidance concerning this process is provided below.

Eligible Activities and Costs

In general, Federal funds may participate in the costs incurred by the LPA in acquiring right-of-way necessary for the project, provided FHWA Authorization has been obtained, Environmental Concurrence has been received, and the appropriate acquisition procedures have been followed. In most cases, eligible costs are limited to the direct costs of right-of-way acquisition. Several types of eligible costs are further described below:

1. Right-of-way services.

Right-of-way services include the cost of all activities necessary to acquire the project right-of-way. Examples of such services include conducting negotiations and / or acquisitions, preparing preliminary surveys or plats, appraisals, title searches, property descriptions, or purchase contracts. These services may be provided by either LPA staff or by a consultant, provided they possess the necessary experience and qualifications.

To request Federal-aid participation in the cost of right-of-way services provided by an LPA, follow the process outlined in [I.M. 3.310](#), Federal-aid Participation in In-House Engineering. If the LPA desires to receive Federal reimbursement for its indirect costs, the indirect costs must be developed in accordance with the requirements of the Office of Management and Budget (OMB) Circular [A-87](#). This requires submittal of a cost allocation plan for review and approval by the Iowa DOT and the FHWA. If Federal participation in indirect costs will be requested, contact the Administering Office for assistance.

If the Federal-aid participation in the cost of right-of-way services provided by a consultant is desired, and those services will be provided as part of a contract that includes architectural or engineering services,

the contract must be obtained using a qualifications-based selection process. In this case, follow the process outlined in [I.M. 3.305](#), Federal-aid Participation in Consultant Costs.

If the right-of-way services are not part of a contract that includes architectural or engineering services, then the procedures outlined in I.M. 3.305 are recommended, but not required. Contracts that involve only right-of-way services may be obtained without using a qualifications-based selection process.

2. Real property acquisition.

These include the actual costs paid by the LPA to secure the title or necessary rights to the property. In general, only property that is actually incorporated into the project is eligible for Federal participation. However, there are a few exceptions, as listed below:

- Permanent or temporary easements outside the project right-of-way
- Property acquired for storage of construction materials
- Acquisitions of property to a logical boundary
- Property acquired for disposal of hazardous materials
- Property acquired for environmental mitigation or banking
- Property acquired for last resort housing

In addition to the actual costs of property acquisition, costs incidental to such acquisitions are also eligible. These include:

- Preliminary surveys and plats
- Appraisals and review appraisals
- Right-of-way cost estimates
- Relocation planning
- Right-of-way plans
- Title work
- Administrative settlements made in accordance with [49 CFR 24.102\(i\)](#), legal settlements, court awards, and costs incidental to the condemnation process
- Other costs directly related to real property acquisition

3. Relocation assistance.

These include the relocation assistance payments required by [49 CFR 24](#). If State laws require payments in excess of those required by the Federal regulations, those payments are also eligible. For more information about relocation assistance payments, refer to Chapter 5 of the [LPA Manual](#).

4. Damages.

These include the reduction in value to remaining real property resulting from a partial acquisition.

5. Property management.

These include the LPA's net costs to manage real property prior to and during construction to provide for maintenance, protection, and the removal and disposal of improvements upon the property, until final project acceptance. For more information, refer to Chapter 7 of the [LPA Manual](#).

6. Uneconomic remnants.

These include the costs of acquiring the remainder of a partial property acquisition for the project, when required by the Uniform Act. Note: Disposal of uneconomic remnants acquired by the LPA may require a credit to the Federal funds used. For more information, see the discussion under the "Excess Right-of-Way" subsection below.

7. Access rights.

These include the costs of obtaining full or partial control of access to an existing highway, as allowed by applicable State laws.

8. Utility and railroad property.

These include the costs of providing replacement right-of-way for railroads or utilities when their operations or facilities are impacted by the project's right-of-way needs. Non-operating utility or railroad property required for the projects is also eligible, and shall be acquired in the same manner as privately owned property.

FHWA Authorization Request

The LPA's request for FHWA Authorization shall include the following:

1. A cover letter or e-mail that includes the Iowa DOT project number and a general description of the project.
2. A description of the parcels to be acquired that includes the property owner's name, address, and parcel number for each parcel.
3. Plan sheets showing the parcels to be acquired, identified by property owner name or parcel numbers.
4. A cost estimate that includes both a total cost and a breakdown of the acquisition and any related incidental costs for each parcel.

Ordinarily, the request should include all parcels that will be acquired for the project. If for any reason the request does not include all parcels, the LPA must recognize that authorization for any remaining parcels will have to be submitted separately, and the costs associated with those remaining parcels may not be incurred until a subsequent FHWA Authorization request is submitted and approved. If the LPA proceeds with any activities associated with parcels not already authorized, the cost of those parcels will not be eligible for Federal participation. *Therefore, the Iowa DOT strongly recommends that requests for FHWA Authorization of right-of-way costs include all parcels to be acquired.*

Reimbursements

After authorized and eligible costs have been paid by the LPA, a request for Federal-aid reimbursement may be filed with the Iowa DOT Administering Office. The LPA's request for reimbursement of right-of-way costs shall include the following:

1. An original, signed cover letter that includes the Iowa DOT project number and a general description of the project. The cover letter should also include a statement that all costs submitted for reimbursement have been incurred in accordance with the applicable Federal and State requirements and have not been previously requested for reimbursement.
2. An itemized statement of costs requested for reimbursement, include a description for each.
3. Documentation to support the costs requested for reimbursement, as described below:
 - For acquisitions of property, include copies of the executed purchase agreements that show the amount paid by the LPA.
 - For right-of-way services provided by the LPA, include copies of timesheets that show the hours worked on the project by LPA staff members, their cost rates, and if previously approved, the associated indirect costs.
 - For right-of-way services provided by a consultant, and other direct incidental right-of-way costs, include copies of the invoices received and copies of the check register showing the payments made for each.

Excess Right-of-Way

If Federal funds participate in the acquisition of right-of-way, and that right-of-way is later disposed of because it is no longer needed for the project, a corresponding credit to the Federal share of the costs of such right-of-way may be required. Therefore, before acquiring any excess right-of-way, the LPA shall consult with the Administering Office. For additional information, refer to the "Other Useful information" section in Chapter 7 of the [LPA Manual](#).

Compensation Estimate Procedures

The central premise of the Compensation Estimate procedures is that they should only be used for minor, uncomplicated acquisitions. Therefore, before using the Compensation Estimate procedures, the LPA should first determine whether the parcels to be acquired meet this criteria. To aid in this determination, refer to the "Checklist for Determining Complex Parcel for Appraisal Purposes" located in [Index 1](#) of the LPA Manual. Refer also to the additional guidance provided in Chapter 3 of the [LPA Manual](#). The checklist consists of Yes/No type questions. A "Yes" answer to any of questions indicates additional review should be done before deciding to proceed with a Compensation Estimate.

Because of the qualifying criteria, the Compensation Estimate method is used most often in rural areas. However, if the situation warrants, this method may also be used for projects in urban areas.

There are situations where a non-typical condition may occur in what is otherwise a simple, uncomplicated acquisition. An example of this type of situation might involve leaving a well on the LPA right-of-way when it is possible to construct the project without destroying the well. As a condition of the right-of-way negotiation, the LPA may allow the property owner to use the well after the construction project is completed. In such cases, a request to use the Compensation Estimate process should be made in writing to the Iowa DOT Administering Office. This request should state the reasons for using the Compensation Estimate process and include documentation to support those reasons. Upon receipt, the Administering Office will consult with the appropriate LPAC and advise the LPA whether the request is approved or not.

