**Federal Award Compliance and Control Record**

**Audit Guidance and Testing**

|  |  |
| --- | --- |
| **Name of Client:** |  |
| **Year Ended:** | 2023 |

|  |  |
| --- | --- |
| **Federal Award Name:** | Highway Planning and Construction (Federal-Aid highway Program) |
| **AL#:** | #20.205 |

# Important Information

**In addition to completing the control and suggested audit procedures, yellow-highlighted text indicates items that must be addressed or updated by auditors and should be deleted after the required information is added.**

*Blue italicized text indicates guidance from CFAE.*

This FACCR has been tailored for local governments and Not-For-Profits. It does not include all required references and testing for Institutes of Higher Learning or State organizations.

If the program had COVID funding expenditures, please refer to the terms and conditions of the grant to determine if any additional requirements were imposed. Also see guidance in [Appendix VII](OMB_Appendix_VII.pdf) of the Compliance Supplement.

If additional material requirements are identified, auditors will need to create procedures to test those requirements. If you have questions, AOS Auditors please open a Spiceworks ticket for assistance (IPAs email [AOSFederal@ohioauditor.gov](mailto:AOSFederal@ohioauditor.gov)).

**Navigation Pane**

Click on the “View” tab on the top ribbon and check the box that says “Navigation Pane” to bring up the headings on the left side of the screen. Click on the various sections within the navigation pane to go directly to that section.

**Table of Contents**

On the table of contents page, users can also click on listed sections to go directly to that section. As information is added into the FACCR, page numbering will change and the Table of Contents may need to be updated to reflect revised numbering. To update the Table of Contents, click on the word “Contents” directly above the line starting with Important Information, which brings up the icon “Update Table.” Clicking OK in the box that appears will update the page numbers on the Table of Contents to reflect any changes in the document.

**Guidance Links**

Links to guidance referenced throughout this document are included below:

* [Part 6](OMB_Part_6.pdf) (Internal Control) of the OMB Compliance Supplement
* [2013 COSO](https://www.coso.org/Shared%20Documents/Framework-Executive-Summary.pdf)
* [GAO’s 2014 Green Book](https://www.gao.gov/assets/gao-14-704g.pdf)
* [2 CFR Part 200](2_CFR_Part_200.pdf) – Once opened, click on the appropriate section(s)

# Agency Adoption of the UG and Example Citations

[*Appendix II*](OMB_Appendix_II.pdf) *to the OMB Compliance Supplement provides the codified section reference of the agency adoption of the Uniform Guidance (UG) (2 CFR Part 200) and nonprocurement suspension and debarment requirements in 2 CFR Part 180, including the 2020 revisions.*

*While some Federal agencies gave regulatory effect to the Uniform Guidance as a whole, others made changes to the UG language within the agency codified sections by either adding specific requirements/exceptions or editing/modifying existing language. OMB does not maintain a complete listing of agency exceptions to the UG, but the most recent compilation of agency additions and exceptions (updated through December 2014) is provided on the* [*CFO website*](https://www.cfo.gov/wp-content/uploads/2014/12/Agency-Exceptions.pdf)*. AOS auditors should review the UG Exception Evaluation by Federal Agency spreadsheet (updated through June 2022)* [*on the Intranet*](https://ohauditor.sharepoint.com/:f:/r/sites/Intranet/Shared%20Documents/Audit_Resources/Federal/Other%20Federal%20Resources?csf=1&web=1&e=RtVw5R) *(Documents > Audit Resources > Federal > Other Federal Resources).*

*Auditors must review the Federal agency adoption of the Uniform Guidance (2 CFR Part 200) and nonprocurement suspension and debarment requirements (2 CFR Part 180) prior to issuing noncompliance citations to verify the Federal agency requirements.*

*Auditors should also review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*

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# Compliance Requirement Matrix

*Footnotes 1-7 below the matrix provide further explanation; review note 6 which discusses tailoring the matrix assessments.*

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | **(1)** | **(2)** | **(6)** | **(6)** | **(3)** | **(4)** | **(5)** | **(5)** | **(6/7)** |
| **Compliance Requirement** | | | **Applicable per Compliance Supplement**  *(Yes/No)* | **Direct & Material to Program / Entity**  *(Yes/No)* | **Monetary**  **or Nonmonetary**  *(Set by CFAE)*  *(M/N)* | **Population Subject to Requirement (if Monetary)**  *(in $)* | **Inherent Risk**  **(from IRAF)**  *(High/Low)* | **Final Control Risk**  *(High/Low)* | **Detection**  **Risk of Noncompl.**  *(High/Low)* | **Overall Audit Risk of Noncompl.**  *(High/Low)* | **Federal Materiality by Compliance Requirement**  *(usually 5%)* |
| **A** |  | **Activities Allowed or Unallowed** | Yes |  | M |  |  |  |  |  | 5% |
| **B** |  | **Allowable Costs/Cost Principles** | Yes |  | M |  |  |  |  |  | 5% |
| **C** |  | **Cash Management** | No |  |  |  |  |  |  |  |  |
| **D** |  | ***Reserved – Not Used*** |  |  |  |  |  |  |  |  |  |
| **E** |  | **Eligibility** | No |  |  |  |  |  |  |  |  |
| **F** |  | **Equipment & Real Property Mgmt** | Yes |  | M |  |  |  |  |  | 5% |
| **G** |  | **Matching, Level of Effort, Earmark** | Yes |  | M |  |  |  |  |  | 5% |
| **H** |  | **Period of Performance** | No |  |  |  |  |  |  |  |  |
| **I** |  | **Procurement & Sus. & Debarment** | Yes |  | N |  |  |  |  |  | 5% |
| **J** |  | **Program Income** | No |  |  |  |  |  |  |  |  |
| **K** |  | ***Reserved – Not Used*** |  |  |  |  |  |  |  |  |  |
| **L** |  | **Reporting** | No |  |  |  |  |  |  |  |  |
| **M** |  | **Subrecipient Monitoring** | Yes |  | N |  |  |  |  |  | 5% |
| **N** |  | **Special Tests & Provisions – N1. Wage Rate Requirements** | Yes |  | M/N |  |  |  |  |  | 5% |
| **N** |  | **Special Tests & Provisions – N2. Quality Assurance Program** | Yes |  | M/N |  |  |  |  |  | 5% |
| **N** |  | **Special Tests & Provisions – N3. Contractor Recoveries** | Yes | **¥** |  |  |  |  |  |  |  |
| **N** |  | **Special Tests & Provisions – N4. Value Engineering** | Yes | **¥** |  |  |  |  |  |  |  |
| **N** |  | **Special Tests & Provisions – N5. Utilities** | Yes | **¥** |  |  |  |  |  |  |  |

**¥ = These requirements are applicable at the State Level, no LEA testing steps were noted per a review of the 2023 Compliance Supplement and discussion with Michael Miller from ODOT September 27, 2023.**

**(1)** *From Part 2, Matrix of Compliance Requirements, for the applicable program in the* [*OMB Compliance Supplement*](https://www.whitehouse.gov/omb/office-federal-financial-management/)*. For programs not included in Part 2, all compliance requirements should be marked as applicable.*

**(2)** *If the Compliance Supplement notes a compliance requirement as being applicable to the program in the first column, it still may not apply at a particular entity either because that entity does not have activity subject to that type of compliance requirement, or the activity could not have a material effect on a major program. If the Compliance Supplement indicates that a type of compliance requirement is applicable and the auditor determines it also is direct and material to the program at the specific entity being audited, the auditor should answer this question “Yes,” and then complete the remainder of the line. Alternatively, if the auditor determines that a particular type of compliance requirement that normally would be applicable to a program (as per part 2 of the Compliance Supplement) is not direct and material to the program at the specific entity being audited, the auditor should answer this question “No.” Along with that response, the auditor should document the basis for the determination in the working papers or this FACCR. When making that determination all parts of that compliance requirement must be considered. For example, Equipment and Real Property Management contains procedures regarding Acquisitions, Dispositions (Disposals), and Inventory Management. The documentation on why the compliance requirement is not be applicable to the program/entity must address all parts of that compliance requirement.*

***(3)*** *Refer to the AICPA Single Audit Guide, chapter 10, Compliance Auditing Applicable to Major Programs, for considerations relating to assessing inherent risk of noncompliance for each direct and material type of compliance requirement. For AOS auditors, the auditor documents the inherent risk assessment for each direct and material compliance requirement on the Inherent Risk Assessment Form (IRAF). The assessments in this column should directly tie to the final inherent risk assessment on the IRAF.*

**(4)** *See guidance on the following page for considerations relating to assessing control risk of noncompliance for each direct and material type of compliance requirement.* ***Planned control risk must be assessed at low per 2 CFR § 200.514; therefore, only final control risk is shown in the matrix.*** *Additionally, auditors must document final control risk in each compliance requirement section’s Audit Implications Summary in this FACCR. See AICPA Single Audit Guide, Chapter 9, Consideration of Internal Control over Compliance for Major Programs.*

**(5)** *Audit risk of noncompliance is defined in AU-C 935 as the risk that the auditor expresses an inappropriate opinion on the entity’s compliance when material noncompliance exists. Audit risk of noncompliance is a function of the risks of material noncompliance and detection risk of noncompliance. A “Low” assessment of detection risk in this matrix means that the risk has been reduced to an acceptable level.*

***(6)*** *The AICPA Single Audit Guide 10.55 states the auditor’s tests of compliance with compliance requirements may disclose instances of noncompliance. The Uniform Guidance refers to these instances of noncompliance, among other matters, as “audit findings.” Such findings may be of a monetary nature and involve questioned costs or may be nonmonetary and not result in questioned costs. CFAE included the monetary vs. nonmonetary determinations for each compliance requirement in this program. If AOS auditor believe the determination of monetary vs. nonmonetary should be updated for a particular section, other than sections E and N, they must consult with CFAE via the FACCR specialty in Spiceworks. The Eligibility and Special Tests & Provisions determinations reflect M/N as the determination of whether the compliance requirement is monetary or non-monetary is contingent upon the specific requirements of the program being tested as well as requirements contained within the grant agreement. For sections E and N, auditors should tailor the assessment as appropriate based on the facts and circumstances of their entity’s operations, update the Compliance Requirement Matrix for the appropriate designation (N or M), and document the research and reasoning behind the determination.*

***(7)*** *AU-C 935.13 & .A7 require auditors to establish and document two materiality levels: (1) a materiality level for the program as a whole, and (2) a second materiality level for the each of the applicable 12 compliance requirement listed in Appendix XI to Part 200. This column documents quantitative materiality at the compliance requirement level for each major program.*

*Note: If the compliance requirement is (1) of a monetary nature, and (2) the requirement applies to the* ***total*** *population of program expenditures, then the compliance materiality amount for the program also equals materiality for the requirement as shown in the last column of the matrix. For example, the population for allowable costs and cost principles will usually equal the total Federal expenditures for the major program as a whole. Conversely, the population for some monetary compliance requirements may be less than the total Federal expenditures. Auditors must carefully determine the population subject to the compliance requirement to properly assess Federal materiality. Auditors should also consider the qualitative aspects of materiality. For example, in some cases, noncompliance and internal control deficiencies that might otherwise be immaterial could be significant to the major program because they involve fraud, abuse, or illegal acts. The program level materiality, typically 5%, is documented in the Record of Single Audit Risk (RSAR).*

**Performing Tests to Evaluate the Effectiveness of Controls**

*Control Risk Assessment:*

*Auditors must:*

* *Document the five internal control components (control environment, risk assessment, control activities, information and communication, and monitoring) for each direct and material compliance requirement and*
* *Perform procedures to obtain an understanding of internal control over compliance for federal programs that is sufficient to plan the audit to support a low assessed level of control risk.*

*If internal control over compliance for a compliance requirement is likely to be ineffective in preventing or detecting noncompliance, the auditor is not required to plan and perform tests of internal control over compliance. Rather, the auditor must assess control risk at maximum, determine whether additional compliance tests are required, and report a significant deficiency (or material weakness) as part of the audit findings.*

*AICPA Single Audit Guide’s paragraph 9.08 states that Uniform Guidance provides that the auditors must perform tests of internal controls over compliance as planned. (Paragraphs 9.40-9.42 of the* *AICPA Single Audit Guide discuss an exception related to ineffective internal control over compliance.) In addition, AU-C 330.08 states the auditor should design and perform tests of controls to obtain sufficient appropriate audit evidence about the operating effectiveness of relevant controls. Further, AU-C 330.09 states in designing and performing tests of controls, the auditor should obtain more persuasive audit evidence the greater the reliance the auditor places on the effectiveness of a control.*

*Testing of the operating effectiveness of controls ordinarily includes procedures such as*

1. *inquiries of appropriate entity personnel, including grant and contract managers;*
2. *the inspection of documents, reports, or electronic files indicating performance of the control;*
3. *the observation of the application of the specific controls; and*
4. *reperformance of the application of the control by the auditor.*

*The auditor should perform such procedures regardless of whether he or she would otherwise choose to obtain evidence to support an assessment of control risk below the maximum level.*

*Paragraph .A24 of AU-C section 330 provides guidance related to the testing of controls. When responding to the risk assessment, the auditor may design a test of controls to be performed concurrently with a test of details on the same transactions. Although the purpose of a test of controls is different from the purpose of a test of details, both may be accomplished concurrently by performing a test of controls and a test of details on the same transaction (a dual-purpose test). For example, the auditor may examine an invoice to determine whether it has been approved and whether it provides substantive evidence of a transaction. A dual-purpose test is designed and evaluated by considering each purpose of the test separately.*

*Also, when performing the tests, the auditor should consider how the outcome of the test of controls may affect the auditor’s determination about the extent of substantive procedures to be performed. See chapter 11 of the AICPA Single Audit Guide for a discussion of the use of dual-purpose samples in a compliance audit.*

*Before a dual-purpose test is performed, AOS auditors must read AOSAM 30500 and 35900 for guidance.*

[Part 6](OMB_Part_6.pdf) of the 2023 OMB Compliance Supplement provides detailed guidance on assessing internal controls over the compliance requirements.

*(Source: 2023 OMB Compliance Supplement)*

**Improper Payments**

Under OMB guidance, Public Law (Pub. L.) No. 107-300, the Improper Payments Information Act of 2002, as amended by Pub. L. No. 111-204, the Improper Payments Elimination and Recovery Act, Executive Order 13520 on reducing improper payments, and the June 18, 2010 Presidential memorandum to enhance payment accuracy, federal agencies are required to take actions to prevent improper payments, review federal awards for such payments, and, as applicable, reclaim improper payments. Improper payments include the following:

1. Any payment that should not have been made or that was made in an incorrect amount, including an overpayment or underpayment, under a statutory, contractual, administrative, or other legally applicable requirement; and includes -- (i) any payment to an ineligible recipient;(ii) any payment for an ineligible good or service; (iii) any duplicate payment; (iv) any payment for a good or service not received, except for those payments where authorized by law; and (v) any payment that does not account for credit for applicable discounts.
2. A payment that could be either proper or improper, but the agency is unable to discern whether the payment was proper or improper as a result of insufficient or lack of documentation.

Auditors must be alert to improper payments, particularly when testing the following parts of section III. – A, “Activities Allowed or Unallowed;” B, “Allowable Costs/Cost Principles;” E, “Eligibility;” and, in some cases, N, “Special Tests and Provisions.”