Completing the Compensation Estimate

An example Compensation Estimate form is provided in [Index 3](#) of the LPA Manual. The person that prepares the Compensation Estimate, including simple acquisitions and minor or cost-to-cure damages such as fences, wells, moving small buildings etc., does not need to be full-time or experienced appraiser. All that is required is a working knowledge of how to determine land values from available land sale market information, and the ability to identify, estimate, and document minor or cost-to-cure damages. The estimator should also serve as the acquisition agent.

Compensation Estimate Right-of-Way Record Sheet

To provide assistance in following and documenting the necessary steps for acquiring a parcel using the Compensation Estimate process, the "Compensation Estimate Right-of-Way Record Sheet" has been developed (see last page of this attachment). This record sheet shall be included with the parcel documentation in the right-of-way file for the project. Instructions for completing the record sheet are provided below:

Heading All of the information should be completed. If there are no tenants involved, indicate "None" in the provided space, do not leave it blank.

Step 1 As soon as feasible, the owner and tenant (if applicable) shall be notified of the LPA's interest in acquiring the real property and the basic protections (right to just compensation and procedures involved) provided to the owner by law. At this point, the LPA should provide the owner with a statement of the property owner's rights, such as included in the Office of Right of Way brochure titled, "[Highways and Your Land](#)".

Step 2 As required by Federal regulations, negotiations or acquisitions of right-of-way shall not begin until after the Iowa DOT has issued Environmental Concurrence. Environmental Concurrence will not be given until after submittal of the Concept Statement and completion of the necessary environmental studies or reviews.

Step 3 The LPA's determination of just compensation must be established prior to beginning negotiations with the property owner. The process should include an inspection of the property. It is not necessary that the estimator offer the property owner or property owner's representative, an opportunity to be present during the property inspection.

Step 4 In preparing a Compensation Estimate, the LPA may use the "assessor's method" in the valuation of minor strips of farmland with no major damages.

The assessor's method involves someone knowledgeable of land values reviewing typical farmland sales in the county each year and determining a fair market value for the different types of farmland and, if desired, calculating a factor which when taken times the assessed valuation will obtain these values. At the beginning of the calendar year, these calculations along with the justifications shall be submitted to the Board of Supervisors for review and approval. The values and / or factors approved by the Board shall be based on the fair market value of farmland in the county for that year. These values along with the justifications must be documented in the board minutes each year.

While the assessor's method, when done properly, is acceptable, the Iowa DOT and the FHWA recommend simply comparing the land to be acquired with two or three recent comparable sales to establish the value. In some cases, this may involve less time and resources than developing a factor-based system such as the assessor's method.

LPAs are encouraged to complete the compensation estimate in the presence of the owners if it is feasible to do so. The written offer may be presented to the owner at this time to expedite the acquisition process.

Step 5 A Compensation Estimate requires administrative approval by someone other than the person who produces the estimate. This person must not be the estimator or the negotiator; and must be a LPA official knowledgeable in land values and have authority to grant administrative approval. The County Assessor could serve in this capacity. If the written offer is made to the owner during the completion of the Compensation Estimate, the administrative approval will follow but should be completed before the acquisition agreement is approved by the LPA.

Step 6 The LPA may make a written offer to the owner to acquire the property for the full amount believed to be just compensation at the same time as the Compensation Estimate is completed (Step 4). Along with the initial written purchase offer, the LPA shall include a copy of the Compensation Estimate form. If multiple owners at different locations are involved, this step may occur after the Compensation Estimate and Administrative Approval steps are completed.

Step 7 The negotiator cannot be the same person as the administrative reviewer but should be the same person as the estimator. The project files shall contain the negotiator's notes on each parcel. The notes shall contain, as a minimum, the dates of contacts, persons present, and a summary of the matters discussed during the contact.

Step 8 The owner shall be given reasonable opportunity to consider the offer and present material (if any) which the owner believes is relevant to modify the offer.

Step 9 Tenants (renters) have an interest in real estate (both for written and oral leases), which must be acquired, on areas needed for right-of-way, temporary easements, permanent easements and fee acquisitions. Tenants should be contacted within a short time (a week to ten days) after the owners have been contacted.

Normally, on short term and farm leases a tenant contract with a minimum value is sufficient. However, items such as the value of the growing crop, field preparation, etc., may, in certain instances, be added to tenant contract.

On major tenant interests, where the appraisal contains a suggested breakdown for the owner and the tenant, both names should appear on the contract or warrant allowing the landlord and tenant to determine the breakdown for their respective interests.

Step 10 If the offer, or a revised offer, is rejected and the LPA intends to acquire the property by eminent domain, it should institute formal condemnation proceedings. The condemnation cannot be speeded up or delayed as a means of coercing the owner to sell. The LPA shall pay the owner's reasonable costs (attorney, appraisal, etc.) if condemnation is abandoned or, as determined by the Compensation Commissioners, if the award is greater than 110 percent of final offer.

Step 11 Prior to taking physical possession of the property to be acquired for right-of-way, the property owner must be paid (warrant issued or the money made available by deposit with the Sheriff as prescribed by law) for the property.

Step 12 The owner should be given ample notice of the possession date. In the case of someone lawfully occupying a dwelling, business, or a farm operation building to be acquired, at least a 90-day written notice must be given.

Compensation Estimate Right-of-Way Record Sheet

Local Public Agency (LPA) _____ Project Number _____

Parcel No. _____ Owners _____

Tenant _____

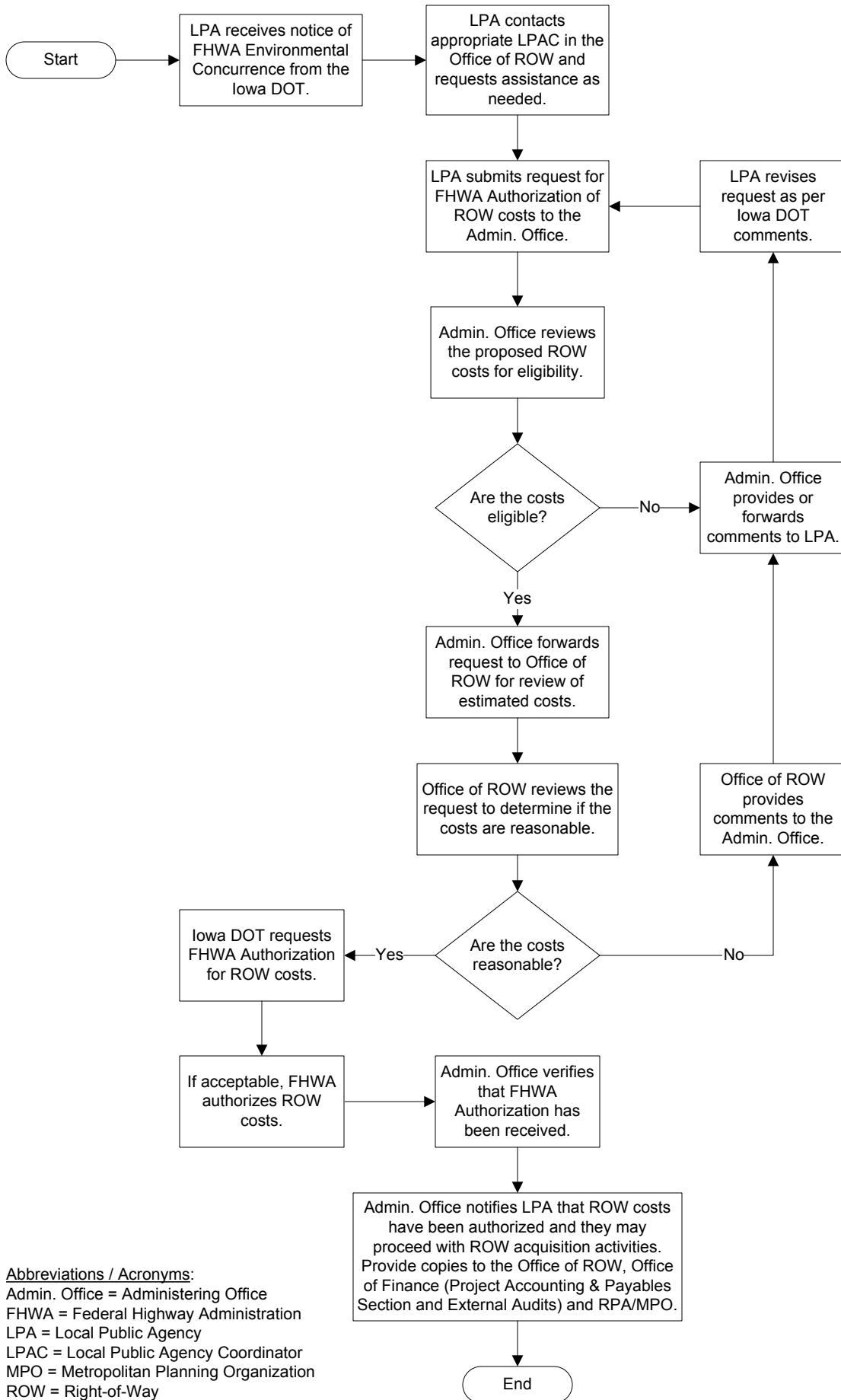
Step Number	Dates		Procedure
	Month--Day--Year	Month--Day--Year	
1	_____	_____	Owner and Tenant (if applicable) notified of LPA's interest in acquiring real property (as soon as feasible).
2	_____	_____	Environmental Concurrence from Iowa DOT (must be received prior to any right-of-way negotiations)
3	_____	_____	Compensation Estimate inspection conducted at property
4	_____	_____	Compensation Estimate completed, by _____.
5	_____	_____	Administrative approval completed, by _____ (must NOT be the same person as the estimator or negotiator).
6	_____	_____	Written offer and written statement of the basis for the offer given to owner.
7	_____	_____	Owner (and tenant if applicable) contacted, by _____ as negotiator (may be the same person as the estimator).
8	_____	_____	Offer accepted/rejected by owner.
9	_____	_____	Offer accepted/rejected by tenant.
10	_____	_____	Condemnation notice (if agreement is not reached). Write N/A if not applicable.
11	_____	_____	Payment made to owner or, for condemnation, deposited with the court.
12	_____	_____	Possession of property.

NOTE: This sheet must be completely filled out for each parcel and attached to parcel documentation in right-of-way project file.

Printed Name and Title of LPA Official

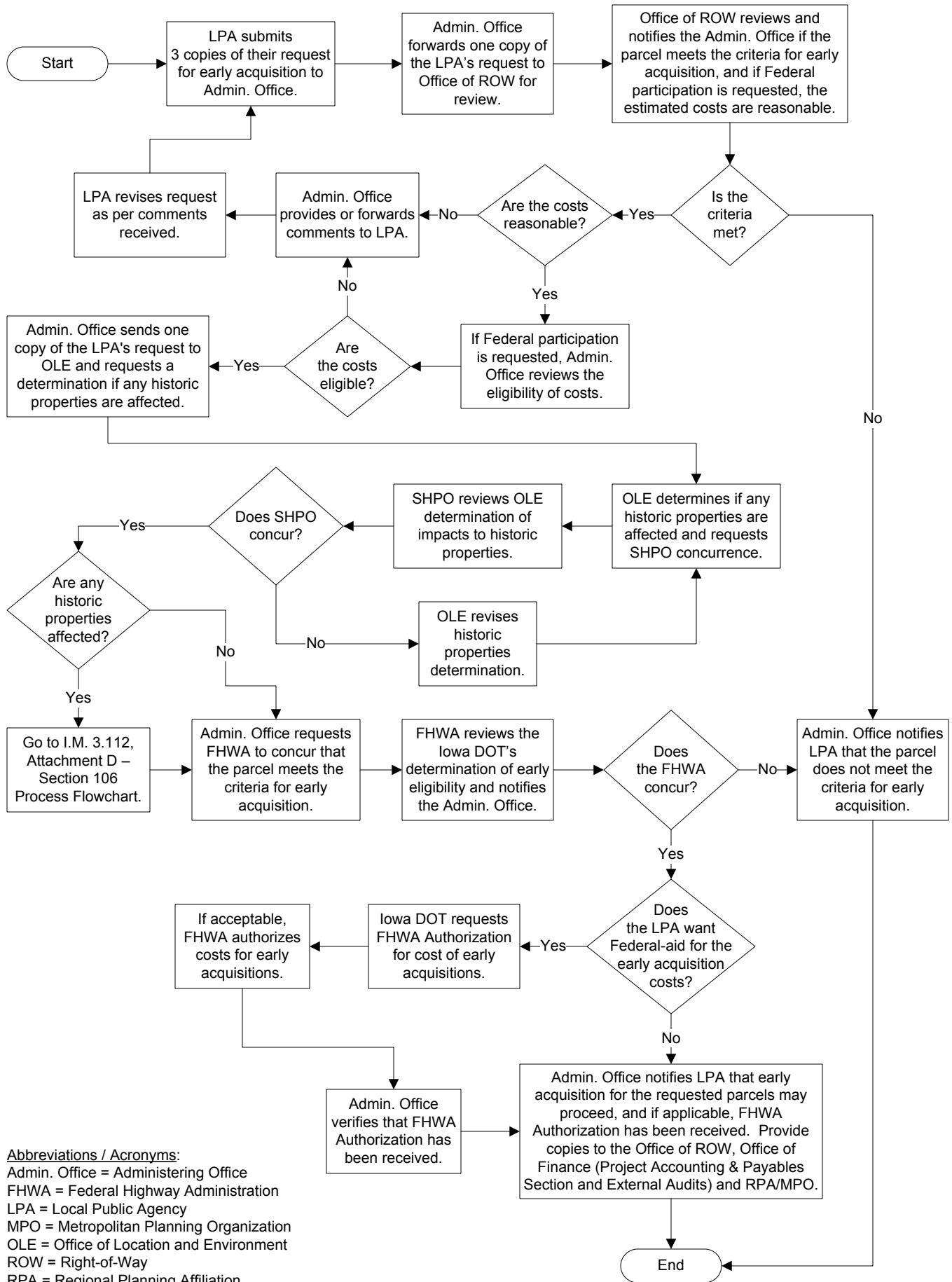
Signature of LPA Official

FHWA Authorization of Right-of-Way Costs Flowchart



Abbreviations / Acronyms:
 Admin. Office = Administering Office
 FHWA = Federal Highway Administration
 LPA = Local Public Agency
 LPAC = Local Public Agency Coordinator
 MPO = Metropolitan Planning Organization
 ROW = Right-of-Way
 RPA = Regional Planning Affiliation

Early Right-of-Way Acquisition Process Flowchart



Abbreviations / Acronyms:
 Admin. Office = Administering Office
 FHWA = Federal Highway Administration
 LPA = Local Public Agency
 MPO = Metropolitan Planning Organization
 OLE = Office of Location and Environment
 ROW = Right-of-Way
 RPA = Regional Planning Affiliation
 SHPO = State Historical Preservation Officer

INSTRUCTIONAL MEMORANDUMS

To Local Public Agencies



To: Counties and Cities	Date: June 18, 2007
From: Office of Local Systems	I.M. No. 3.650
Subject: Federal-aid Participation in Utility Relocations	

Contents: This Instructional Memorandum (I.M.) provides a summary of the requirements and procedures for Federal participation in the cost of utility relocations on Federal-aid transportation projects, as specified in Title 23 of the Code of Federal Regulations, Part 645, Subpart A ([23 CFR 645 A](#)). Topics addressed include eligibility of utility relocations, utility agreements, and the procedures for obtaining Federal participation in utility relocations. This I.M. includes the following attachments:

- [Attachment A](#) – Utility Relocation Federal-aid Eligibility Flowchart
- [Attachment B](#) – FHWA Authorization of Utility Relocation Costs Flowchart

Note: For additional instructions and procedures related to utility accommodation and coordination, refer also to [I.M. 3.640](#), Utility Accommodation and Coordination.