*(Source: 2023 OMB Compliance Supplement Part 3)*

# Part I – OMB Compliance Supplement Information

### I. Program Objectives

The purpose of the Federal-Aid Highway Program is to assist the states in providing for construction, preservation, and improvement of highways and bridges on eligible Federal-Aid routes, (including the National Highway System (NHS) -an integrated, interconnected transportation system important to interstate commerce and travel), and for other special purpose programs and projects. This program also provides for the construction and improvement of highways in the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands. The Infrastructure Investment and Jobs Act (IIJA) also known as the Bipartisan Infrastructure Law (BIL) is a once-in-a-generation investment in infrastructure that will help grow the economy, enhance U.S. competitiveness, create jobs, and build safe, resilient, and equitable transportation future. It was determined that dividing the Highway Planning and Construction Cluster into separate compliance supplements would be more beneficial for auditing purposes. The IIJA includes additional complex requirements that would affect the single audit since each program has unique requirements. BIL provides the basis for the Federal Highway Administration (FHWA) programs and activities through September 30, 2026. It makes an investment of $350 billion in highway programs. This includes the largest dedicated bridge investment since the construction of the Interstate Highway System. New programs under the BIL focus on key infrastructure priorities including rehabilitating bridges in critical need of repair, reducing carbon emissions, increasing system resilience, removing barriers to connecting communities, and improving mobility and access to economic opportunity. BIL also continues to focus the program on safety and performance-based investment and on accelerating project delivery through expedited environmental review and elimination of duplicate processes.

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

### II. Program Procedures

Federal-aid highway funds are generally apportioned by statutory formulas to the states and generally restricted to use on Federal-aid highways (i.e., roads open to the public and not functionally classified as local or rural minor collector roads). Exceptions to the use on Federal-aid highways include (1) planning and research activities; (2) bridge and safety improvements, which may be on any public road; (3) highway safety improvement projects, bicycle and pedestrian projects, transportation alternatives, and recreational trails projects, which may be located along any road or off road; and (4) projects funded under the Federal Lands and Tribal Transportation Program (FLTTP). Some limited categories of funds may be granted directly to other state agencies, tribal governments, or Local Public Agencies (LPAs), such as cities, counties, MPOs, and other political subdivisions. Funds may also be passed through such agencies, but the direct recipient retains overall stewardship responsibility.

While each project approved by FHWA may have individual categories of allowable activities, in general this program’s funds may be used for the following:

1. surveying;

2. engineering studies and design;

3. environmental studies;

4. right-of-way acquisition and relocation assistance;

5. capital improvements classified as new construction or reconstruction;

6. improvements for functional, geometric, or safety reasons;

7. 4R projects (restoration, rehabilitation, resurfacing, and reconstruction);

8. preservation;

9. planning; research, development, and technology transfer;

10. intelligent transportation systems projects;

11. roadside beautification;

12. vegetation management;

13. wetland and natural habitat mitigation;

14. traffic management and control improvements;

15. improvements necessary to accommodate other transportation modes;

16. development and establishment of transportation management systems;

17. billboard removal;

18. fringe and corridor parking;

19. car pool and van pool projects;

20. historic preservation and rehabilitation of historic transportation facilities;

21. scenic and historic highway improvements;

22. inspection and evaluation of bridges, tunnels, and other highway assets;

23. asset management;

24. construction of ferry boats, ferry terminal facilities, and approaches to such facilities;

25. highway safety improvement projects;

26. bicycle and pedestrian projects; and

27. workforce development, training, and education.

These funds generally cannot be used for routine highway operational activities, such as police patrols, mowing, snow plowing, or maintenance, unless it is preventative maintenance.

Also, certain authorizations (e.g., National Highway Performance Program (NHPP), Surface Transportation Block Grant (STBG) program, or Congestion Mitigation and Air Quality (CMAQ) Improvement program may be used for improvements to transit. CMAQ funds are for transportation projects and programs in air quality, nonattainment and maintenance areas for ozone, carbon monoxide, and particulate matter, which reduce transportation related emissions, though provision is made for states without air quality issues.

Projects in urban areas of 50,000 or more population must be based on a transportation planning process, carried out by the MPOs in cooperation with the state and transit operators, and be included in the metropolitan long-range plan and the Transportation Improvement Program for the area. Projects in nonmetropolitan areas of a state must be consistent with the state’s transportation plan. All federal-aid projects must also be included in the approved Statewide Transportation Improvement Program (STIP) developed as part of the required statewide transportation planning process. FHWA and Federal Transit Administration (FTA) must approve the STIP jointly.

Prior to fiscal year (FY) 2013, the Appalachian Development Highway System (ADHS) was a cost-to-complete program (i.e., funding was provided over time to complete the approved initial construction/upgrading of the system) authorized by Section 201 of the Appalachian Regional Development Act of 1965. The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) did not provide dedicated funding for the ADHS but did make ADHS activities eligible under the NHPP and STBG programs. The Fixing America’s Surface Transportation (FAST) Act (Pub. L. No. 114-94) provided states through FY 2050 the authority to select a state share of up to 100 percent for the cost of constructing highways and access roads on the ADHS. The Appalachian Regional Commission (ARC) has programmatic oversight responsibilities, which include approval of the location of the corridors and of state-generated estimates of the cost to complete the ADHS. The FHWA has project-level oversight responsibilities for the ADHS program. If the location, scope, and character of proposed ADHS projects are in agreement with the latest approved cost-to-complete estimate and all state requirements have been satisfied, FHWA authorizes the work with the ADHS, STBG, and/or NHPP funds. FHWA provides oversight for the design and construction of the ADHS (23 USC 106(g)(5)(B)).

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

### III. Source of Governing Requirements

The primary sources of program requirements are 23 USC (Highways). Implementing regulations are found in 23 CFR (Highways) and 49 CFR (Transportation). The ADHS program requirements are found in 40 USC (Public Building, Property, And Works).

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

### IV. Other Information

FHWA program laws, regulations, and other general information can be found at <https://highways.dot.gov/>, [Bipartisan Infrastructure Law](https://www.fhwa.dot.gov/bipartisan-infrastructure-law/), [Legislation, Regulations and Guidance -Resources | Federal Highway Administration (dot.gov)](https://www.fhwa.dot.gov/resources/legsregs/).

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

# Part II – Pass through Agency and Grant Specific Information

In Ohio, the Ohio Department of Transportation (ODOT) administers the state’s award and makes subawards to local governments through Local Public Agency (LPA) and Metropolitan Planning Organization (MPO) contracts (agreements). The written agreements and scope of work document are the primary award documents, but other communications and approval documents also are relevant.

**NOTE:**  From time to time local governments may receive direct awards from FHWA. This FACCR may be used for awards passed-through ODOT or directly received from FHWA.

ODOT also makes similar awards that do not involve Federal funds. For LPAs, agreements relating to Federal funds are normally titled “LPA Federal Local-Let Project Agreement” and agreements relating to non-Federal funds are normally titled “LPA Non-Federal Project Agreement”. In all cases, auditors should review award documents to determine whether Federal funds are involved.

***NOTE:*** *Additionally, some local governments agree to cooperate with ODOT concerning projects ODOT is administering. In some cases, the local government will pay for and administer certain improvements that are not eligible for Federal funding but directly benefit the local government. The local government generally does not receive any funding from ODOT for these projects and these agreements are not titled “LPA Agreements”. Although ODOT’s project may involve Federal funding, such local participation does not constitute Federal financial assistance. Since the local government does not apply for the ODOT project, the government should* ***not*** *record memo receipts and disbursements, per AOS Bulletin 2000-08. However, if funding is received from ODOT, the local government may be a subrecipient. The specific terms of these agreements will vary, so the auditor must always refer to the agreement.*

Henceforth, any reference in this document to “LPA agreements” refers solely to LPA Federal Local-Let Project Agreements.

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

**Project Administration**

ODOT administers the Highway Planning and Construction Program. The subrecipient determination process for local governments is complex. The following information from ODOT is to assist auditors in differentiating subrecipient (i.e., LPA) projects from non-subrecipient / beneficiary projects (i.e., vendors, non-participants, etc.).

There are generally two opportunities for a local government to receive Federal funds from ODOT.

1. The LPA can administer a project, or specific phases of a project, and is responsible for the administration of the project. The LPA is required to report the project expenditures, for any phase of the project it administered, on its Schedule of Expenditures of Federal Awards (SEFA).
2. ODOT can administer projects in the LPA’s geographic area, providing Federal and/or State funding for the project, but the LPA does not administer the project and has no responsibility for the project (these projects will not be reported on the LPA’s SEFA).

Generally, there are four phases to a construction project:

1. Preliminary Engineering (PE),
2. Right-of-Way Acquisition,
3. Construction, and
4. Other.

Each phase may be performed and administered independently. For example, the LPA may perform the PE and Right-of-Way Acquisition phases of a project, while ODOT administers the Construction phase. Alternatively, the LPA may administer all phases of the project.

The local Engineer’s Office typically administers the LPA work and is the best source for obtaining an understanding of the project scope and the work performed by the LPA. Additionally, project agreements and enabling legislation would also be available from the local Engineer’s Office.

**LPA Subrecipient Projects** –

ODOT does not provide a listing of LPA PIDs with their corresponding expenditure information. The LPA is responsible to report their expenditures on the SEFA, not the reimbursements from ODOT. The LPA must have a tracking process established to capture relevant data for reporting. The LPA cannot rely upon ODOT’s records as their only source of project expenditures data.

The LPA (or SEFA compiler) should email SEFA confirmation requests to ODOT at [DOT.LPAQuestions@dot.ohio.gov](mailto:DOT.LPAQuestions@dot.ohio.gov). Details concerning the confirmation process and documentation required to be attached can be found in the Documents to Submit for Office of External Audits’ Verification of an LPA’s Draft SEFA section of [ODOT SEFA Guidance for LPAs](https://www.transportation.ohio.gov/programs/external-audits/audit-lpa/guidance-lpa-sefa). Since this process can be quite time consuming for ODOT’s staff, AOS recommends that auditors inform LPA representatives of this need as soon as possible (preferably during the entrance conference).

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

***NOTE:*** *AOS auditors are required to, and IPA auditors are strongly encouraged to, request during the planning phase of the audit that the client send a confirmation request to ODOT to confirm the client’s reported Highway Planning and Construction Program expenditures. See the SEFA Completeness Guide for further information.*

**Determination of Payment Date for SEFA Reporting:**

Most Ohio local governments have elected to prepare their SEFAs using the cash-basis of accounting. Therefore, since they are using the cash-basis, for those transactions where the LPA reviews the contractor’s/vendor’s invoice and then forwards the invoice to ODOT so that the State issues a direct payment to the contractor/vendor, the LPA must use the State of Ohio Warrant Date to assign that transaction to a fiscal year for SEFA reporting. The use of any other date field may result in transactions of this type being assigned to the wrong fiscal year. So, for cash-basis SEFA preparers, for transactions of this type, the use of the State of Ohio Warrant Date is required.

Also, for cash-basis SEFA preparers, when the LPA issues a payment to the contractor for the Federal share and is subsequently reimbursed by ODOT, for these transactions the LPA must use the check date, not the date ODOT issued the reimbursement payment. Furthermore, for cash-basis SEFA preparers, for Federally reimbursed labor costs that originate with the LPA, the LPA should use the dates the corresponding payroll was paid, not the date of ODOT’s reimbursement payment.

Finally, there is a Capital Program Payments Report available from ODOT’s [Construction Management Reporting System](https://cmsportal.dot.state.oh.us/) (CMRS). That report can be used to confirm State of Ohio Warrant Dates. However, as Federal, State and/or Local funds disbursed by ODOT may be commingled/combined in the Warrant or EFT, this report **cannot** be used to verify the disbursement of specific Federal funds amounts. This issue is one of the primary reasons for the Notice which appears on page one of the reports. A different LPA source document must be used to confirm the Federal funds portion of the payment.

*(Source:* [*ODOT SEFA Guidance for LPAs*](https://www.transportation.ohio.gov/programs/external-audits/audit-lpa/guidance-lpa-sefa)*)*

**ODOT-Administered (Let) Projects–**

* ODOT provides a cost estimate to the LPA prior to beginning the project and informs the LPA how much it will likely be expected to contribute.
* The LPA is then required to pass enabling legislation (i.e., an ordinance or resolution) indicating it is authorized and able to contribute a certain amount of funding toward the project.
* In an ODOT-Administered project agreement, ODOT will be responsible for administering the construction phase of the project, and may also administer all other phases, while the LPA only is responsible for its financial contribution to the project and for keeping the construction site free of items that may interfere with the project.
* After passing legislation and signing the contract, the LPA must place the contribution on deposit with ODOT prior to the start of the project. ODOT then may assume all administrative and federal compliance responsibility for the project and pays the contractors from the Federal, State and local contribution funds that are on deposit.
  + When there are multiple ODOT-administered projects, a separate resolution must be passed for each project. A separate ODOT-Let Project agreement will likely exist for each project as well; however, that decision is at ODOT‘s discretion.
* For those projects that ODOT fully administers all project phases, the LPA usually has no further responsibility or input in the project (except removing and managing possible interferences such as utilities and vehicles, etc.).
  + *However*, there are ODOT projects for which ODOT does not administer every phase of the project, and the LPA will administer one or more phases of the project. The Agreement between ODOT and the LPA will provide clarification for which phases are administered by ODOT and which phases are administered by the LPA. This split-administration can make the ODOT projects difficult to understand the reporting responsibility specific to the LPA and is usually where the Engineer’s Office can provide valuable input and clarification for the auditor.

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

See Also: [ODOT SEFA Guidance for LPAs](https://www.transportation.ohio.gov/programs/external-audits/audit-lpa/guidance-lpa-sefa) and [LPA Project Cost Tracking Spreadsheet](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/external-audits/audit-lpa/lpa-cost-tracking).

### Program Overview and Testing Considerations

**LPA Participation Requirements**

The Federal Highway Administration (FHWA) permits the Ohio Department of Transportation (ODOT) to delegate project activities on Federal-aid projects to Local Public Agencies (LPAs). However, ODOT is ultimately responsible and, as such, must assure local compliance with all Federal and State laws, regulations, and policies. LPA participation is at ODOT’s discretion. It is the mutual desire of both ODOT and the LPA to have the LPA serve as the responsible lead agency for the administration of the Local-let project.

In order to uphold the integrity of ODOT’s Local-let program, and as evidence of their capability to administer a Local-let construction project, LPAs must possess a minimum organizational structure, credentialed employees, previous successful project delivery and certain documented processes. These considerations apply to more than just the specific project development disciplines associated with design, environmental, right-of-way and construction. The considerations also apply to general aspects of public business, fiscal accountability, Disadvantage Business Enterprise (DBE) requirements, Prevailing Wage and other applicable requirements associated with Federal and State funding. Through the qualification process, ODOT determines if an LPA possesses the qualified staff, experience, and management oversight to successfully administer a project from preliminary development through project completion.

An LPA seeking qualification to participate in the Local-let process, must meet standardized requirements described within this chapter. General requirements include:

1) The LPA must have designated a Person in Responsible Charge to act as its authority for all ODOT delegated responsibilities and project approvals pertaining to the Local-let project. The Person in Responsible Charge must be a full-time staff member employed by the LPA seeking qualification.

2) All eLearning Local Project Administration Training Series must be completed by an LPA staff person at least every five (5) years. While the responsibility for completing the modules may be shared among the LPA staff, it is highly recommended that the LPA’s Person in Responsible Charge be the LPA staff member responsible for completing these modules on behalf of the LPA.

3) The LPA must have a completed and approved Participation Requirement Review Form on file. The Participation Requirement Review Form must be updated and renewed every four (4) years.

4) The LPA shall have sufficient expertise and capability to perform and/or supervise the design, environmental, Plans, Specifications & Estimates (PE&E), and construction administration phases of the project.

5) All LPA projects must be administered by a Licensed Professional Engineer or Architect, as applicable, registered in the State of Ohio, and who is either on staff as a public employee or contracted through a qualified engineering firm and designated as the LPA Project Engineer.

6) Projects must be administered in accordance with ODOT’s Locally Administered Transportation Projects (LATP) Manual of Procedures.

The LPA seeking qualification is the entity with whom ODOT will enter into a project agreement with. Therefore, since this LPA holds all the legal responsibility and liability of the project, these general requirements must be adhered to by the LPA to ensure proper knowledge of Federal and State requirements and ensure proper project oversight. This is regardless of whether the LPA seeking qualification intends to hire a qualified engineering firm or utilize a larger, more qualified LPA to help administer the project on their behalf.

Once a project has been formally identified, the LPA may request to the ODOT District LPA Manager to administer the project utilizing the Local-let process. The LPA’s intentions should be made known prior to the initial project-scoping meeting. Upon this request, the LPA Manager will provide the LPA with ODOT’s prequalification requirements and associated forms. The qualification requirements include the eLearning training modules and the Local-let Participation Requirement Review Form. These shall be completed and submitted by the LPA to the District LPA Manager prior to the PS&E being submitted. Required criteria will be addressed as a component of the Local-let Participation Requirement Review Form, and are as follows:

Project Administration Processes: The LPA must have established and documented practices for each of the following project administration components. The LPA must identify, the individual(s) responsible for the management of these processes, whether on the LPA staff or through consultant services.

1. Person in Responsible Charge: As provided for in 23 CFR 635.105(c) (4), an LPA must provide a full-time employee of that agency to be in “responsible charge” of the project. This individual is held accountable for ensuring all applicable Federal and State regulations are followed on the project and must have the responsibility, authority, and resources to manage it effectively. This person serves as the agency contact for all project issues or inquiries and should be familiar with project progress, involved in all decisions requiring change orders, and visit the project on a frequency commensurate with the project magnitude and complexity. This person is also responsible for ensuring the project is delivered in accordance with established milestone dates. The Person in Responsible Charge may be the project engineer provided the project engineer is a full-time employee of the public agency. In situations where the project engineer is a consultant, the Person in Responsible Charge must be a full-time employee of the LPA.

2. eLearning Local Project Administration Training Series: The LPA’s designated Person in Responsible Charge and other LPA staff involved with the project’s administration must complete the eLearning Local Project Administration Training Series based upon the LATP Manual of Procedures and Equal Employment Opportunity (EEO) laws. Successful completion of the training is a threshold requirement before an LPA may apply for local project administration qualification. The training series is available through Ohio’s Local Technical Assistance Program (LTAP) Center. More information and access to the training is available at: [LTAP/eLearning](https://www.transportation.ohio.gov/programs/ltap/all-events/elearning).

3. Previous Project Experience: Previous Project Experience: The LPA should have previously delivered and maintained successful capital improvement projects of a similar nature, size and complexity. If the LPA has no previous experience with a Federal-aid project, previous project experience examples may include projects funded solely by the LPA themselves.

4. Project Engineer:

a. The LPA’s designated Project Engineer must be a Licensed Professional Engineer registered in the State of Ohio, who has previously performed/provided similar engineering services/products (including project management) in a successful manner on comparable projects. The Project Engineer shall exercise the primary, day-to-day responsibilities over the engineering and other technical aspects of designing and constructing the project.

b. In the event the role of Project Engineer is to be filled through an ODOT Prequalified consultant, the required separation of interests between the design and construction phase necessitates this role be divided between two distinct, unaffiliated consultant service providers with respect to the two phases of the project, resulting in both a Project Design Engineer and a Project Construction Engineer from separate providers. In unusual circumstances, a waiver of this requirement may be provided as described in the Consultant Contract Administration Chapter of this manual.

5. Project Administration Processes: The LPA must have established and documented practices for each of the following project administration components. The LPA must identify, the individual(s) responsible for the management of these processes, whether on the LPA staff or through consultant services.

a. Consultant Services Evaluation and Selection: Selection of consultants for the provision of professional services to the project must result from an objective, qualification-based selection process pursuant to State and Local laws. If Federal funds are used in a consultant agreement, the selection and contract administration must comply with Federal requirements as stated in 23 CFR 172. Geographic location of a business entity, or other restrictions on competition, may not be imposed in selecting a service provider.

b. Consultant Services Management: Established practices and processes in place to ensure each consultant is held accountable for delivering its services in a quality and timely fashion pursuant to the terms of the contractual agreement and schedule.

c. Right-of-Way Design and Acquisition: Established practices and processes must be in place to ensure property acquisition is managed and paid in accordance with the Uniform Relocation and Real Estate Acquisition Act of 1970 and/or Chapter 163 of the Ohio Revised Code. Note: At this time, all LPAs must follow ODOT’s Right-of-Way Design and Acquisition process for any Local-let projects utilizing Federal funds.

d. Environmental: Established practices and processes must be in place to ensure compliance with the proper level of coordination in accordance with the National Environmental Policy Act of 1969. Note: ODOT entered into the Surface Transportation Project Delivery Program (known as the National Environmental Policy Act (NEPA) Assignment) in 2015. In accordance with Section 327 of Title 23 of the U.S. Code as embodied in the Ohio NEPA Assignment Memorandum of Understanding, all LPAs must follow ODOT’s Environmental process for any Local-let projects utilizing Federal funds.

e. Change Orders: Established practices and processes must be in place for the review and approval of change orders on a project. This process should follow the general guidance outlined in the LPA Change Order Guidance in Appendix K of the LPA Construction Contract Administration Chapter. Note: Appendix K is a guidance document, not a process. An LPA may not submit Appendix K as their Change Order process.

f. Dispute Resolution / Claims Management Process: An established and defined process must be in place identifying, at minimum, a two-tiered approach taken in the resolution of a dispute or claim. While a two-tiered approach is the minimum, it is highly recommended LPA’s have a three-tiered approach that includes mediation. Mediation is often less costly and results in a more timely resolution than arbitration.

g. Accounting and Reporting: Established practices and processes must be in place to ensure all financial transactions associated with the project are properly accounted for and accurate records are maintained in this regard for subsequent audit purposes (2 CFR 200 – Uniform Guidance).

h. Project Advertising, Sale and Award: Established practices and processes must be in place identifying activities associated with advertising, bid opening, bid review, confirming eligibility by checking the proper websites for suspension or debarment and project award.

i. Disadvantaged Business Enterprise (DBE) / Ensuring Diversity, Growth and Equity (EDGE) Business Enterprises: Established practices and processes must ensure all applicable DBE / EDGE requirements are met.

j. Davis-Bacon and/or State Prevailing Wages: Established practices and processes must be in place to ensure the proper payment, reporting and record keeping associated with Federal Davis-Bacon and/or State Prevailing Wage Requirements are met.

k. Maintenance of Project Files: Established practices and processes must ensure all required documentation is maintained in the project file and the project file is retained for a specified length of time in accordance with Federal, State, and Local laws.

An evaluation of the LPA’s Local-let Participation Requirement Review Form will be performed by the LPA Manager upon receipt into the district. The LPA Manager will provide feedback to the LPA, if necessary, as to any corrections that should be made. Once the LPA Manager is satisfied with the submission, they will send it on to ODOT’s Office of Local Programs for their review.

The LPA must meet additional requirements not outlined on the Local-let Participation Requirement Review Form. The LPA must not be under fiscal watch or fiscal emergency for its most recently completed fiscal year. In the event the LPA is emerging from fiscal watch or fiscal emergency, the LPA must be able to clearly demonstrate it has adequate financial resources to fund matching and/or cost overruns on the project.

Additionally, the LPA must have established authority in place for executing the project. The LPA must also be willing to provide a copy to ODOT of the approved legislation allowing the mayor, county engineer or other designated local official with clear authority to enter into a project agreement with ODOT. A sample of this legislation can be found at the end of this chapter, labeled “SAMPLE LEGISLATION FOR AUTHORITY”.

Once an LPA has qualified to administer a Local-let project, the qualifications are valid for a number of years. The LPA will then complete the eLearning training modules every five (5) years and complete the Local-let Participation Requirement Review Form every four (4) years. The LPA may be asked to go through the qualification processes prior to the end of the qualification time period if there are changes in key personnel within the LPA. It will be at the discretion of the District LPA Manager to determine if this is necessary. Further, the LPA understands Federal and State laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project and agrees the most recent Federal and State requirements will apply to the project, unless ODOT or FHWA issues a written determination otherwise.

*(Source:* [*LPA Local Let Manual of Procedures, LPA Participation Requirements Chapter*](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-programs/local-let-manual-of-procedures/2-lpa-participation/2-lpa-participation) *and Michael Miller, ODOT Office of External Audits on 09/27/2023)*

**Metropolitan Planning Organization (MPO) Projects**

MPO projects are governed by a biennial MPO agreement and an annual work program funding. ODOT reimburses the MPO for costs claimed that are eligible under the work program. Though the MPO Agreement covers two years, funding is on an annual basis. Most MPO planning projects (i.e., the Consolidated Planning Grant) have an annual budget period of July 1 through June 30. Further, if awarded funds remain unexpended at the end of the program year, an extension of the period of performance of up to six months may be requested by the subrecipient. See discussion regarding Carryover Funding in the MPO Administration Manual.

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

**MPO Structure**

Federal transportation law requires that a Metropolitan Planning Organization (MPO) be designated for each urbanized area. An “Urbanized Area” is defined by the U.S. Census Bureau and recognized by federal law as a densely settled area with a population of at least 50,000. Ohio has 17 areas designated for MPOs.

Each MPO may select a governance structure and voting procedure that best meets the needs and desires of its member governments. Typically, each MPO has a policy board which sometimes is referred to as the policy committee. The board is comprised of local elected officials, ODOT, public transit operators, and operators of major modes of transportation. The board is the entity formally designated as the Metropolitan Planning Organization and is responsible for conducting the urbanized area’s transportation planning process.

ODOT contracts with an agency, established pursuant to Ohio Revised Code (ORC), willing to house a staff responsible for assisting the board in performing the policy development, technical analysis, and administrative activities necessary for conducting the area’s planning process. The staff is not the MPO. The MPO board or policy committee is the MPO. The government entity that houses the staff for the board is the “monetary handling agency.” Contractual agreements are between the monetary handling agency and ODOT.

*(Source:* [*Ohio MPO Administration Manual, January 2019*](https://www.transportation.ohio.gov/wps/wcm/connect/gov/888bffcf-246b-4c7d-af7f-0fc85a7a91cc/MPO+Administration+Manual.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_K9I401S01H7F40QBNJU3SO1F56-888bffcf-246b-4c7d-af7f-0fc85a7a91cc-ogPJQx6) *p.2)*

**Ohio Municipal Bridge Program**

The Municipal Bridge Program provides Federal funds to municipal corporations, metroparks and Regional Transit Authorities (RTA) for highway bridge replacement, bridge rehabilitation, or bridge demolition projects. A funding limit of $2 million per project has been established.

ODOT will provide up to 80% of eligible costs for construction only (including construction engineering, i.e. testing and inspection), up to the specified funding limit. Currently, the 15% Toll Revenue Credit (TRC) is available to increase the Federal percentage to 95% and will continue as long as TRC is available, which is currently through Fiscal Year 2027. The local entity is responsible for the remaining 5% non-Federal share of the construction costs and for all costs associated with preliminary engineering, environmental studies and documents, final design and right of way. The local match portion for construction is required to be cash. In-kind contributions cannot be accepted as part of the local share. The municipality must demonstrate the ability and commitment to oversee the project through to completion.

A General Engineering Services Task Order may be available for use by the awarded applicants to help with general engineering services tasks, such as preliminary engineering and design. The use of the task order will be on a first come, first serve basis. Additionally, the use of the task order is in excess of the awarded construction amount and does not take away from the stated project cap amount in the award letter.

To be eligible for the Municipal Bridge program, the bridge must

* be owned by a city, village, metropark or RTA,
* must be open to vehicular traffic (this requirement may be waived if the bridge was closed within the last 5 years due to concern for public safety of the traveling public),
* meet the federal definition of a bridge,
  + i.e. have an NBIS bridge length greater than 20 feet. Further detail on the NBIS bridge length can be found in FHWA’s MT guide link (<https://www.fhwa.dot.gov/bridge/mtguide.pdf>) on page 73 under item #112.
* be defined as “poor”,
  + have a deck summary rating, superstructure rating or substructure rating of 4 or less.

For a list of eligible bridges, refer to the Target Bridge List posted on the Office of Local Programs’ website ([Municipal Bridge Program & Guidance](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-funding-opportunities/resources/municipal-bridge)). An updated list will be published every May. Some eligible bridges may not appear on the Target Bridge List due to the timing between when the list was generated and when an inspection occurs. If an inspection occurs after the list was generated and the bridge is now eligible, an application may be submitted as long as AssetWise (formerly SMS) is updated by the application due date to verify eligibility.

Depending on the proposed work, a structure type and/or a hydraulics analysis may be required to determine the appropriate structure and work. If either or both are necessary, they should be done prior to requesting Municipal Bridge funds. Knowing the appropriate structure type enables the applicant to provide a more accurate cost estimate and project schedule, increasing the likelihood the project stays on budget and on schedule.

A criteria-based project selection process has been developed to focus on eliminating deficiencies (both on and off Federal-Aid Highways), while keeping within a financial plan that utilizes existing available resources. Funding of all projects will be linked to defined deficiencies, so each dollar invested results in system improvement.

A scoring system has been established for use in prioritizing projects. The scoring criteria includes items currently utilized for traditional funding of bridge projects such as General Appraisal, Substructure Condition Rating, Superstructure Condition Rating, Deck Condition Rating, and Legally Posted Bridge Load Limit. Other categories used are Economic Health and Regional Impact.

In addition to the scoring system, a multi-disciplinary team reviews the applications and provides feedback and a determination for each project. The committee’s determinations are taken into consideration when selecting projects to award funding. Lastly, whether the municipality has been awarded funds in previous years may also play a factor in the decision to award, depending on the amount of funding requested during that year’s solicitation cycle.

Scope of project and commitment dates are established and agreed to by the municipality, MPO, if applicable, and ODOT, when the project is programmed. These dates are the milestones for each phase of the project through final inspection. The number and types of milestones differ as to whether a project is sold and administered by ODOT or by the municipality. It is crucial that each party is committed to meeting the milestone dates established. Failure on the part of the municipality to meet the agreed upon milestone dates could result in a withdrawal of funding by ODOT.