Eligibility

To determine if the costs associated with a utility relocation are eligible for Federal-aid reimbursement, three questions must be answered: 1) Do the circumstances of the relocation allow for Federal reimbursement? 2) Are the activities associated with the relocation eligible? and 3) Are the specific cost items associated with those activities eligible? Each question is further explained below.

Eligible Relocations

Relocation of a utility facility may or may not be eligible for Federal-aid reimbursement, depending on the specific circumstances of that relocation. These circumstances include a number of variables, such as ownership, location, reasons for relocation, and the applicable Federal and State laws, regulations, and policies.

The questions listed below are designed to assist in determining the eligibility of a proposed utility relocation. Additional explanation and information is provided below each question. To obtain the correct determination of eligibility, these questions must be answered in the order indicated. The same decision making process is also illustrated graphically in [Attachment A](#) – Utility Relocation Federal-aid Eligibility Flowchart.

1. *Is the utility relocation part of a safety project?* If yes, the relocation is eligible. If no, go to the next question.

A “safety project” is initiated specifically for the purpose of reducing the roadside hazards of utility facilities to the transportation facility users. Only those facilities that pose a safety hazard would be eligible, and the safety benefit of such relocations must be supported by a site-specific crash history or a safety study.

2. *Is the utility relocation required to construct the project?* If no, the relocation is not eligible. If yes, go to the next question.

Except for safety corrective measures, the need for the utility relocation must be caused by the transportation project. That is, the utility facilities must be relocated in order for the proposed transportation project to function properly. Relocations that are solely for the benefit of the utility, the utility’s contractor, or the LPA’s contractor are not eligible.

For example, the project construction may be more convenient or efficient for the utility or the contractor if certain utility relocations are made, but such reasons by themselves are not sufficient to allow Federal reimbursement.

3. *Is the utility relocation required to construct an Interstate Highway project?* If yes, the relocation is eligible. If no, go to the next question.

The utility itself does not have to be located on the Interstate, but the cause for the relocation must be due to an Interstate project. Such relocations are eligible for Federal reimbursement because this is explicitly permitted by [Section 306A.10](#) of the Code of Iowa.

4. *Is the utility located within the existing right-of-way of a non-Interstate primary highway?* If yes, the relocation is not eligible. If no, go to the next question.

This question pertains to utilities located on primary highways, except those highways that are part of the Interstate. This includes extensions of primary highway inside city corporate limits. For such projects, the Iowa DOT's Utility Accommodation Policy, which is published at [761 Iowa Administrative Code, Chapter 115 Utility Accommodation](#), will apply. This policy requires all utilities that occupy the primary highway right-of-way to relocate at their own expense.

5. *Does the utility occupy publicly owned land?* If no, the relocation is eligible. If yes, go to the next question.

For purposes of this question, publicly owned land includes the LPA's road or street right-of-way, or any other property that is owned by a political subdivision of the State.

If a utility is not located on any road right-of-way or other publicly owned lands, the utility will have rights to the property it is located on, either by fee title or an easement. In this case, if a transportation project damages or takes the utility's property, the utility is entitled to compensation under eminent domain, and therefore such costs paid by the LPA are eligible.

6. *Is the utility required to relocate at its own expense?* If yes, the relocation is not eligible. If no, go to the next question.

The utility's obligations for relocation should be specified in the applicable permit, agreement, or utility accommodation policy.

For projects located on the right-of-way of non-primary, Federal-aid highways, the [Policy for Accommodating Utilities On the County and City Non-Primary Federal-Aid Road System](#) will apply. Federal-aid highways include all roadway classifications on the [Federal Functional Classification maps](#), except local roads and rural minor collectors. This policy requires all utilities located within the Federal-aid highway right-of-way to relocate at their own expense when required by a highway project.

For projects that are neither on a primary highway nor a Federal-aid highway, this question will be determined by the provisions of the applicable permit or utility agreement between the LPA and the utility. Typically, these permits or agreements require that utilities occupying the public right-of-way must relocate at their own expense. However, the LPA should verify this by reviewing the terms of the applicable permit or agreement.

7. *Is the utility owned by the LPA?* If yes, the relocation is eligible. If no, go to the next question.

LPA owned utilities are owned, operated, and controlled by either the LPA or a subdivision of the LPA's government. For example, a municipal utility for a city would be considered a LPA owned utility for that city.

8. *Does the LPA have legal authority to pay for the relocation?* If yes, the relocation is eligible. If no, the relocation is not eligible.

To answer yes to this question, the LPA must have an existing local statute, ordinance, agreement, or some other legal basis for making a relocation payment to the utility. If in doubt, the LPA should consult with their attorney to determine if such payments are allowed.

Note: If a request for Federal participation in utility relocations is based on this condition, the LPA shall include the following with its request for FHWA authorization of utility costs: copies of the relevant local statutes, ordinances, agreements, permits, or policies; and an explanation of how these allow the LPA to make payment to the utility. The Iowa DOT and / or the FHWA may request a written legal opinion that supports this determination.

Eligible Activities

After verifying that a particular relocation itself is eligible, it must be determined if the activity associated with that relocation is eligible. The following types of activities associated with eligible relocations may be eligible for Federal reimbursement, as detailed below.

Engineering

Federal funds may participate in the cost of preliminary engineering work required for the design of utility relocations and the associated construction engineering work. Such engineering work may be accomplished by one of the following methods, subject to mutual agreement between the utility and the LPA:

1. The LPA's engineering staff. If the LPA's engineering staff is used, these services must be reviewed and approved in accordance with [I.M. 3.310](#), Federal-aid Participation in In-House Engineering Costs.
2. The utility's engineering staff. If the utility's engineering staff is used, Federal participation in these costs will be subject to the limitations set forth in the "Eligible Costs" section below.
3. An engineering consultant contract that is procured and administered by LPA with approval of the Iowa DOT Administering Office and the utility. In this case, the procedures in [I.M. 3.305](#), Federal Participation in Consultant Costs, shall be followed.
4. An engineering consultant contract that is procured and administered by the utility with approval of the LPA. In this case, the consultant fees must be reasonable and not based on a percentage of construction cost. The utility may contract for the required engineering work on a project-specific basis, or as part of an existing continuing contract, if such work is regularly performed for the utility. Use of a qualifications-based selection, as outlined in I.M. 3.305, Federal Participation in Consultant Costs, is encouraged, but not required.

Right-of-Way

When required by the transportation project, the cost of providing replacement right-of-way for a utility is eligible for Federal reimbursement, provided both the following conditions are met:

1. The utility has a property interest in its current location, the damage or taking of which is compensable under eminent domain; or providing replacement right-of-way for the utility makes the project more cost effective as a whole; or the acquisition is necessary to meet the requirements of the project.
2. There will be no charge to the project for that portion of the utility's existing right-of-way that will be used for transportation purposes. In other words, the utility cannot "double-dip" by receiving both the replacement right-of-way and compensation for its former right-of-way that is being used for the transportation project.