Federal law requires that Federally-funded projects conform to the National Environmental Policy Act and the National Historic Preservation Act. To comply with these laws, projects must have an environmental review to assess and/or mitigate effects on social, economic, and environmental factors. Any property acquisition must conform to the Uniform Relocation Assistance and Real Property Acquisition Act, as amended.

Note: This guidance applies only to the solicitation cycle for that fiscal year. While projects could be awarded during the 2020 solicitation cycle that won’t go to construction until 2022 or 2023, testing should be performed using the solicitation and guidance for the year the project was awarded funds and not the actual construction year. Additionally, with the revision of the dates of the solicitation cycle, there was no solicitation cycle for SFY 2019.

ODOT currently has a design task order that those who were funded during SFY 21 to present may utilize. It pays for 100% of General Engineering (design work) so that activity could be allowed (eligible) if utilizing the task order. The task order is on a first come/first serve basis and applicants request the use of it after the project has been awarded and scoped with the district.

*(Source:* [*Municipal Bridge Program Guidelines*](https://www.transportation.ohio.gov/programs/local-funding-opportunities/resources/municipal-bridge)*, Michael Miller, ODOT Office of External Audits on 09/27/2023, and Nichole Lawhorn, ODOT Program Manager on 10/06/2023)*

*Based on the Note above from ODOT, auditors will need to utilize the Municipal Bridge Program Guidelines for the solicitation cycle in which the project was awarded. Documentation hyperlinked above (the most recent available) is included for informational purposes only and guidelines for the solicitation year being tested should be obtained from the auditee.*

**Local Major Bridge Program**

The Local Major Bridge Program provides Federal funds to counties and municipal corporations for bridge replacement, major bridge rehabilitation, and bridge demolition projects. Bridge replacement and bridge rehabilitation projects will be given a higher priority in funding consideration than bridge demolition projects.

A Local Major Bridge is defined as a moveable/lift bridge or a bridge having a deck area greater than 15,000 square feet. The bridge must also carry vehicular traffic (this requirement will be waived for demonstration projects or if the bridge has been closed five (5) years or less). The annual allocation for the Local Major Bridge Program is established by the Ohio Department of Transportation (ODOT) and administered by the Division of Planning, Office of Local Programs and is currently set at $20 million annually. Currently, there are 238 bridges identified statewide

as Local Major Bridges.

Eligibility Criteria:

1. Bridge Replacement Projects
   1. Must meet the definition of a Local Major Bridge
   2. Must have a General Appraisal of 4 or less or be legally posted for load restriction
   3. Must be open to vehicular traffic or has been closed within the last 5 years
   4. Must have completed a feasibility study
2. Bridge Rehabilitation Projects
   1. Must meet the definition of a Local Major Bridge
   2. Must have a General Appraisal of 5 or less or be legally posted for load restriction
   3. Must be open to vehicular traffic or has been closed within the last 5 years
   4. Must have completed a feasibility study
3. Bridge Demolition Projects
   1. Must meet the definition of a Local Major Bridge
4. Major Bridge Preventative Maintenance Projects
   1. Must meet the definition of a Local Major Bridge
   2. Must be open to vehicular traffic or has been closed within the last 5 years
   3. Eligible projects could include, but are not limited to:
      1. Deck overlay, concrete sealing, abutment patching, replacement of the bridge railing, expansion joint repair or replacement, drainage system repairs, replacement coating systems for structural steel, or a combination of items
      2. General rule of thumb: if it is something ODOT would do to one of their bridges to extend the longevity of the life of the bridge 10-15+ years, it will be considered.

ODOT will provide up to 80% of eligible costs for all project phases, up to the specified funding limit. There is a maximum of $20,000,000 per project (not application). Currently, 15% Toll Revenue Credit (TRC) is available to increase the Federal percentage to 95% and will continue as long as TRC is available, which is currently through State Fiscal Year (SFY) 2027. The local agency is responsible for the non-Federal share of the project costs and any costs over the specified project cap.

The local contribution for construction is required to be a cash match. In-kind contributions cannot be accepted as part of the local share. The proposed project must be publicly-owned and on existing publicly-owned property. The Local Agency must demonstrate, based on previous project experience, the ability and commitment to oversee the project to completion and award the contract within the specified State Fiscal Year.

A criteria-based project selection process has been developed to focus on eliminating deficiencies, while keeping within a financial plan that utilizes existing available resources. Funding of all projects is linked to defined deficiencies, so each dollar invested results in system improvement. A scoring system is used to prioritize projects. The scoring criteria includes items currently utilized for traditional funding of bridge projects, such as General Appraisal, Local Share, Economic Health, and Regional Impact*.*

The scope of the project and commitment dates are established as agreed upon by the Local Public Agency (LPA), ODOT, and the MPO, if applicable, when the project is programmed. These dates are the milestones for each phase of the project through final inspection. The number and types of milestones differ as to whether a project is sold and administered by ODOT or by the LPA. ODOT reserves the right to move any project to the end of the selected project list or withdraw funding if any commitment dates are missed by the LPA. All awarded funding is contingent upon the availability of future Federal funds.

Once selected projects are programmed and are at an appropriate stage of project development, a value engineering session will be required on all projects with a construction cost exceeding $20,000,000. Value engineering may be required on projects less than $20,000,000 if deemed necessary by the Department.

Federal law requires that all Federally-funded projects conform to the National Environmental Policy Act (NEPA) and the National Historic Preservation Act. To comply with these laws, projects must have an environmental review to assess and/or mitigate effects on social, economic, and environmental factors. Any property acquisition must conform to the Uniform Relocation Assistance and Real Property Acquisition Act, as amended. The project must also be in compliance with all other applicable Federal and State regulations.

Note: This guidance applies only to the solicitation cycle for that fiscal year. While projects could be awarded during the 2020 solicitation cycle that won’t go to construction until 2022 or 2023, testing should be performed using the solicitation and guidance for the year the project was awarded funds and not the actual construction year.

*(Source:* [*Local Major Bridge Program Guidelines*](https://www.transportation.ohio.gov/wps/wcm/connect/gov/ca1ff7a1-6c9b-402f-97cb-e3e7856a6c44/Local+Major+Bridge+Program+Guidelines+Revised+6-2022.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-ca1ff7a1-6c9b-402f-97cb-e3e7856a6c44-o6cB4u0) *& Michael Miller, ODOT Office of External Audits on 09/27/2023)*

*Based on the Note above from ODOT, auditors will need to utilize the Local Major Bridge Program Guidelines for the solicitation cycle in which the project was awarded. Documentation hyperlinked above (the most recent available) is included for informational purposes only and guidelines for the solicitation year being tested should be obtained from the auditee.*

**Small City Program**

The Small City Program provides Federal funds to small cities with populations from 5,000 to 24,999 that are NOT located within Metropolitan Planning Organizations' boundaries. Currently there are 53 small cities that meet this program’s criteria. A listing of the eligible cities that meet the program’s criteria can be found on the Local Programs website at: <https://www.transportation.ohio.gov/static/Programs/LocalPrograms/SmallCity/EligibleSmallCities.pdf>

This program may be used by the incorporated localities for any road, safety or signal project on the Federal-aid system. A funding limit of $2 million per project has been established. ODOT will provide up to 80% of eligible costs for construction only (including construction engineering, i.e. testing and inspection), up to the specified funding limit. Currently, 15% Toll Revenue Credit (TRC) is available to increase the Federal percentage to 95% and will continue as long as TRC is available, which is currently through fiscal year 2027. The small city is responsible for the 5% non-federal share of the construction costs and for all costs associated with preliminary engineering, environmental studies and documents, final design, right of way, and utilities. The local match for construction is required to be cash. In-kind contributions cannot be accepted as part of the local share. The small city must demonstrate the ability and commitment to oversee the project through to completion.

The allocation for the Small City Program will be established by ODOT and administered by the Office of Local Programs. Currently, the annual budget for this program is $10.5 million. As previously stated, there are currently 53 small cities identified as eligible for this program. The population is determined by the official U.S. Census and those cities eligible for the Small City Program will be re-evaluated every ten years after the census has occurred and the data has been provided to the public. A criteria-based project selection process has been developed to focus on enhancing system performance, both on and off Federal-Aid Highways, while keeping within a financial plan that utilizes existing available resources. Funding of all projects will be linked to defined deficiencies, so each dollar invested results in system improvement.

A scoring system has been established to be used in prioritizing projects. The scoring criteria includes: Annual Average Daily Traffic (AADT), Volume to Capacity, Pavement Condition Rating, Safety Integrated Project (SIP) Maps, Crash Frequency, Equivalent Property Damage Only (EPDO) Index, and Economic Health. In addition to this scoring system, a multi-disciplinary committee reviews the applications and provides feedback and determination for each project. The committee’s determinations are taken into consideration when determining which projects to award funding. Lastly, whether the Small City has been awarded funds in previous years may play a factor in the decision to award depending on the amount of funding requested during that year’s solicitation cycle.

Scope of project and commitment dates are established and agreed to by the Small City and ODOT when the project is programmed. These dates are the milestones for each phase of the project through final inspection. The number and types of milestones differ as to whether a project is sold and administered by ODOT or by the Small City. ODOT reserves the right to move any project to the end of the selected project list or withdraw funding if commitment dates are missed by the Small City.

Federal law requires that Federally-funded projects conform to the National Environmental Policy Act and the National Historic Preservation Act. To comply with these laws, projects must have an environmental review to assess and/or mitigate effects on social, economic, and environmental factors. Section 404/401 Waterway permits are the responsibility of the Small City. Any property acquisition must conform to the Uniform Relocation Assistance and Real Property Acquisition Act, as amended.

Note: This guidance applies only to the solicitation cycle for that fiscal year. While projects could be awarded during the 2020 solicitation cycle that won’t go to construction until 2022 or 2023, testing should be performed using the solicitation and guidance for the year the project was awarded funds and not the actual construction year.

*(Source:* [*Small City Program Guidelines*](https://www.transportation.ohio.gov/wps/wcm/connect/gov/b895fb2a-4273-4808-b46b-a3b9a739ce08/Small+City+Guidance+Revised+4-2022.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-b895fb2a-4273-4808-b46b-a3b9a739ce08-o1NwLQA) *& Michael Miller, ODOT Office of External Audits on 09/27/2023 & Nichole Lawhorn, ODOT Program Manager on 10/06/2023)*

*Based on the Note above from ODOT, auditors will need to utilize the Small City Program Guidelines for the solicitation cycle in which the project was awarded. Documentation hyperlinked above (the most recent available) is included for informational purposes only and guidelines for the solicitation year being tested should be obtained from the auditee.*

**Transportation Alternative Programs**

**I. Purpose & Eligibility**

The Transportation Alternatives Program (TAP) provides funds for projects that advance non-motorized transportation facilities, historic transportation preservation, and environmental mitigation and vegetation management activities. ODOT encourages adding alternatives to planned transportation projects rather than stand-alone projects. TAP funded activities must be accessible to the general public or targeted at a broad segment of the general public.

ODOT’s TAP funds are for those projects sponsored by local governments outside the county boundaries of Metropolitan Planning Organizations (MPOs), unless the local is within a small MPO (population less than 200,000) that has opted to join the ODOT program. There are four (4) counties that return their TAP funding, these counties are Allen, Belmont, Licking and Washington.

If warranted, a project could be awarded Safety funding in addition to TAP funding. Safety funding, unlike TAP funds, can be used by the project sponsor in the Preliminary Engineering, Design or Right-of-Way phase of the project. A Safety section of the TAP Application is an opportunity to provide information on how a proposed project might improve roadway safety.

ODOT is providing this guidance to those eligible entities who completed an online Letter of Interest (LOI) for which ODOT determined met the minimum eligibility guidelines. The application must be for the same project scope submitted in the LOI and be, for rating purposes, submitted under only one of the qualifying categories as follows:

**Bicycle and Pedestrian Facilities**

For the purposes of the TAP Program, a pedestrian is not only defined as a person traveling by foot but also “any mobility impaired person using a wheelchair.” Projects proposed under this category that connects activity centers such as businesses, medical facilities, schools, libraries, shopping areas, recreational areas, etc. will receive higher priority.

Provision for Bicycle and Pedestrian Facilities - This may include activities such as shared use paths, bike lanes, paved shoulders, geometric improvements, turning lanes, traffic signs, new sidewalks, and sidewalk gap closures.  Also eligible are bicycle parking racks, bicycle lockers, designated areas with safety lighting, and covered bicycle shelters.

Upgrading facilities to meet Federal, State and/or local responsibilities for compliance with ADA requirements (such as ramps, and/or other necessary design features) is also eligible.  This category may also include traffic calming improvements to reduce conflicts in heavy pedestrian areas. Traffic calming improvements could include roundabouts, bump-outs, speed humps, raised crossings, raised intersections, median refuges, narrowed traffic lanes, lane reductions, full- or half-street closures, automated speed enforcement, variable speed limits, and demarcations with color, texture, and/or pattern.

Some amenities that make these facilities safer or more accommodating to users, such as vegetative management (see eligibility description below), street furnishings for pedestrians (including lighting, trash receptacles, and seating apparatuses) are also eligible.  Street parking construction costs, stand-alone parking lot projects for future bicycle or pedestrian facilities are ineligible, however, parking facilities (with restrooms) at a trailhead of an existing bicycle/pedestrian are eligible for funding.

For all bicycle and pedestrian projects please review the following criteria outlined in [The Guide for the Development of Bicycle Facilities, 2012](https://bookstore.transportation.org/collection_detail.aspx?ID=116) and ODOT's Location & Design Manuals (see Related Resources), and [A Policy on Geometric Design of Highways and Streets](https://bookstore.transportation.org/collection_detail.aspx?ID=110), where applicable. Pedestrian facility projects must be Americans with Disabilities Act (ADA) compliant.

**Abandoned Railway Corridors (Rails-to-Trails)**

Conversion of abandoned railway corridors for the purpose of creating shared use paths (includes acquisition and construction) - This category includes the acquisition, rehabilitation, and development of corridors for bicycle and pedestrian use. The acquisition of right-of-way can be a stand-alone project; however, there must be a planned trail for the acquired right-of-way. Eligible railway corridors must either have been authorized for abandonment, have abandonment proceedings pending or have been set aside for future transportation use under applicable federal or state laws. Preservation of an abandoned rail corridor must lead to the development of a pedestrian and/or bicycle facility and is not intended to solely preserve the rail corridor for future use. Sponsors must comply with federal regulations involving property acquisitions contained in the “Uniform Act.” (Talk to your ODOT District representative. Also, see [Uniform Act - Real Estate - FHWA (dot.gov)](https://www.fhwa.dot.gov/real_estate/uniform_act/index.cfm).

**Community Improvement Activities**

**Archaeological planning and research** - This category is limited to research on sites relating to impacts from implementation of a transporta­tion project eligible under United States Code of Federal Regulations Title 23 – Highways. This category is not for routine excavations. All work must be done in compliance with the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation or the Secretary of the Interior’s Standards for Historic Preservation Projects and must be managed under the direction of qualified professionals who are educated and experienced in archaeology.

**Construction of turnouts, overlooks and viewing areas**- This category allows for the construction of overlooks, turnouts and viewing areas that allow for the visual enjoyment of significant scenic or historic view sheds. Significant view sheds can include Ohio Scenic Byways and recognized historic districts or historic sites.