The replacement right-of-way may be acquired by either the utility or the LPA. When the LPA will acquire the utility's property or replacement right-of-way for the utility, such acquisitions must follow the procedures outlined in [I.M. 3.605](#), Right-of-Way Acquisition.

When the utility will acquire its own replacement right-of-way, the procedures specified by I.M. 3.605 do not apply. However, before acquiring replacement right-of-way, the utility must prepare a written valuation of the property to be acquired and provide this to the LPA. The LPA shall submit this documentation to the Iowa DOT with the draft utility agreement.

If the transportation project requires acquisition of real property belonging to the utility, but does not require relocation of the utility's facilities, the cost of acquiring such property is also eligible, provided the utility has a real property interest in its current location, the damage or taking of which is compensable under eminent domain. In such cases, the utility is treated like any other property owner whose property is needed for the project, and the Federal acquisition procedures outlined in I.M. 3.605 shall apply.

Construction

In general, the construction work associated with relocation or adjustment of utility facilities is eligible for Federal participation.

Construction work may be performed by the utility if the utility is adequately staffed and equipped to perform the work in a satisfactory manner (i.e., at a time convenient to and in coordination with the transportation project construction), and one of the following conditions are met:

1. The work is minor, involves existing facilities, and is routinely performed by the utility with its own forces. In this case, it has already been determined that it is cost effective for the utility to perform such work.
2. The Administering Office concurs that it is cost effective for the utility to perform the work, even if the work is not minor or involves installation of new facilities. In this case, the LPA shall submit the utility's justification for a cost effective determination to the Administering Office as part of its request for FHWA Authorization of utility costs.

If one of these conditions are not met, the work may be accomplished by means of a construction contract. The contract may be procured in a number of different ways:

1. The LPA may award a separate utility relocation contract, or with permission of the utility, include the utility relocation work as part of the LPA's contract for the transportation project.

In either situation, the contract must follow the same bidding and contract requirements that would apply for other Federally funded transportation projects. In most cases, this means the contract will have to be let through the Iowa DOT, as described in [I.M. 3.730](#), Iowa DOT Letting Process. However, for those transportation projects that qualify, the procedures described in [I.M. 3.720](#), Local Letting Process – Federal-aid, may be followed instead.

2. The utility may award a utility relocation contract using a competitive bidding process.

In this case, the LPA should review the utility's bidding procedures and concur in the award of the contract. Neither the Iowa DOT nor the FHWA need to review or concur in competitive contract awards made by the utility. For such contracts, the Federal bidding and contracting requirements that must be followed for LPA let contracts do not apply. This includes such provisions as Disadvantaged Business Enterprises (DBE), Equal Opportunity Employment (EEO), the Clean Air Act, Davis-Bacon Wage Rates, and other provisions, as shown on [Form FHWA-1273](#).

Nevertheless, this does not relieve the utility or its contractor from compliance with other Federal laws or regulations that apply regardless of whether Federal funds participate in the utility costs or not, such as the National Environmental Policy Act (NEPA), Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA).

3. The LPA or the utility may include the work as part of an existing continuing contract, provided the costs are reasonable and the LPA can demonstrate this to be the most cost effective method.
4. For low-cost incidental work, the LPA or the utility may award a construction contract to a qualified contractor without a competitive bidding process, provided the costs are reasonable.

For cases 3 and 4 above, the LPA shall submit a request to the Iowa DOT Administering Office that includes a cost estimate for the utility relocation work and an explanation of why this is the most cost-effective method to accomplish the utility relocations. Before proceeding with such work, the LPA must receive written concurrence from the Administering Office.

Eligible Costs

After determining the relocation is eligible, and the activity associated with the relocation are eligible, the cost elements of that activity (e.g., labor, overhead, materials, equipment, etc.) must also be evaluated for eligibility. The eligibility criteria for these cost elements is specified in [23 CFR 645.117](#). If a pre-audit is requested, the eligibility of these cost elements will be reviewed by the Iowa DOT (see the "Pre-audit Procedures" subsection

under the "Procedures for Federal Participation" section below). These cost items may also be reviewed as part of the project's final audit.

There are some elements of utility costs that may require credit to the Federal-aid project. These are briefly described below.

Betterment Credits

The additional costs associated with a betterment to utility facilities that are replaced or adjusted will require a credit. For example, if an 8" waterline must be relocated because of the project, and the utility chooses to increase the capacity of their facilities by replacing it with a 12" waterline, the estimated differential cost between the 8" and 12" lines must be deducted from the actual 12" waterline costs before the appropriate Federal share is calculated.

However, there are certain conditions under which a betterment to relocated utility facilities will not require a credit. Those include:

1. The betterment is required by the transportation project
2. Replacement of devices or materials that are of equivalent standards but not identical.
3. Increases to the next higher grade or size when the existing devices or materials are no longer manufactured.
4. The betterment is required by law under governmental and appropriate regulatory commission code.
5. The betterment is required by the utility's current design practices and there is a direct benefit to the transportation project.

In addition to betterments, the accrued depreciation of utility buildings and associated equipment that are replaced may also require a credit. Such accrued depreciation is based on the ratio between the period of actual length of service and the total life expectancy applied to the original cost. Depreciation credit is not required for utility buildings or equipment that are rehabilitated or moved (i.e., not replaced) because of the transportation project.

Salvage Credits

Credit will also be required for the salvage value of materials removed. Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a consideration for loss in service life at 10 percent. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the LPA or utility, following an opportunity for inspection by the LPA and an appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

Eligibility of Utility Relocations for Earmark Funds

Projects that are specially designated or "earmarked" by Congress for Federal funding usually follow the same utility relocation eligibility rules as any other Federal-aid project, as outlined above. However, if the funds for an earmarked project are specifically designated for utility relocations, this may override the normal rules of eligibility. To be eligible, such a designation must occur in the legislative description of the project itself or elsewhere in the authorizing legislation. Funding applications or Congressional letters are not sufficient to establish the eligibility of utility relocations that are otherwise ineligible under the normal rules.

Utility Agreements

In order for Federal funds to participate in utility relocation costs, a written agreement must be executed by the LPA and the utility. The agreement must also be reviewed and approved by the Iowa DOT Administering Office.

It is the responsibility of the LPA to initiate the agreement process with the utility. Some utility agreements can take a significant amount of time to negotiate and execute, therefore, the LPA should contact the utility as early possible in the project development process.

Agreement Content

Many utilities have standardized agreements that may be used for this purpose. However, use of a standard format is not required. Regardless of the particular form of agreement used, all utility agreements for construction-type projects shall include the following provisions:

1. A statement of each party's responsibilities for accomplishing and paying for the cost of the utility relocations. This statement should include the basis of LPA's authority or obligation to pay for utility relocation costs.
2. The provisions of [23 CFR 645](#) and the [Policy for Accommodating Utilities On the County and City Non-Primary Federal-Aid Road System](#) incorporated by reference.
3. The method for performing the utility relocation work. The method used must be one of the options described in the "Construction" subsection under the "Eligible Activities" section above.
4. The method for developing utility relocation costs.

The preferred method is based on actual direct and related indirect costs. However, subject to approval by the Iowa DOT, other methods may be used, provided they are based on generally accepted industry practices and can be reasonably supported by recent actual expenditures. The lump-sum method may be used if the work can be clearly defined and the cost accurately estimated. Unit costs may be used if they are developed by the LPA in cooperation with the utility and are updated annually based on actual cost data.

5. An itemized cost estimate of the utility relocation work.

If the work will require any credits for the purposes of Federal-aid reimbursement, these shall be identified. The cost estimate should also include right-of-way, preliminary engineering, and construction engineering costs, if applicable. If the agreement is based on the utility's actual costs, the cost estimate should include a break-down of the estimated costs, such as direct labor, labor surcharges, overhead and indirect construction charges, materials, equipment, etc.