**Historic Preservation and Rehabilitation of historic transportation facilities** - Historic transportation buildings are buildings or structures associated with the operation, passenger and freight use, construction, or maintenance of any mode of transportation where such a building is listed in or eligible for listing in the National Register as determined by SHPO. Historic structures and facilities include, but are not restricted to, tunnels, bridges, trestles, canals, viaducts, stations, rails, non-operational vehicles, and other transportation features related to the operation, passenger and freight use, construction, preservation or maintenance of any mode of transportation. Funds for operation of historic transportation facilities are ineligible. Any Historic structure or site must be on or eligible for the National Register of Historic Places. If the structure or site is found not to be on or eligible for the National Register the project will not be eligible. All work must be done in compliance with the *Secretary of the Interior’s Standards for Historic Preservation Projects*.

**Vegetation management**- Practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control. Routine maintenance of landscaping / vegetation is not eligible.

**Environmental Mitigation Activity** - Including pollution prevention and pollution abatement activities and mitigation to address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in 23 U.S.C. 133(b) (11), 328(a), and 329; or to reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

**Recreational Trails**

Includes projects that will provide and maintain recreational trails for both motorized and non-motorized recreational trail use. This category provides funds for all kinds of recreational trail uses. Examples are pedestrian uses like hiking, running, and wheelchair use, bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles.

Eligible projects under Recreational Trails category can include maintenance and restoration of existing recreational trails, development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails, and construction of new recreational trails (with restrictions for new trails on Federal lands). Recreational trail projects offering a transportation component will take priority over those that are only recreational.

**Safe Routes for Non- Drivers**

The construction of infrastructure-related projects that will improve safety connectivity, and accessibility for non-drivers, including children, older adults, and individuals with disabilities to access daily needs and projects that are otherwise eligible under ODOT’s Safe Routes to School Program. These projects be either infrastructure or non-infrastructure in nature. However, funding for a Safe Routes to School Coordinator is not eligible for TAP funds.

*(Source:* [*ODOT Transportation Alternatives Program 2023-2024 Guidance*](https://www.transportation.ohio.gov/programs/local-funding-opportunities/resources/transportation-alternatives-program))

ODOT suballocates TAP funds to MPOs for local government projects within MPO boundaries. **MPOs are responsible for policies and criteria for their projects.**

The allocation for the TAP Program will be established by ODOT and will be administered by the Office of Local Programs.

**GOVERNING AUTHORITY:**

23 USC 133

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023 and Nichole Lawhorn, ODOT Program Manager on 10/06/2023)*

**State Infrastructure Bank (SIB) Loans**

The Department maintains a direct loan and bond financing program, authorized under the Ohio Revised Code, Chapter 5531, for developing transportation facilities throughout Ohio.   The State Infrastructure Bank (SIB) shall be used as a method of funding highway, rail, transit, intermodal, and other transportation facilities and projects which produce revenue to amortize debt while contributing to the connectivity of Ohio's transportation system and further the goals such as corridor completion, economic development, competitiveness in a global economy, and quality of life.

The Ohio SIB was initially capitalized with a $40 million authorization of state general revenue funds (GRF) from the Ohio State Legislature, $10 million in state motor fuel tax funds, and $87 million in Federal Title XXIII Highway funds. Any highway or transit project eligible under Title XXIII, as well as aviation, rail and other intermodal transportation facilities is eligible for direct loan funding under the SIB.

ODOT's objective is to maximize the use of federaland state funds in order to make direct loans for eligible projects. Repayments will be made to ODOT and then re-loaned to subsequent projects hence creating a SIB revolving loan program. The SIB revolving loan program will increase the number of delivered transportation projects that otherwise would not have been considered due to unavailable funding.

**Administration**

ODOT will be the primary decision maker for SIB projects. Within ODOT, the SIB Loan Committee will manage the approval process.

The ODOT SIB Program Manager will promulgate the application process and will be the contact source for information on the program. The ODOT SIB Program Manager will receive applications, review them, and make recommendations to the SIB Loan Committee.

ODOT will administer the loans and bonds using prudent financial guidelines and policies.

*(Source:* [*State Infrastructure Bank (SIB)*](http://www.dot.state.oh.us/divisions/finance/pages/stateinfrastructurebank.aspx) *& Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

**Additional Guidance:**

The Ohio Department of Transportation (ODOT) has a webpage that includes a Manual of Procedures (hereafter referred to as “LPA Manual”) and a summary of various LPA agreement requirements *Division of Planning Local Programs Procedures and Guidance:* <https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-programs/resources/local-let-processes>

ODOT provided further guidance in the following documents at <http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx>:

<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/external-audits/audit-lpa/guidance-lpa-sefa>

<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/external-audits/audit-lpa/lpa-cost-tracking>

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

### Reporting

*Example SEFA and Footnote shells, the “Single Audit SEFA 2023 Completeness Guide” and additional resources are available for AOS Staff on the Intranet and for IPAs on the* [*IPA Resource Internet Page*](http://www.ohioauditor.gov/references/practiceaids.html)*.*

# Part III – Applicable Compliance Requirements

## A. ACTIVITIES ALLOWED OR UNALLOWED

### OMB Compliance Requirements

*For a cost to be allowable, it must (1) be for a purpose the specific award permits (tested in FACCR Section A)**and (2) fall within 2 CFR Part 200, Subpart E Cost Principles (tested in FACCR Section B). These two criteria are roughly analogous to classifying a cost by both program/function and object. That is, the grant award generally prescribes the allowable program/function while 2 CFR Part 200, Subpart E prescribes allowable object cost categories and restrictions that may apply to certain object codes of expenditures.*

*For example, could a government use an imaginary Homeland Security grant to pay OP&F pension costs for its police force? To determine this, the client (and auditors) would look to the grant agreement to see if police activities (security of persons and property function cost classification) met the program objectives. Then, the auditor would look to Subpart E (provisions for selected items of cost § 200.420-200.476) to determine if pension costs (an object cost classification) are permissible. (200.431(g) states they are allowable, with certain provisions, so we would need to determine if the auditee met the provisions.) Both the client and the auditor should look at 2 CFR Part 200, Subpart E even if the grant agreement includes a budget by object code approved by the grantor agency. Also, keep in mind that granting agencies have codified 2 CFR Part 200 and some agencies have been granted exceptions to provisions within 2 CFR Part 200.*

The specific requirements for activities allowed or unallowed are unique to each Federal program and are found in the federal statutes, regulations, and the terms and conditions of the Federal award pertaining to the program.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Source of Governing Requirements**

The requirements for activities allowed or unallowed are contained in program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

Federal funds can be used for administrative settlement costs incurred in defending contract claim proceedings before arbitration boards or state courts only if approved by FHWA for state-aid projects. If special counsel is used, it must be recommended by the State Attorney or State Department of Transportation (State DOT) legal counsel and approved in advance by FHWA (23 CFR section 140.505).

ADHS funds may be used only for work included in the ADHS cost estimate approved by the ARC (40 USC 14501).

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

### Additional Program Specific Information

**LPA Projects**

8. CONSTRUCTION CONTRACT ADMINISTRATION

8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA is requests reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA’s construction contractor (“Contractor”), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor’s invoice from the LPA.

*(Source:* [*Local-Let Project Agreement*](https://www.transportation.ohio.gov/programs/local-programs/local-let-manual-of-procedures/agreements/lpa-federal-local-let-project-agreement-cfda20.205)*)*

LPA Invoices

For on-behalf payments that ODOT makes directly to contractors, the LPA initiates the request for payment. No on-behalf payments can be made for Local-Let projects unless the LPA initiates a request for payment. (The LPA must track these payments since it submits these requests to ODOT.) The LPA should provide invoice copies to the auditor.

The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenditures involved, attaching copies of all source documentation associated with pending invoices or paid costs.

ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay the LPA’s construction contractor (“Contractor”) directly, the eligible items of expense in accordance with the cost sharing provisions of the LPA Agreement. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of the receipt of the approved Contractor’s invoice from the LPA.

It is important to review applicable local government agreements to determine if the language is consistent with the guidance/reference above, as applicable.

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

The Construction Project Engineer (CPE) is responsible for preparing documentation to support payment for work performed by the Contractor by measurement of completed and accepted quantities of work. The documentation shall provide validation that the quantity for payment has been determined in accordance with contract requirements with necessary measurements, calculations, material certifications, etc., and that the work was done in close conformity to the plans and specifications.

*(Source:* [*ODOT Local-Let Manual of Procedures\_Construction Contract Administration Chapter*](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-programs/local-let-manual-of-procedures/8-construction-contracts-administration/8-construction-contract-administration)*)*

**Ohio Municipal Bridge Program**

**ELIGIBLE WORK**

Municipal Bridge funds may be used for the following:

* Bridge Replacement
* Bridge Rehabilitation
* Bridge Demolition
* Minimal Approach Work: as necessary and related to the bridge project (general rule of thumb is 50’ on each side)
* Utilities: if the utility lines are on the bridge and it is necessary to the project to move or replace (will not pay for “upgrades” to the current system; e.g. a 30’ pipe rather than the existing 24’)

Ineligible items include, but are not limited to:

* New Roadway
* Roadway Improvements: except as necessary to complete the bridge project
* Utilities: except as necessary to complete the bridge project
* Upgrades to Existing Utilities
* Pedestrian Bridges
* Rail Bridges
* Design Risk Contingency costs
* Right-of-Way
* Preliminary Engineering
* Environmental work
* Design work (unless using the Municipal Bridge General Engineering Services Task Order)

*(Source:* [*Municipal Bridge Program Guidelines*](https://www.transportation.ohio.gov/programs/local-funding-opportunities/resources/municipal-bridge)*)*

ODOT currently has a design task order that those who were funded during SFY 21 to present may utilize. It pays for 100% of General Engineering (design work) so that activity could be allowed (eligible) if utilizing the task order. The task order is on a first come/first serve basis and applicants request the use of it after the project has been awarded and scoped with the district.

*(Source: Nichole Lawhorn, ODOT Program Manager on 10/06/2023)*

**Small City Program**

ELIGIBLE WORK

Small City funds may be used for the following:

* Pavement rehabilitation
* Roundabouts
* Bridge overlay, as part of a paving project
* Signals
* Roadway widening
* Road diets\*
* Utilities and storm water pump station: if deemed necessary to the project to move or replace (will not pay for “upgrades” to the current system; e.g. a 30” pipe rather than the existing 24”)
* Curb and ramps: if deemed necessary as part of the eligible project

\*May be eligible items under the Safety Program depending on existing conditions (i.e. speed, ADT, demand/need, network gaps, alignment with the State & US Bike Route System) and proposed work.

Ineligible items include, but are not limited to:

* Bridge replacement, rehabilitation, or demolition
* Access roads
* Projects that are primarily driven by congestion mitigation and not repairing/replacing existing deteriorating roadway
* Utilities: except as necessary to complete the roadway project
* Upgrades to existing utilities
* Pedestrian/bicycle bridges\*
* Sidewalks and shared use paths\*
* Stand-alone storm water pump stations
* Pedestrian signals and signage\*
* Enhancement items such as streetscapes, benches, trash receptacles, decorative poles, etc.\*\*
* Design risk contingency costs
* Right-of-Way
* Preliminary Engineering
* Environmental work
* Design work (if the project is design build, this work must be tracked separately)

\*May be eligible items under the Safety Program depending on existing conditions (i.e. speed, ADT, demand/need, network gaps, alignment with the State & US Bike Route System) and proposed work. These are also eligible items under the Transportation Alternatives Program (TAP).

\*\*Eligible items under TAP. TAP is the preferred funding source for these work items or project types.

*(Source:* [*Small City Program Guidelines*](https://www.transportation.ohio.gov/working/publications/small-city) *& Michael Miller, ODOT Office of External Audits on 09/27/2023)*

**Transportation Alternative Program**

**II. Ineligible Costs**

Though not a comprehensive list, these are some activities that will not be funded with federal dollars and are the sponsor’s responsibility. Items that are ineligible for funding by the TAP program can be included in the construction contract as nonparticipating items with the funding provided by the sponsor.

* Landscaping and scenic enhancements as independent projects- However, landscaping and scenic enhancements could be eligible as part of the construction of any Federal-aid highway project under 23 U.S.C. 319, including TAP-funded projects.
* Acquisition of scenic easements and scenic or historic sites.
* Administrative costs - Some examples of actions considered to be administrative are application preparation; consultant selection and management; coordination with ODOT, etc.
* Public art - Items of public art include, but are not limited to: statuary, decorative banners, flag displays (including flagpoles), murals, fountains, clock towers, etc.
* Standard roadway or bridge infrastructure items, such as roadway paving or structural work, will not be considered for funding unless incidental to the TAP project.
* Parking - The exception is if the facility is related to a bicycle trailhead, or to access a turnout, overlook, viewing area, or historic transportation facility.
* Mitigation - A work item that serves to mitigate (compensate for) an environmental impact (including historic, natural, or cultural).
* Operation of historic transportation facilities
* Transportation Museums

Any action or work taken prior to FHWA project authorization will make the entire project ineligible for compensation.

*(Source:* [*ODOT Transportation Alternatives Program 2023-2024 Guidance*](https://www.transportation.ohio.gov/programs/local-funding-opportunities/resources/transportation-alternatives-program))

**Add program specific requirements from:**

* **The individual grant application, agreement, and policies,**
* **The pass-through agency, and**
* **Federal agency guidance not included in the compliance supplement (such as federal agency grant manuals, references to CFR, etc.)**

**Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).
2. Determine whether Federal awards were expended only for allowable activities.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Control Documentation and Testing**

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| --- |
| *Auditors should clearly document what control procedures address the compliance requirement. Reference or link to documentation or where testing was performed.*  **Basis for the control** *(Ex. reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):*  **Control Procedure** *(Description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):*  **Person(s) responsible for performing the control procedure** *(Title):*  **Description of evidence documenting the control was applied** *(i.e. sampling unit):* |

### Suggested Substantive Audit Procedures – Compliance

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| --- |
| Consider the results of control testing above in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.  *(Source: 2023 OMB Compliance Supplement Part 3)*  ***AOS Auditors:*** *Steps marked with an asterisk (\*) are addressed via the attributes in the payroll and non-payroll Federal Testing Templates available on the Intranet.*  1. Identify the types of activities which are either specifically allowed or prohibited by the laws, regulations, and the provisions of the contract or grant agreements pertaining to the program.  *Auditors should be able to identify these activities using Part 4 requirements as well as tailoring the “Additional Program Specific Information” section above.*  2. When allowability is determined based upon summary level data, perform procedures to verify that:  a. Activities were allowable.  b. Individual transactions were properly classified and accumulated into the activity total.  \*3. When allowability is determined based upon individual transactions, select a sample of transactions and perform procedures to verify that the transaction was for an allowable activity.  4. The auditor should be alert for large transfers of funds from program accounts which may have been used to fund unallowable activities. |

### Audit Implications Summary

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| --- |
| *Consider the adequacy of the system and controls, and the effect on sample size, significant deficiencies/material weaknesses, material non-compliance and management letter comments.*  *Auditors should review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*   1. **Results of Test of Controls:** *(including material weaknesses, significant deficiencies, and management letter items)* 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## B. ALLOWABLE COSTS/COST PRINCIPLES

**Introduction**

2 CFR Part 200, Subpart E and Appendices III-VII establish principles and standards for determining allowable direct and indirect costs for Federal awards. This section is organized into the following areas of allowable costs: States and Local Government and Indian Tribe Costs (Direct and Indirect); State/Local Government Central Service Costs; and State Public Assistance Agency Costs.