6. If the LPA and the utility will share in the cost of the utility relocation, the agreement shall identify the share to be paid by each party.
7. If the utility will make repayment of any costs that were initially paid by the LPA, the agreement shall specify the amount and terms of such repayments.
8. References to the plans, and if needed, specifications that describe the proposed work. These should be incorporated into the agreement as an attachment or exhibit.
9. A provision stating that the utility may not commence work until after receipt of written notification from the LPA that the relocation work has been approved by the Iowa DOT and received FHWA Authorization.
10. If the utility has a property interest in its current location, a provision that states the utility will provide a release or disclaimer of all property interests to the LPA after completion of the relocation and prior to final payment by the LPA.

Changes to the Agreement

If there are changes to the scope of work approved by the agreement (e.g., extra work, significant changes to the plans, specifications, or estimates), an amendment to the agreement, written change, or extra work order must be approved by the LPA and the Iowa DOT. Absent such documentation, Federal funds may not participate in the additional costs associated with such changes.

Procedures for Federal Participation

To obtain Federal participation in utility relocation costs, follow the process illustrated in the flowchart included as [Attachment B](#) to this I.M. Like any other type of project work, FHWA Authorization must be obtained prior to beginning any utility work which will be reimbursed with Federal funds. Additional details and guidance concerning this process is provided below.

FHWA Authorization Request Submittal

To request FHWA Authorization for utility relocation costs, submit the following to the Administering Office:

1. A cover letter, memo, or e-mail that includes the project number and a description of the circumstances that require the utility relocation.
2. The draft utility agreement, including the proposed plans, specifications (if applicable), and an itemized estimate of utility relocation costs to be paid by the LPA.

Pre-audit Procedures

If the estimated total utility cost to be paid by the LPA is greater than \$100,000, the Administering Office will forward 1 copy of the draft utility agreement to the Iowa DOT Office of Finance, External Audits, and request a pre-audit. If the estimated cost is less than \$100,000, a pre-audit is usually not required, unless:

- the utility is to be paid on a lump-sum or unit price basis;
- there is insufficient knowledge of the utility's accounting system;
- there is previous unfavorable experience regarding the reliability of the utility's accounting system;
- the utility agreement involves procurement of new equipment or supplies for which cost experience is lacking; or
- the Administering Office has concerns about any item in the proposed cost estimate.

External Audits may waive the need for a pre-audit based on its knowledge of the utility and its past audit history. A pre-audit typically includes:

- an analysis of the utility's cost proposal and financial records for the method of accounting in place to assure that the utility has the ability to adequately segregate and accumulate reasonable and allowable costs to be charged against the project; and
- an analysis of the utility's proposed direct costing rates and indirect overhead factors to assure their propriety and eligibility for Federal reimbursement, as required by [23 CFR 645.117](#).

If there are any questions about the pre-audit procedures, the LPA or Administering Office may contact External Audits for assistance.

Reimbursements

The LPA may request reimbursement for the costs of approved and authorized utility relocation work anytime after payments have been made to the utility. Each request for reimbursement shall include:

- 1 cover letter that identifies the project number, the work for which reimbursement is being requested, and the total amount claimed for reimbursement.
- If the utility is performing the work with its own forces, include 1 copy of the utility's estimate of work completed to date.
- If the utility is using a contractor or consultant to perform the work, 1 copy each of the contractor or consultant invoice, and any applicable subcontractor or subconsultant invoices.
- 1 copy of the canceled check or check register to verify that the LPA has made payment to the utility.

Completion of Utility Work

After all the utility relocation work is completed, the LPA shall submit a request for final reimbursement to the Administering Office. The final reimbursement request shall include:

- 1 cover letter that identifies the project number, the work for which reimbursement is being requested, and the total amount claimed for reimbursement. The cover letter shall also include a statement by the LPA that the utility relocation work was completed in general conformance with the utility agreement.
- If the utility is performing the work with its own forces, include 1 copy of the utility's final costs.
- If the utility is using a contractor or consultant to perform the work, 1 copy each of the contractor or consultant final invoice, and any applicable subcontractor or subconsultant final invoices.

- 1 copy of the canceled check or check register to verify that the LPA has made final payment to the utility.

Because the final audit process can require a significant amount of time, and the final audit will need to be complete before the project as a whole can receive final Federal-aid reimbursement, the LPA should submit their request for final reimbursement of utility relocation work as soon as possible.

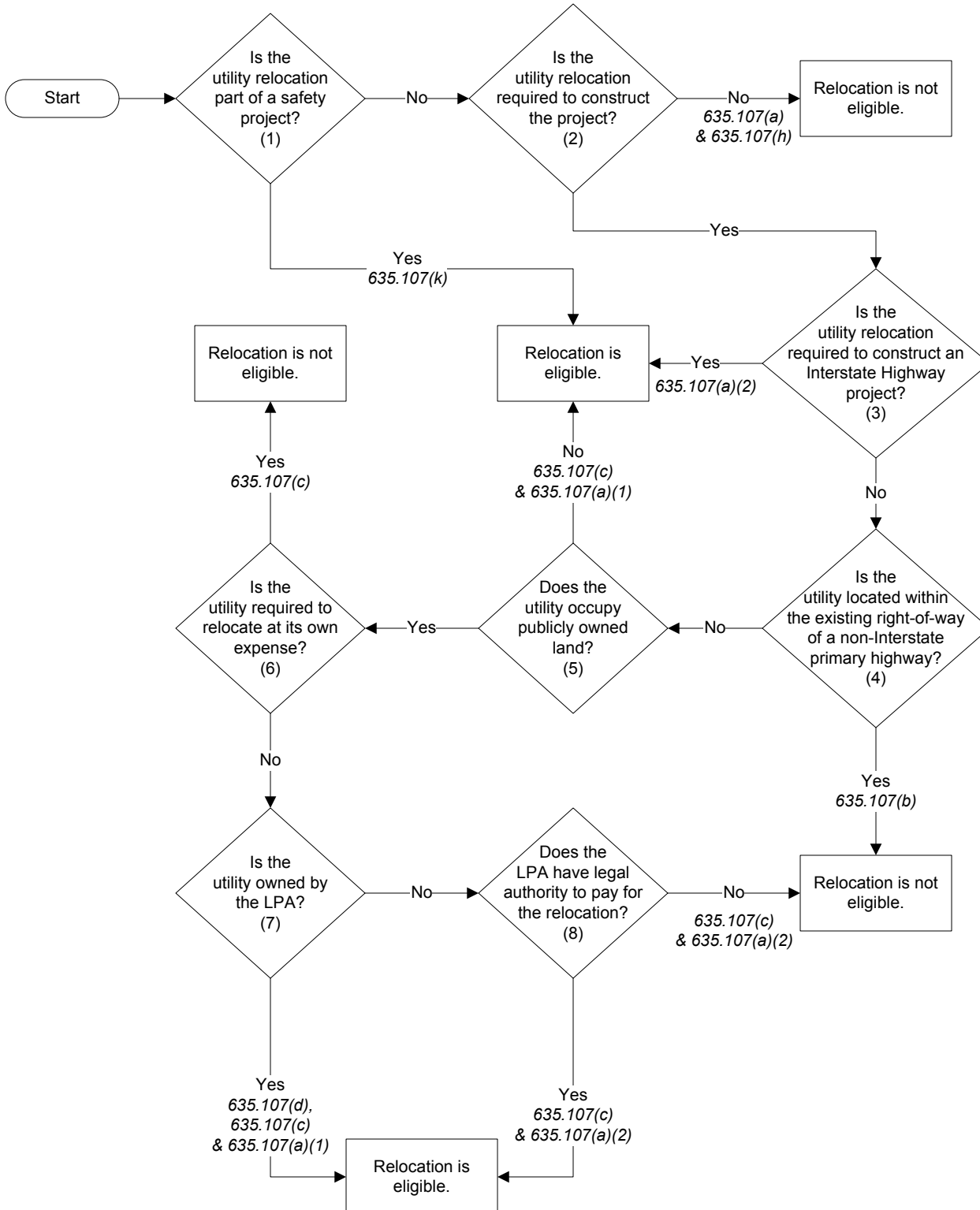
Upon receipt of a request for final reimbursement of utility relocation costs, the Administering Office will forward a request for a final audit or final review to the Office of Finance, External Audits. Lump sum agreements do not need a final audit, but may have a final review. External Audits may waive final audit requirements on utility agreements less than \$100,000. Final reimbursement for lump sum agreements under \$100,000 can be made prior to the final audit or review (reimbursement set by agreement).

If a final audit is conducted, External Audits will review all invoiced charges to assure that the charges are adequately supported and are eligible for reimbursement. After the final audit is complete, External Audits will return the audit report to the Administering Office, which in turn will pass the report on to the LPA and the utility.

- If the final audit report finds that a balance is due to the utility, the utility may invoice the LPA for the balance due and the LPA may request reimbursement for the additional payment. Upon receipt of such a request, the Iowa DOT will reimburse the LPA for the appropriate Federal share.
- If the final audit report finds that the utility has been overpaid, the Iowa DOT will invoice the LPA for the appropriate Federal share or deduct this amount from the balance of reimbursement that is due to the LPA for other project costs. Likewise, the LPA may request reimbursement from the utility for the amount of overpayment.

Utility Relocation Federal-Aid Eligibility Flowchart

For Local Public Agency (LPA) Federal-aid Projects



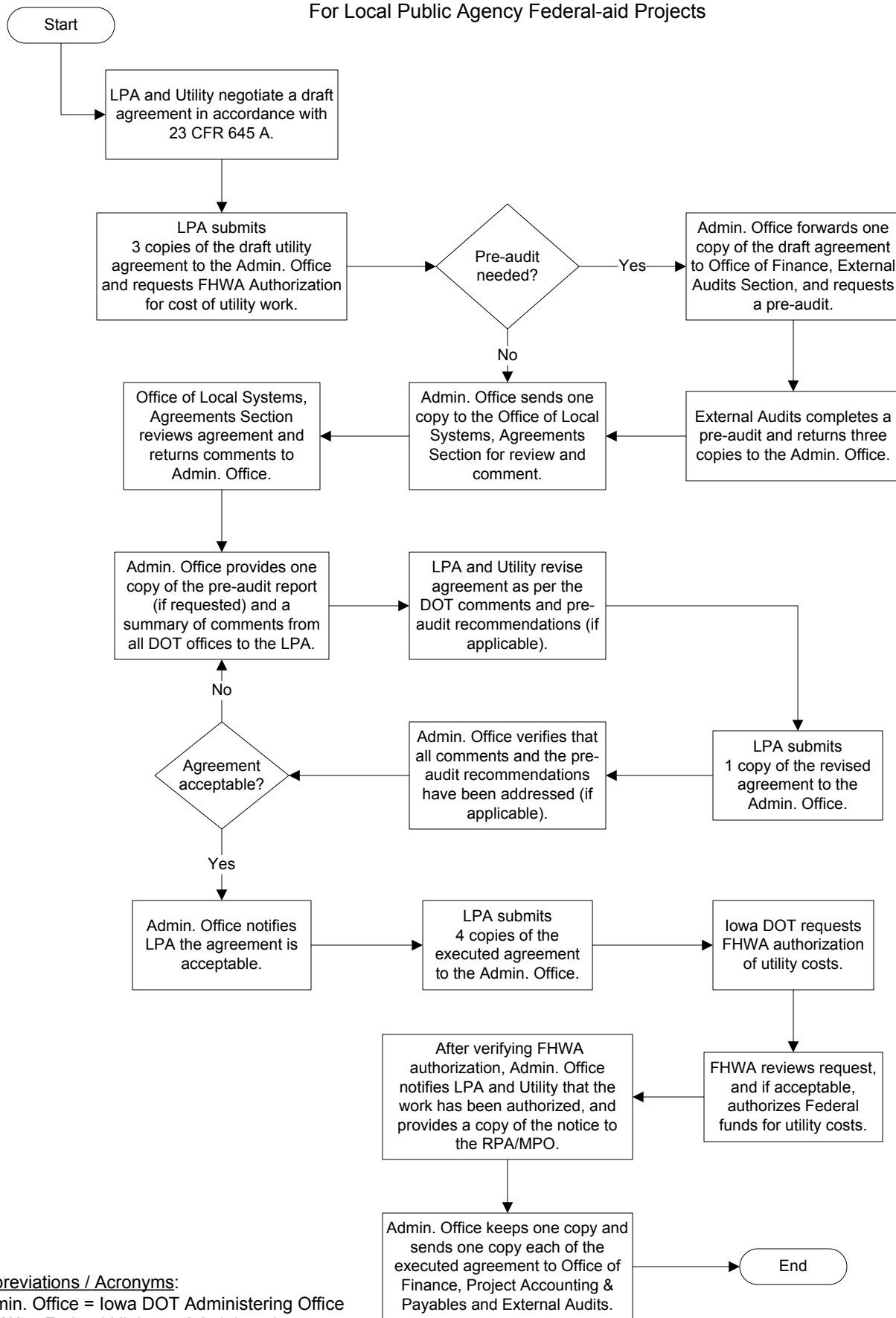
Notes:

1) For additional explanation of each question shown on this flowchart, refer to the corresponding numbered questions in the "Eligible Relocations" section of this I.M.

2) For each eligibility determination shown on this flowchart, the supporting references from 23 CFR 645 are shown in *italics*.

FHWA Authorization of Utility Relocation Costs Flowchart

For Local Public Agency Federal-aid Projects



Abbreviations / Acronyms:

- Admin. Office = Iowa DOT Administering Office
- FHWA = Federal Highway Administration
- LPA = Local Public Agency
- MPO = Metropolitan Planning Organization
- RPA = Regional Planning Affiliation

INSTRUCTIONAL MEMORANDUMS

To Local Public Agencies



To: Counties and Cities

Date: June 18, 2007

From: Office of Local Systems

I.M. No. 3.710

Subject: DBE Guidelines

Contents: This Instructional Memorandum (I.M.) includes general guidelines and procedures for a Local Public Agency (LPA) to comply with the Disadvantaged Business Enterprise (DBE) requirements on locally let construction contracts and consultant contracts that will be reimbursed with Federal funds.

Introduction

The DBE program was created to ensure nondiscrimination in the award and administration of United States Department of Transportation (U.S. DOT) assisted contracts. It seeks to create a level playing field for minority and women firms to compete, and to help remove barriers to participation in these contracts. It also aims to help DBE firms grow, so that they may compete successfully outside of the DBE program. It applies only to contracts that include U.S. DOT funds. General regulations for the program are set forth in [49 CFR 26](#).

The Iowa Department of Transportation (Iowa DOT) is responsible to certify DBE firms, ensure that contract opportunities are provided for DBE firms, and submit a semi-annual DBE report to the Federal Highway Administration (FHWA). For LPA Federal-aid projects, the LPA has the ultimate responsibility for determining contract goals and awards.

For the specific steps and forms needed to address the DBE requirements on Federal-aid consultant contracts, refer to [I.M. 3.305](#), Federal-aid Participation in Consultant Costs. For the specific steps and forms needed to address the DBE requirements on locally let construction contracts, refer to [I.M. 3.720](#), Local Letting Process – Federal-aid.