*(Source: 2023 OMB Compliance Supplement Part 3)*

*FACCR Section B includes five distinct testing sections, the first of which is always applicable.*

1. *Cost Principles for States, Local Governments, and Indian Tribes – testing guidance and steps included in FACCR, not separate testing document.*

*Auditors* ***must*** *evaluate if additional section(s) are applicable to their Entity, including sources reviewed to verify applicability. For additional sections, auditors must pull the testing section(s) into their working papers and test accordingly.*

*Additional testing sections are located* [***here***](https://ohauditor.sharepoint.com/sites/Intranet/Shared%20Documents/Forms/AllItems.aspx?FolderCTID=0x0120002FFBFB1F4A3C3F47AE37C7A44E1C1EDE&id=%2Fsites%2FIntranet%2FShared%20Documents%2FAudit%5FResources%2FFederal%2FFACCRs%20and%20IRAFs%2F2023%2FSection%20B%20Addenda&viewid=68cb3ab2%2D567e%2D456a%2D975c%2Da88f3e9c3727)*for AOS auditors and* [***here***](https://ohioauditor.gov/references/practiceaids/faccrs.html) *for IPA auditors.*

1. *De Minimis Indirect Cost Rate*
   1. *This section must be tested if the Entity utilizes the de minimis indirect cost rate to charge indirect costs to the grant, whether as a recipient or subrecipient.*
   2. *Applicability Determination:* **Auditors must specify here if this section is applicable to the Entity and identify which sources were reviewed to make the determination.**
   3. *If applicable, testing documents:* **Link to testing documents**
2. *Allowable Costs – State/Local Government-wide Central Service Costs*
   1. *This section must be tested if the Entity allocated costs to the grant using central service cost allocation plans (CAPs).*
   2. *Applicability Determination:* **Auditors must specify here if this section is applicable to the Entity and identify which sources were reviewed to make the determination.**
   3. *If applicable, testing documents:* **Link to testing documents**
3. *Allowable Costs – State Public Assistance Agency Costs*
   1. *This section must be tested if the Entity charged state public assistance agency costs to the grant.* 
      1. *State public assistance agency costs are defined as (1) all costs allocated or incurred by the State agency except expenditures for financial assistance, medical vendor payments, and payments for service and goods provided directly to program recipients and (2) normally charged to Federal awards by implementing the public assistance cost allocation plan (CAP).*
      2. *This may be applicable at the local level if local entities perform procedures to support the State compliance (For example, this may occur with JFS programs)*
   2. *Applicability Determination:* **Auditors must specify here if this section is applicable to the Entity and identify which sources were reviewed to make the determination.**
   3. *If applicable, testing documents:* **Link to testing documents**
4. *Cost Principles for Nonprofit Organizations* 
   1. *This section must be tested if the Entity is a nonprofit organization.*
   2. *Applicability Determination:* **Auditors must specify here if this section is applicable to the Entity and identify which sources were reviewed to make the determination.**
   3. *If applicable, testing documents:* **Link to testing documents**

### Applicability of Cost Principles

*For a cost to be allowable, it must (1) be for a purpose the specific award permits (tested in FACCR Section A) and (2) fall within 2 CFR Part 200, Subpart E Cost Principles (tested in FACCR Section B). These two criteria are roughly analogous to classifying a cost by both program/function and object. That is, the grant award generally prescribes the allowable program/function while 2 CFR 200, Subpart E prescribes allowable object cost categories and restrictions that may apply to certain object codes of expenditures.*

*For example, could a government use an imaginary Homeland Security grant to pay OP&F pension costs for its police force? To determine this, the client (and we) would look to the grant agreement to see if police activities (security of persons and property function cost classification) met the program objectives. Then, the auditor would look to Subpart E (provisions for selected items of cost § 200.420-200.476) to determine if pension costs (an object cost classification) are permissible. (200.431(g) states they are allowable, with certain provisions, so we would need to determine if the auditee met the provisions.) Both the client and the auditor should look at 2 CFR Part 200, Subpart E even if the grant agreement includes a budget by object code approved by the grantor agency. Also, keep in mind that granting agencies have codified 2 CFR Part 200 and some agencies have been granted exceptions to provisions within 2 CFR Part 200.*

*The specific requirements for activities allowed or unallowed are unique to each Federal program and are found in the laws, regulations, and the provisions of the Federal award contracts or grant agreements pertaining to the program.*

The cost principles in 2 CFR Part 200, Subpart E (Cost Principles), prescribe the cost accounting requirements associated with the administration of Federal awards by:

1. States, local governments and Indian tribes
2. Institutions of higher education (IHEs)
3. Nonprofit organizations

As provided in 2 CFR 200.101, the cost principles requirements apply to all Federal awards with the exception of grant agreements and cooperative agreements providing food commodities; agreements for loans, loan guarantees, interest subsidies, insurance; and programs listed in 2 CFR 200.101(e) (see Appendix I of this Supplement). Federal awards administered by publicly owned hospitals and other providers of medical care are exempt from 2 CFR Part 200, Subpart E, but are subject to the requirements [45 CFR Part 75, Appendix IX](45_CFR_Part_75.pdf), the Department of Health and Human Services (HHS) implementation of 2 CFR Part 200. The cost principles applicable to a non-Federal entity apply to all Federal awards received by the entity, regardless of whether the awards are received directly from the Federal awarding agency or indirectly through a pass-through entity. For this purpose, Federal awards include cost-reimbursement contacts under the Federal Acquisition Regulation (FAR). The cost principles do not apply to Federal awards under which a non-Federal entity is not required to account to the Federal awarding agency or pass-through entity for actual costs incurred.

**Source of Governing Requirements**

The requirements for allowable costs/cost principles are contained in 2 CFR Part 200, Subpart E, program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

The requirements for the development and submission of indirect (facilities and administration (F&A)) cost rate proposals and cost allocation plans (CAPs) are contained in 2 CFR Part 200, Appendices III-VII as follows:

* Appendix III to Part 200—Indirect (F&A) Const Identification and Assignment and Rate Determination for Institutions of Higher Education (IHEs)
* Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations
* Appendix V to Part 200—State/Local Government-Wide Central Service Cost Allocation Plans
* Appendix VI to Part 200—Public Assistance Cost Allocation Plans
* Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

Except for the requirements identified below under “Basic Guidelines,” which are applicable to all types of non-Federal entities, this compliance requirement is divided into sections based on the type of non-Federal entity. The differences that exist are necessary because of the nature of the non-Federal entity organizational structures, programs administered, and breadth of services offered by some non-Federal entities and not others.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Basic Guidelines**

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards;

1. Be necessary and reasonable for the performance of the Federal award and be allocable thereto under the principles in 2 CFR Part 200, Subpart E.

2. Conform to any limitations or exclusions set forth in 2 CFR Part 200, Subpart E or in the Federal award as to types or amount of cost items.

3. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-Federal entity.

4. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

5. Be determined in accordance with generally accepted accounting principles (GAAP), except, for State and local governments and Indian tribes only, as otherwise provided for in 2 CFR Part 200.

6. Not be included as a cost or used to meet cost-sharing or matching requirements of any other federally financed program in either the current or a prior period.

7. Be adequately documented.

**Selected Items of Cost**

2 CFR 200.420 - 200.476 provide the principles to be applied in establishing the allowability of certain items of cost, in addition to the basic considerations identified above. These principles apply whether or not a particular item of cost is treated as a direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment provided for similar or related items of cost and the principles described in 2 CFR 200.402 - 200.411.

[List of Selected Items of Cost Contained in 2 CFR Part 200](Selected_Items_of_Cost_Part_3_ComplianceSupplement.pdf)

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

No Part 4 OMB Program Specific Requirements for Allowable Costs / Cost Principles.

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

***Written Procedure Requirements:***

*2 CFR 200.302(b)(7) requires written procedures for determining the allowability of costs in accordance with Subpart E-Cost Principles of this part and the terms and conditions of the Federal award.*

*2 CFR 200.430 states that costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees: (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities; (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and (3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.*

*2 CFR 200.431 requires established written leave policies if the entity intends to pay fringe benefits.*

*2 CFR 200.464(a)(2) requires reimbursement of relocation costs to employees be in accordance with an established written policy must be consistently followed by the employer.*

*2 CFR 200.475 requires reimbursement and/or charges to be consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally funded activities and in accordance with non-Federal entity's written travel reimbursement policies.*

### Additional Program Specific Information

**LPA Agreements**

The LPA can recover direct, fringe and/or indirect costs incurred on federally funded projects through one of four cost recovery methods described later in the chapter. A method of cost recovery must be selected at the time the agreement is signed between the LPA and ODOT, and the methodology selected by the LPA will apply to the entire life of the project agreement.

LPA Agreements and Cost Recovery

The LPA must select one of the cost recovery options in Section 15.1 of the LPA project agreement, outlined below.

1. **No cost recovery of any LPA’s project direct labor, fringe benefits, or indirect costs:** The LPA may elect not to seek recovery for any labor costs, direct or indirect.
2. **Direct Labor plus indirect costs determined using the Federal 10% De Minimis Indirect Cost Rate:** An LPA may elect to recover its direct labor and 10% De Minimis indirect costs.
3. **Direct Labor plus fringe benefits costs calculated using the LPA’s ODOT approved Fringe Benefits Rate, plus indirect costs determined using the Federal De Minimis Indirect Cost Rate:** An LPA may elect to recover its direct labor plus applicable fringe benefit costs (determined by establishing a fringe rate, which is discussed further in the chapter) plus 10% De Minimis indirect costs.
4. **Direct Labor, plus approved fringe benefit costs** **calculated using the LPA’s ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA’s ODOT approved indirect cost rate:** An LPA may elect to recover its direct labor, applicable fringe benefit costs, and applicable indirect costs (determined by establishing a fringe rate and an indirect cost rate, which is discussed further in the chapter).

The cost recovery method selected is only applicable to the LPA signing the project agreement. For example, if an LPA were hiring a consultant in lieu of using their own labor forces, they would select no cost recovery of any LPA direct labor, fringe benefits, or indirect costs as their recovery option on the project agreement. Since the agreement pertains only to the LPA, this does not prevent the LPA from still seeking reimbursement for any eligible consultant costs incurred on the project.

A cost recovery option must be made at the time the project agreement is signed between ODOT and the LPA. Only one method of cost recovery may be selected by the LPA. However, the LPA may elect to amend the agreement and select an alternative cost recovery method than the option originally selected.

If the LPA chooses to amend their original cost recovery selection, it must be done prior to the Plans, Specifications, and Estimates (PS&E) package being submitted to ODOT’s Office of Local Programs by the ODOT district office. No changes to the cost recovery method selected can be made after the PS&E has been submitted to the Office of Local Programs. This ensures that the selected cost recovery method is not changed mid-project and provides consistency in the process across the state.

*(Source:*  [*ODOT Local-Let Manual Finance Chapter 11*](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-programs/local-let-manual-of-procedures/11-finance)*)*

The Construction Project Engineer (CPE) is responsible for ensuring that costs submitted for work performed are allowable, allocable and reasonable. At a minimum, costs must be:

* Incurred subsequent to FHWA authorization of the project
* Supported through adequate and sufficient source documentation
* Eligible for reimbursement
* Necessary for the project
* In accordance with all laws, regulations and sponsored agreements
* Net of applicable credits

*(Source:* [*ODOT Local-Let Manual of Procedures, Construction Contract Administration Chapter*](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-programs/local-let-manual-of-procedures/8-construction-contracts-administration/8-construction-contract-administration)*)*

Establishing an ODOT Approved Indirect Cost Rate

An LPA may pursue recovery of its direct labor, as well as its fringe benefit and indirect costs, using a sufficiently documented ODOT approved indirect cost rate. ODOT will provide approval of only one average indirect cost rate for each LPA using a documented process and an indirect cost rate form. The average indirect cost rate will apply to all employees charging time to a project and seeking federal and/or state reimbursement. While utilizing the approved indirect cost rate provides the maximum reimbursement, it does require significantly more effort and documentation to obtain approval.

To obtain an approved ODOT indirect cost rate that can be applied to the LPA’s direct labor costs, the LPA will need to:

* Communicate with the District LPA Manager its desire to obtain an approved indirect cost rate.
* Complete the CAP (cost allocation plan) rate form (located at: <https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/external-audits/audit-lpa/#page=1> under the ‘Fringe and Overhead Rates Guidance’ section of the webpage) and submit the form, along with the supporting documentation for costs, to the Office of External Audits using the following email address: [Michael.Miller@dot.ohio.gov](mailto:Michael.Miller@dot.ohio.gov). A checklist of required items can be found in the corresponding tab at the bottom of the spreadsheet.
* Upon receiving the CAP rate form and supporting documentation, the Office of External Audits will review. If further documentation is required, the Office of External Audits will contact the LPA and request the remaining documentation.
* Once all supporting documentation is reviewed and approved, the Office of External Audits will provide an ODOT approved indirect cost rate for the LPA to use during a specified time period (i.e. the LPA’s fiscal year).
* The LPA will apply this rate to all direct labor costs incurred during the time period for which the rate applies.

An LPA who administers more than one project a year could apply their CAP rate to multiple projects. Each project would utilize the same CAP rate during the applicable period to recover labor and overhead costs.

The approved CAP rate will allow the LPA to apply the same rate for all employees included in the plan.

Unless an extension of approved rates is requested and approved, the LPA must submit a new rate request each year it elects to use the indirect cost rate option for calculating total labor costs on ODOT projects administered by either the LPA or ODOT (if the LPA is administering a specific phase that includes funds eligible for reimbursement). Once an indirect cost rate has a been approved, the LPA may elect for a one-time extension of up to four (4) additional fiscal years. If the LPA wants to extend its rate, they will need to submit a request to the Office of External Audits. However, once an extension is approved, the LPA cannot obtain a new rate until the extension period expires. The LPA must renegotiate a new rate between each extension period.

*De Minimis Rate*

The 10% De Minimis Indirect Cost Rate allows the LPA to be reimbursed an additional 10% of the sum of their direct labor and fringe benefit costs. The LPA does not have to apply to be eligible to use the 10% De Minimis rate. They simply must select a cost recovery option that provides for the 10% De Minimis rate to be applied to their base labor costs and, if applicable, fringe benefits costs, and have an approved timekeeping system.

*(Source:*  [*ODOT Local-Let Manual Finance Chapter 11*](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-programs/local-let-manual-of-procedures/11-finance)*)*

LPAs that do not have an approved indirect cost allocation plan may still be eligible to receive reimbursement via the 10% “de minimis indirect cost rate” provided by 2 CFR 200.414. In prior years, the Safe Harbor rate (unique to Ohio from other states through FHWA) was available to be applied to LPA projects. However, the eligibility to select the Safe Harbor rate was terminated for new agreements signed after 12/26/2014 with the implementation of the Uniform Guidance (UG). If the Safe Harbor rates are documented in the signed project agreement, the rates may be used on that project until the project is completed.

To recover labor, fringe, and indirect costs, the LPA must have adequate time tracking systems in place, including the ability to track all labor costs and assign them to cost objectives (projects), including Federal and non-Federal funding sources. This election is executed on a contract by contract basis and is part of the standard LPA agreement. When invoices are submitted to ODOT for reimbursement of the LPA’s labor, fringe, and indirect costs, the LPA must ensure that it follows the cost recovery method selected on the agreement. If no method was selected, then the LPA is not eligible for reimbursement of its costs.

LPA’s charging fringe and indirect costs to ODOT projects should have in their possession a Certificate of Indirect Costs approved by ODOT Office of External Audits. The rates charged must be consistent with those documented in the Certificate. An example of the Certificate is located at: <http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx>

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

**MPO Agreements**

10.6: Allowable Costs *(p.45)*

Allowable costs are determined in accordance with 2 CFR Part 200 as well as ODOT Contract Audit Circulars. Costs must be described in the approved MPO work program to be allowable.

The following are qualifications to 2 CFR Part 200:

* Work Categories: The MPO will account for activities and costs as defined in Section 8.4 - Work Program Subcategories.
* Multi-funded Activities: ODOT may cooperate with work program participants to fund activities of mutual interest. ODOT’s share in the cost of a multi-funded activity will not exceed the ratio specified in the approved work program. If the effective dates of funding sources differ, ODOT’s participation will be limited to its predetermined rate applicable to actual eligible cost incurred, regardless of when other funding sources are approved. At no time will ODOT participate at a higher rate than that agreed to and specified in the work program to temporarily cover the share of costs to be borne by other funding sources.
* Lease/Option Equipment Purchases: The total cost of equipment rented or leased under an agreement with a purchase option at lease termination cannot exceed the original purchase price of the equipment.
* Cost Allocation Plans: Each MPO must develop an annual Cost Allocation Plan (CAP) to cover all overhead (indirect) costs associated with activities included in the work program. The methodology used to develop the CAP shall be uniform and consistent with prior fiscal years and shall identify the period of time from which the cost data were extracted. The MPO must submit the proposed CAP with its annual work program for ODOT approval (or concurrence, if the State of Ohio is not the cognizant agency) to establish a predetermined, fixed or provisional indirect cost rate applicable to the work program. Indirect costs are not eligible for federal or state reimbursement without an approved CAP from the MPO’s cognizant agency.
* The costs of discretionary, non-recurring or special occasions of paid employee leave are allowable if the benefits are identified in the MPO’s formal written leave policies.

8.5: Work Program Modifications *(p.36)*

Throughout the fiscal year, MPO work programs may need to be modified due to changes in scope and budget. All modifications should first be approved by the MPO Policy Committee. Once approved by the MPO Policy Committee, they should be sent to ODOT.

However, not all work program modifications need ODOT or FHWA/FTA approval. The following table identifies the approval requirements for different types of work program modifications. MPOs may reallocate funding within the direct cost elements of the work program budget to meet unanticipated requirements without prior ODOT approval unless the revisions results in any of the following:

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10.5: Cost Allocation Plan *(p.45)*

MPO handling agencies typically receive funding from a variety of funding sources. One of the specific requirements of the reimbursement process is development of a Cost Allocation Plan (CAP). The CAP covers all overhead costs to be allocated to the services proposed in the work program. Indirect agency expenses are distributed proportionately among the respective funding sources of the monetary handling agency. Indirect costs are those that have been incurred for common or joint purposes. The CAP distributes agency indirect costs proportionately among these funding sources. More detail is available in 2 CFR Part 200.

[ODOT Contract Audit Circular No. MPO-02](http://www.dot.state.oh.us/Divisions/Finance/Auditing/MPO%20Contract%20Audit%20Circulars/ODOT%20Circular%20MPO%20-%202%20CAP%20Documentation%20-%20update%2012-26-2014.pdf) requires CAP proposals be submitted 4 months before the start of the recipient or subrecipient agency’s fiscal year. ODOT, as the pass thru entity, is the cognizant approval agency for most MPO handling agencies. For MPOs which cover multiple states, one state shall be designated as the cognizant, or responsible, state. Any costs incurred after the beginning of the fiscal year, but prior to approval for the CAP, will be reimbursed only upon approval of the CAP. Refer to ODOT Contract Audit Circulars No. [MPO-01](http://www.dot.state.oh.us/Divisions/Finance/Auditing/MPO%20Contract%20Audit%20Circulars/ODOT%20Circular%20MPO%20-%201%20Preparing%20Overhead%20Rates%20-%20update%2012-26-2014.pdf) and [MPO-02](http://www.dot.state.oh.us/Divisions/Finance/Auditing/MPO%20Contract%20Audit%20Circulars/ODOT%20Circular%20MPO%20-%202%20CAP%20Documentation%20-%20update%2012-26-2014.pdf) for guidance.

*(Source:* [*Ohio MPO Administration Manual*](https://www.transportation.ohio.gov/programs/statewide-planning-research/regional-transportation-planning/mpo-manual)*)*

MPOs and Regional Transportation Planning Organizations (RTPOs) charge labor, fringe, and indirect costs to most ODOT planning projects. The fringe and indirect rates charged are documented in a Fringe Benefit and Indirect Cost Rate Agreement executed annually with ODOT. The rates charged must be consistent with those documented in the Rate Agreement. The fringe and indirect rates are reconciled to actual costs annually. Year-end adjustments will be made consistent with the Rate Agreement.

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

**Add program specific requirements from:**

* **The individual grant application, agreement, and policies,**
* **The pass-through agency, and**
* **Federal agency guidance not included in the compliance supplement (such as federal agency grant manuals, references to CFR, etc.)**

### Cost Principles for States, Local Governments and Indian Tribes

### OMB Compliance Requirements

**Direct Costs**

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a federal award or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

**Indirect Costs**

*Allocation of Indirect Costs and Determination of Indirect Cost Rates*

1. The specific methods for allocating indirect costs and computing indirect cost rates are as follows:
   1. *Simplified Method* – This method is applicable where a governmental unit’s department or agency has only one major function, or where all its major functions benefit from the indirect cost to approximately the same degree. The allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures described in 2 CFR Part 200, Appendix VII, paragraph C.2.
   2. *Multiple Allocation Base Method* – This method is applicable where a governmental unit’s department or agency has several major functions that benefit from its indirect costs in varying degrees. The allocation of indirect costs may require the accumulation of such costs into separate groupings which are then allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. (For detailed information, refer to 2 CFR Part 200, Appendix VII, paragraph C.3.)
   3. *Special Indirect Cost Rates* – In some instances, a single indirect cost rate for all activities of a department or agency may not be appropriate. Different factors may substantially affect the indirect costs applicable to a particular program or group of programs (e.g., the physical location of the work, the nature of the facilities, or level of administrative support required). (For the requirements for a separate indirect cost rate, refer to 2 CFR Part 200, Appendix VII, paragraph C.4.)
   4. *Cost Allocation Plans* – In certain cases, the cognizant agency for indirect costs may require a state or local government o unit’s department or agency to prepare a CAP instead of an ICRP. These are infrequently occurring cases in which the nature of the department or agency’s federal awards makes impracticable the use of a rate to recover indirect costs. A CAP required in0 such cases consists of narrative descriptions of the methods the department or agency uses to allocate indirect costs to programs, awards, or other cost objectives. Like an ICRP, the CAP either must be submitted to the cognizant agency for indirect cost for review, negotiation, and approval, or retained on file for inspection during audits.

*Submission Requirements*

1. Submission requirements are identified in 2 CFR Part 200, Appendix VII, paragraph D.1. All departments or agencies of a governmental unit claiming indirect costs under federal awards must prepare an ICRP and related documentation to support those costs.
2. A state/local department or agency or Indian tribe that receives more than $35 million in direct federal funding must submit its ICRP to its cognizant agency for indirect costs. Other state/local government departments or agencies that are not required to submit a proposal to the cognizant agency for indirect costs must develop an ICRP in accordance with the requirements of 2 CFR Part 200 and maintain the proposal and related supporting documentation for audit.
3. Where a government receives funds as a subrecipient only, the pass-through entity will be responsible for the indirect cost rate used (2 CFR section 200.331(a)(4)).
4. Each Indian tribe desiring reimbursement of indirect costs must submit its ICRP to the DOI (its cognizant agency for indirect costs).
5. ICRPs must be developed (and, when required, submitted) within 6 months after the close of the governmental unit’s fiscal year, unless an exception is approved by the cognizant agency for indirect costs.

*Documentation and Certification Requirements*

The documentation and certification requirements for ICRPs are included in 2 CFR Part 200, Appendix VII, paragraphs D.2 and 3, respectively. The proposal and related documentation must be retained for audit in accordance with the record retention requirements contained in 2 CFR section 200.333(f).

**Cognizant Agency for Indirect Costs**

2 CFR Part 200, Appendix V, paragraph F, provides the guidelines to use when determining the Federal agency that will serve as the cognizant agency for indirect costs for States, local governments, and Indian tribes. References to the “cognizant agency for indirect costs” are not equivalent to the cognizant agency for audit responsibilities, which is defined in 2 CFR 200.1\_Cognizant\_Agency.

For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is generally the Federal agency with the largest value of direct Federal awards (excluding pass-through awards) with a governmental unit or component, as appropriate. In general, unless different arrangements are agreed to by the concerned Federal agencies or described in 2 CFR Part 200, Appendix V, paragraph F, the cognizant agency for central service cost allocation plans is the Federal agency with the largest dollar value of total Federal awards (including pass-through awards) with a governmental unit.

Once designated as the cognizant agency for indirect costs, the Federal agency remains so for a period of 5 years. In addition, 2 CFR Part 200, Appendix V, paragraph F, lists the cognizant agencies for certain specific types of plans and the cognizant agencies for indirect costs for certain types of governmental entities. For example, HHS is cognizant for all public assistance and State-wide cost allocation plans for all States (including the District of Columbia and Puerto Rico), State and local hospitals, libraries, and health districts and the Department of the Interior (DOI) is cognizant for all Indian tribal governments, territorial governments, and State and local park and recreational districts.

*(Source: 2023 OMB Compliance Supplement Part 3)*

#### Audit Objectives and Control Tests: Allowable Costs –– Direct and Indirect Costs

The individual State/local government/Indian tribe departments or agencies (also known as “operating agencies”) are responsible for the performance or administration of Federal awards. In order to receive cost reimbursement **under** Federal awards, the department or agency usually submits claims asserting that allowable and eligible costs (direct and indirect) have been incurred in accordance with 2 CFR Part 200, Subpart E.

The indirect cost rate proposal (ICRP) provides the documentation prepared by a State/local government/Indian tribe department or agency to substantiate its request for the establishment of an indirect cost rate. The indirect costs include (1) costs originating in the department or agency of the governmental unit carrying out Federal awards, and (2) for States and local governments, costs of central governmental services distributed through the State/local government-wide central service CAP that are not otherwise treated as direct costs. The ICRPs are based on the most current financial data and are used to either establish predetermined, fixed, or provisional indirect cost rates or to finalize provisional rates (for rate definitions refer to 2 CFR Part 200, Appendix VII, paragraph B).

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

**Audit Objectives: Direct Costs**

1. Determine whether the organization complied with the provisions of 2 CFR Part 200 as follows:
2. Direct charges to federal awards were for allowable costs.
3. Unallowable costs determined to be direct costs were included in the allocation base for the purpose of computing an indirect cost rate.

**Audit Objectives: Indirect Costs**

1. Determine whether the governmental unit complied with the provisions of 2 CFR Part 200 as follows:
2. Charges to cost pools used in calculating indirect cost rates were for allowable costs.
3. The methods for allocating the costs are in accordance with the cost principles, and produce an equitable and consistent distribution of costs (e.g., all activities that benefit from the indirect cost, including unallowable activities, must receive an appropriate allocation of indirect costs).
4. Indirect cost rates were applied in accordance with negotiated indirect cost rate agreements (ICRA).
5. For State/local departments or agencies that do not have to submit an ICRP to the cognizant agency for indirect costs (those that receive less than $35 million in direct Federal awards), indirect cost rates were applied in accordance with the ICRP maintained on file.

*(Source: 2023 OMB Compliance Supplement Part 3)*

***Additional Control Test Objectives for Written Procedures***

*When documenting and identifying the key control(s) in place to address the compliance requirement, consider if the client has written procedures to document the control process.*

* *UG requires written policies for the requirements outlined in 2 CFR 200.302(b)(7), 2 CFR 200.430, 2 CFR 200.431, 2 CFR 200.464(a)(2), and 2 CFR 200.475.*
* *Document whether the non-federal entity established written procedures consistent with the following requirements:*
  + *2 CFR 200.302(b)(7) for determining the allowability of costs in accordance with Subpart E-Cost Principles.*
  + *2 CFR 200.430 for allowability of compensation costs.*
  + *2 CFR 200.431 for written leave policies.*
  + *2 CFR 200.464(a)(2) for reimbursement of relocation costs.*
  + *2 CFR 200.475 for travel reimbursements.*
* *It is auditor judgment how to report instances where the entity either lacks having a written policy or their written policy is insufficient to meet the requirements of 2 CFR 200.302(b)(7), 2 CFR 200.430, 2 CFR 200.431, 2 CFR 200.464(a)(2), and 2 CFR 200.475.*
  + *While auditors would normally use a written policy as the basis for the compliance control, there could be other key controls in place to ensure program compliance.*
  + *The lack of a policy would be noncompliance, which could rise to the level of material noncompliance and even a control deficiency (SD / MW) if there were underlying internal control deficiencies.* 
    - *If there are key controls in place operating effectively, AOS auditors would report the lack of the required UG policy as a management letter citation. However, in subsequent audits, evaluate if the noncompliance should be elevated if not adopted. Written policies aid in consistency and adherence to requirements strengthening internal control processes.*

**Control Documentation and Testing**

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| *Auditors should clearly document what control procedures address the compliance requirement. Reference or link to documentation or where testing was performed.*  **Basis for the control** *(Ex. reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors)*:  **Control Procedure** *(Description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors)*:  **Person(s) responsible for performing the control procedure** *(Title)*:  **Description of evidence documenting the control was applied** *(i.e. sampling unit)*: |