Which Firms are Certified DBE firms?

The [Iowa Directory of Certified Disadvantaged Business Enterprises](#) is the official register of eligible DBE contractor and consultant firms. This directory is available from the Iowa DOT, Office of Contracts, and is also available on the internet. Amendments to this directory are published monthly to coincide with the regular Iowa DOT contract lettings.

When Should a DBE Goal be Set?

DBE goals can only be set on Federal-aid contracts. However, they do not need to be set on all Federal-aid contracts. The Federal regulations require each contract to be analyzed to determine the potential for DBE participation. Following are some issues the LPA should consider when deciding if a DBE goal should be set for a Federal-aid contract:

1. **Availability of Firms:** The availability of DBE firms, as identified in the Iowa Directory of Certified DBE firms, should be a primary factor in establishing a goal.
2. **Multiple ways to Meet a Goal:** Contracts that provide more than one opportunity to meet a DBE goal should be given consideration. For example, DBE firms are available to perform three different types of work on the contract; or three different DBE firms are available to perform a single type of work included on the contract.
3. **Size of Contract and Subcontracts:** The size of the estimated contract and subcontract amounts should also be given consideration. In general, larger contracts provide more opportunities for substantial subcontracts (i.e., those that exceed \$10,000). In contrast, small contracts often provide only very limited subcontract opportunities, or none at all. The Iowa DOT has developed the following ranges of estimated contract costs to assist the LPA in determining if a DBE goal should be set:
 - Less than \$100,000 – These contracts generally do not provide subcontract opportunities that exceed \$10,000. Therefore, DBE goals are usually not set on these small contracts.

- Between \$100,000 and \$250,000 – These contracts usually have subcontract opportunities that would exceed \$10,000. Therefore DBE goals are usually set for these contracts, provided the contract contains work that is normally done by available DBE firms.
- Contracts with estimated costs greater than \$250,000 – These contracts almost always present sufficient subcontract opportunities. Therefore, these contracts should always be considered for DBE goals. The Office of Contracts should be consulted for information on availability of DBE firms to perform work on the contract. If no DBE goal is proposed for a contract of this size, the LPA must provide an explanation to support this decision. This explanation should address the special conditions associated with the proposed work and the specific reasons why participation by DBE firms is not feasible.

What Size DBE Goal Should be Set?

The availability of DBE firms and the options available for the prime contractor or consultant to meet the DBE goal should be considered in setting the size of the DBE goal. The items of work on the proposed contract should also be reviewed. Goals on Iowa DOT let contracts are normally established in a range from 0% to 15%, in 2.5% increments. The Iowa DOT recommends use of similar procedures for LPA consultant and locally let construction contracts.

Advertising for DBE Participation

Opportunities to include DBE firms in the contract should be made, even if no DBE goal is set. This can be done by notifying available DBE firms of the upcoming contract and by encouraging the prime contractor or consultant to seek out DBE firms to use as subcontractors or subconsultants.

For consultant contracts, the LPA should consider including the following phrase in the Request for Proposals (RFP) when no DBE project goal was set: "No Disadvantaged Business Enterprise (DBE) goal has been set on this contract. However, use of DBE firms is encouraged."

Demonstration of Good Faith Efforts by Contractors or Consultants

All firms submitting a bid or proposal for contracts with a DBE goal should provide with their bid or proposal sufficient documentation of their good faith efforts to achieve the goal. This information should include: the names of the DBE firms contacted, a list of those DBE firms who submitted a quote or proposal to perform work on the contract, and an explanation of the reasons why any DBE firm that submitted a quote or proposal was not used. The documentation submitted with the bid or proposal should be sufficient for the LPA to determine the reasonableness of the contractor's or consultant's good faith effort.

LPA Review of Contractor or Consultant Good Faith Efforts

If the contractor or consultant has met the DBE goal, no review of their good faith effort is required. But if a contractor or consultant did not meet the established DBE goal, the LPA must review their good faith efforts before a contract can be awarded to such a contractor or consultant.

However, the determination of which contractor is the low bidder (or in the case of professional services, which consultant is best qualified) should be made *without regard* to whether or not the contractor or consultant achieved the DBE goal. The contractor's or consultant's good faith effort to meet the DBE goal is evaluated only *after* it is determined whom the contract would otherwise be awarded to.

To demonstrate a good faith effort, the contractor or consultant must take all steps that would reasonably be expected to achieve the DBE goal. If the contractor or consultant exceeded 80% of the average DBE commitment of other contractors or consultants who submitted a proposal for the contract, this is considered a good faith effort, and no further review is required.

If the contractor's or consultant's DBE commitment was less than 80% of the average noted above, the LPA must make a fair and reasonable judgment as to whether the contractor or consultant made an adequate good faith effort to meet the DBE goal. The LPA should consider the quality, quantity and intensity of the efforts documented by the contractor or consultant to demonstrate an active and aggressive effort to meet the goal. Guidelines to assist the LPA in making this judgment are listed below:

- Past relationships between a prime and a DBE subcontractor or subconsultant may be considered in evaluating good faith efforts, with certain restrictions. A prime may elect not to use a particular DBE subcontractor or subconsultant because of demonstrated and documented difficulties in past working relationships. However, a prime may not elect to avoid a DBE subcontractor or subconsultant solely because they have established a relationship with a non-DBE firm for similar services. One objective of the DBE program is to provide opportunities for DBE firms that they otherwise may not have had. Continuing to use non-DBE firms solely because of familiarity interferes with that objective.
- Proximity to the work site may not be considered as a reason to not select a DBE subcontractor or subconsultant. It is the responsibility of the subcontractor or subconsultant to perform the work. The subcontractor or subconsultant should have the option to travel or take other measures to adequately perform, if they are willing to do so.
- Incompatibility of electronic data systems may be considered when selecting a subcontractor or subconsultant. Primes and subs must have the ability to communicate efficiently and accurately in order to complete the work. However, efforts to overcome these differences must be made similarly for both DBE and non-DBE firms.
- Additional cost that might be associated with utilizing DBE firms is often cited as a reason to not select a DBE firm. However, it is recognized that the DBE program will have some costs in order to meet the Federal government's objective for the program. Therefore, unless the additional cost is unreasonable, cost may not be used as reason for not using a DBE firm.

Disputes Concerning Good Faith Efforts

The Federal regulations require the LPA provide an opportunity for administrative reconsideration to firms that will be denied a contract due to lack of good faith effort to achieve the DBE goal. Administrative reconsideration involves providing the contractor or consultant an opportunity to present their case as to why they were unable to achieve the DBE goal.

The administrative reconsideration meeting *must* be conducted with individuals who were not involved in the original decision to deny the contract award. The *sole* responsibility of the individuals involved in the administrative reconsideration is to confirm that the contractor or consultant did not make reasonable effort to achieve the DBE goal. The individuals conducting the administrative reconsideration cannot revise the project DBE goal, or allow the contractor or consultant to revise the amount of their DBE commitment. For LPA Federal-aid projects, the administrative reconsideration will be conducted by the Iowa DOT.

Good Faith Efforts when a DBE Firms is Unable to Perform the Work

If a DBE is unable to perform the work for which they were committed to perform, the prime contractor or consultant should notify the LPA and the Iowa DOT. The contractor or consultant must make a good faith effort to replace the dollar amount of the lost DBE commitment. No monetary sanction will be imposed if the DBE firm is unable to perform for reasons beyond the control of the prime contractor or consultant, and the prime contractor or consultant made an adequate good faith effort to replace the lost DBE commitment. Monetary sanctions should be imposed if the prime contractor or consultant intentionally fails to meet their original DBE commitment.