#### Suggested Substantive Audit Procedures – Compliance – Direct and Indirect Costs

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| Consider the results of control testing above in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.  *(Source: 2023 OMB Compliance Supplement Part 3)*  ***AOS Auditors:*** *Steps marked with an asterisk (\*) are addressed via the attributes in the payroll and non-payroll Federal Testing Templates available on the Intranet.*  ***Direct Costs***  \*Test a sample of transactions for conformance with the following criteria contained in 2 CFR Part 200, as applicable:   1. If the auditor identifies unallowable direct costs, the auditor should be aware that “directly associated costs” might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would not have been incurred if the other cost had not been incurred. For example, fringe benefits are “directly associated” with payroll costs. When an unallowable cost is incurred, directly associated costs are also unallowable. 2. Costs were approved by the Federal awarding agency, if required (see the above table (Selected Items of Cost, Exhibit 1) or 2 CFR 200.407 for selected items of cost that require prior written approval). 3. Costs did not consist of improper payments, including (1) payments that should not have been made or that were made in incorrect amounts (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; (2) payments that do not account for credit for applicable discounts; (3) duplicate payments; (4) payments that were made to an ineligible party or for an ineligible good or service; and (5) payments for goods or services not received (except for such payments where authorized by law).   d. Costs were necessary and reasonable for the performance of the Federal award and allocable under the principles of 2 CFR Part 200, Subpart E.  e. Costs conformed to any limitations or exclusions set forth in 2 CFR Part 200, Subpart E, or in the Federal award as to types or amount of cost items.  *While several selected items of cost are included in Exhibit 1 , one item to note is* Compensation - Personnel Services*, (formally referred to as Time and Effort/Semi Annual Certification). See 2 CFR 200.430.*  *As a reminder, this is a policy-based requirement. If employees are partially paid from at least one federal grant, auditors should review the auditee’s policy for ensuring employee pay is allocated to federal programs based on actual time spent on each program and test accordingly.*  f. Costs were consistent with policies and procedures that apply uniformly to both federally financed and other activities of the State/local government/Indian tribe department or agency.  g. Costs were accorded consistent treatment. Costs were not assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances was allocated to the Federal award as an indirect cost.  h. Costs were not included as a cost of any other federally financed program in either the current or a prior period.  i. Costs were not used to meet the cost-sharing or matching requirements of another Federal program, except where authorized by Federal statute.  j. Costs were adequately documented.  ***Indirect Costs***  a. If the State/local department or agency is not required to submit an ICRP and related supporting documentation, the auditor should consider the risk of the reduced level of oversight in designing the nature, timing, and extent of compliance testing.  b. *General Audit Procedures* – The following procedures apply to charges to cost pools that are allocated wholly or partially to Federal awards or used in formulating indirect cost rates used for recovering indirect costs under Federal awards.  (1) Test a sample of transactions for conformance with:  (a) The criteria contained in the “Basic Considerations” section of 2 CFR 200.402 - 200.411.  (b) The principles to establish allowability or unallowability of certain items of cost (2 CFR 200.420 - 200.476).  *While several selected items of cost are included in Exhibit 1 , one item to note is* Compensation - Personnel Services*, (formally referred to as Time and Effort/Semi Annual Certification). See 2 CFR 200.430.*  *As a reminder, this is a policy-based requirement. If employees are partially paid from at least one federal grant, auditors should review the auditee’s policy for ensuring employee pay is allocated to federal programs based on actual time spent on each program and test accordingly.*  (2) If the auditor identifies unallowable costs, the auditor should be aware that directly associated costs might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would have not been incurred if the other cost had not been incurred. When an unallowable cost is incurred, directly associated costs are also unallowable. For example, occupancy costs related to unallowable general costs of government are also unallowable.  c. *Special Audit Procedures for State, Local Government, and Indian Tribe ICRPs (see also the AOS discussion on* [*testing the ICRP*](Testing_the_ICRP_discussion.pdf)*)*  (1) Verify that the ICRP includes the required documentation in accordance with 2 CFR Part 200, Appendix VII, paragraph D.  (2) *Testing of the ICRP* – There may be a timing consideration when the audit is completed before the ICRP is completed. In this instance, the auditor should consider performing interim testing of the costs charged to the cost pools and the allocation bases (e.g., determine from management the cost pools that management expects to include in the ICRP and test the costs for compliance with 2 CFR Part 200). Should there be audit exceptions, corrective action may be taken earlier to minimize questioned costs. In the next year’s audit, the auditor should complete testing and verify management’s representations against the completed ICRP.  The following procedures are some acceptable options the auditor may use to obtain assurance that the costs collected in the cost pools and the allocation methods used are in compliance with 2 CFR Part 200, Subpart E:  (a) *Indirect Cost Pool* – Test the indirect cost pool to ascertain if it includes only allowable costs in accordance with 2 CFR Part 200.  (i) Test to ensure that unallowable costs are identified and eliminated from the indirect cost pool (e.g., capital expenditures, general costs of government).  (ii) Identify significant changes in expense categories between the prior ICRP and the current ICRP. Test a sample of transactions to verify the allowability of the costs.  (iii) Trace the central service costs that are included in the indirect cost pool to the approved State/local government or central service CAP or to plans on file when submission is not required.  (b) *Direct Cost Base* – Test the methods of allocating the costs to ascertain if they are in accordance with the applicable provisions of 2 CFR Part 200 and produce an equitable distribution of costs.  (i) Determine that the proposed base(s) includes all activities that benefit from the indirect costs being allocated.  (ii) If the direct cost base is not limited to direct salaries and wages, determine that distorting items are excluded from the base. Examples of distorting items include capital expenditures, flow-through funds (such as benefit payments), and subaward costs in excess of $25,000 per subaward.  (iii) Determine the appropriateness of the allocation base (e.g., salaries and wages, modified total direct costs).  (c) *Other Procedures*  (i) Examine the records for employee compensation to ascertain if they are accurate, and the costs are allowable and properly allocated to the various functional and programmatic activities to which salary and wage costs are charged. (Refer to 2 CFR 200.430 for additional information on support of salaries and wages.)  (ii) For an ICRP using the multiple allocation base method, test statistical data (e.g., square footage, audit hours, salaries and wages) to ascertain if the proposed allocation or rate bases are reasonable, updated as necessary, and do not contain any material omissions.  (3) *Testing of Charges Based Upon the ICRA* – Perform the following procedures to test the application of charges to Federal awards based upon an ICRA:  (a) Obtain and read the current ICRA and determine the terms in effect.  (b) Select a sample of claims for reimbursement and verify that the rates used are in accordance with the rate agreement, that rates were applied to the appropriate bases, and that the amounts claimed were the product of applying the rate to the applicable base. Verify that the costs included in the base(s) are consistent with the costs that were included in the base year (e.g., if the allocation base is total direct costs, verify that current-year direct costs do not include costs items that were treated as indirect costs in the base year).  (4) *Other Procedures* – No Negotiated ICRA  (a) If an indirect cost rate has not been negotiated by a cognizant agency for indirect costs, the auditor should determine whether documentation exists to support the costs. When the auditee has documentation, the suggested general audit procedures under paragraph 3.b above should be performed to determine the appropriateness of the indirect cost charges to awards.  (b) If an indirect cost rate has not been negotiated by a cognizant agency for indirect costs, and documentation to support the indirect costs does not exist, the auditor should question the costs based on a lack of supporting documentation. |

### Audit Implications Summary

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| *Consider the adequacy of the system and controls, and the effect on sample size, significant deficiencies/material weaknesses, material non-compliance and management letter comments.*  *Auditors should review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*  ***This box should include results of applicable additional testing sections as determined at the beginning of Section B.***   1. **Results of Test of Controls:** *(including material weaknesses, significant deficiencies and management letter items)* 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## F. EQUIPMENT AND REAL PROPERTY MANAGEMENT

*Additional guidance regarding applicability determinations is included in the Suggested Audit Procedures.*

### OMB Compliance Requirements

***Equipment Management – Grants and Cooperative Agreements***

Equipment means tangible personal property, including information technology systems, having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000 (2 CFR 200.1\_Equipment). Title to equipment acquired by a non-Federal entity under grants and cooperative agreements vests in the non-Federal entity subject to certain obligations and conditions (2 CFR 200.313(a)).

*Non-Federal Entities Other than States*

Non-Federal entities other than States must follow 2 CFR 200.313(c) through (e) which require that:

1. Equipment, including replacement equipment, be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award or, when appropriate, under other Federal awards; however, the non-Federal entity must not encumber the equipment without prior approval of the Federal awarding agency (2 CFR 200.313(c) and (e)).
2. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal award identification number), who holds title, the acquisition date, cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sales price of the property (2 CFR 200.313(d)(1)).
3. A physical inventory of the property must be taken and the results reconciled with the property records at least once every 2 years (2 CFR 200.313(d)(2)).
4. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated (2 CFR 200.313(d)(3)).
5. Adequate maintenance procedures must be developed to keep the property in good condition (2 CFR 200.313(d)(4)).
6. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return (2 CFR 200.313(d)(5)).

7. When original or replacement equipment acquired under a Federal award is no longer needed for a Federal program (whether the original project or program or other activities currently or previously supported by the Federal government), the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the award. Items of equipment with a current per-unit fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency. If the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of $5,000 may be retained or sold. The Federal awarding agency is entitled to the Federal interest in the equipment, which is the amount calculated by multiplying the current market value or sale proceeds by the Federal agency’s participation in total project costs (2 CFR 200.313(e).

OMB Note: Intangible property that is acquired under a Federal award, rather than developed or produced under the award, is subject the requirements of 2 CFR 200.313(e) regarding disposition (2 CFR 200.315(a)).

***Real Property Management -- Grants and Cooperative Agreements***

Title to real property acquired or improved by non-Federal entities under grants and cooperative agreements vests in the non-Federal entity subject to the obligations and conditions specified in 2 CFR 200.311 (2 CFR 200.311(a)). Real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber title to or other interests in the real property (2 CFR 200.311(b)).

When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or the pass-through entity, as applicable. When real property is sold, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return. If sold, non-Federal entities must compensate the Federal awarding agency for the portion of the net sales proceeds that represents the Federal agency’s interest in the real property, which is the amount calculated by multiplying the current market value or sale proceeds by the Federal agency’s participation in total project costs. If the property is retained, the non-Federal entity must compensate the Federal awarding agency for the Federal portion of the current fair market value of the property. Disposition instructions may also provide for transfer of title to the Federal awarding agency or a designated third party, in which case the non-Federal entity is entitled to the non-Federal interest in the property, which is calculated by multiplying the current market value or sale proceeds by the non-Federal entity’s share in total project costs (2 CFR 200.311(c)(3)).

***Equipment and Real Property Management – Cost-Reimbursement Contracts Under the Federal Acquisition Regulation (FAR)***

Equipment and real property management requirements for cost-reimbursement contracts are specified in the FAR clause at [48 CFR 52.245-1](48_CFR_52.245-1.pdf). Federal government property as defined in the FAR includes both equipment and real property. Title to Federal government property acquired by a non-Federal entity normally vests in the Federal government, unless otherwise noted in the contract terms and conditions. The FAR requires:

1. A system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Federal government property and a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Federal government property.
2. Federal government property must be used for performing the contract for which it was acquired unless otherwise provided for in the contract or approved by the Federal awarding agency.
3. Property records must be maintained and include the name, part number and description, and other elements as necessary and required in accordance with the terms and conditions of the contract, quantity received, unit acquisition cost, unique-item identifier, accountable contract number, location, disposition, and posting reference and date of transaction.
4. A physical inventory must be periodically performed, recorded, and disclosed. Except as provided for in the contract, the non-Federal entity must not dispose of inventory until authorized by the Federal awarding agency. The non-Federal entity may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value.

**Source of Governing Requirements**

The requirements for equipment and real property are contained in 2 CFR 200.313 (equipment), 2 CFR 200.311 (real property), [48 CFR 52.245-1](48_CFR_52.245-1.pdf) (equipment and real property), program legislation, Federal awarding agency regulations, and the terms and conditions of the Federal award.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

For equipment, States will use State procedures in accordance with 2 CFR 200.313. Subrecipients shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award in accordance with 2 CFR 1201.313.

The state and LPA subrecipients shall charge at a minimum, fair market value for the sale, use, lease, or lease renewal of real property acquired with federal highway funds. The state or LPA shall use such income for projects eligible under 23 USC. Exceptions may be granted to allow use for social, environmental, or economic purposes (23 USC 156). Tribal governments are not subject to 23 USC 156 and fall under tribal self-governance provisions and 2 CFR Part 200.

A state may use other public land acquisition organizations or private consultants to carry out the state’s authorities under 23 CFR section 710.201 in accordance with a written agreement (23 CFR section 710.201(g)).

**Replacement of Publicly Owned Real Property**

Federal funds may be used to reimburse the reasonable costs actually incurred for the functional replacement of publicly owned and publicly used real property provided that FHWA concurs that it is in the public interest. The cost of increases in capacity and other betterments are not eligible except (1) if necessary to replace utilities; (2) to meet legal, regulatory, or similar requirements; or (3) to meet reasonable prevailing standards for the type of facility being replaced (23 CFR section 710.509).

Federal funds may be used to reimburse the reasonable costs actually incurred for the functional replacement of publicly owned and publicly used real property provided that FHWA concurs that it is in the public interest. The cost of increases in capacity and other betterments are not eligible except (1) if necessary, to replace utilities; (2) to meet legal, regulatory, or similar requirements; or (3) to meet reasonable prevailing standards for the type of facility being replaced (23 CFR section 710.509).

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

### Additional Program Specific Information

**LPA Agreements**

**MAINTENANCE**

In accordance with ODOT’s LPA Federal Local-let Project Agreement, Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, upon completion of a Federal-aid construction project, the LPA shall maintain the improved facility to design standards and provide adequate maintenance activities, unless otherwise agreed to by ODOT. The Project must remain under the ownership and authority of the LPA for 20 years, unless otherwise agreed to by ODOT. If the Project is not being adequately maintained, ODOT shall notify the LPA of any deficiencies. If the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally funded programs.

The FHWA expects ODOT to effectively exercise its maintenance oversight responsibilities. [ODOT’s LPA Maintenance Monitoring and Oversight Program](https://www.dot.state.oh.us/Divisions/ConstructionMgt/Admin/General%20Files/LPA%20Maintenance%20Monitoring%20and%20Oversight%20Program.pdf) procedure document provides the framework for ODOT to effectively and efficiently manage its Federal aid program maintenance oversight to ensure federal compliance.

*(Source:* [*ODOT Local-Let Manual of Procedures, Construction Contract Administration Chapter*](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-programs/local-let-manual-of-procedures/8-construction-contracts-administration/8-construction-contract-administration)*)*

**Add program specific requirements from:**

* **The individual grant application, agreement, and policies,**
* **The pass-through agency, and**
* **Federal agency guidance not included in the compliance supplement (such as federal agency grant manuals, references to CFR, etc.)**

**Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

2. Determine whether the non-federal entity maintains proper records for equipment and adequately safeguards and maintains equipment.

3. Determine whether disposition or encumbrance of any equipment or real property acquired or improved under federal awards is in accordance with federal requirements and that the federal awarding agency was properly compensated for its portion of any property sold or converted to non-federal use.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Control Documentation and Testing**

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| *Auditors should clearly document what control procedures address the compliance requirement. Reference or link to documentation or where testing was performed.*  **Basis for the control** *(Ex. reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors)*:  **Control Procedure** *(Description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors)*:  **Person(s) responsible for performing the control procedure** *(Title)*:  **Description of evidence documenting the control was applied** *(i.e. sampling unit)*: |

### Suggested Substantive Audit Procedures – Compliance

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| Consider the results of control testing above in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.  *(Source: 2023 OMB Compliance Supplement Part 3)*  ***AOS Auditors:*** *Steps marked with an asterisk (\*) are addressed via the attributes in the Equipment Federal Testing Template available on the Intranet.*  *Step 1 is omitted as it is only applicable to States.*  2. Inventory Management of Equipment Acquired Under Federal Awards  *Question 2a is asking about purchases made during the year with federal funds – are the purchases properly recorded and do the records include the required information? Questions 2b and 2c are asking about existing inventory; even if the entity had no purchases during the current year, it’s common to have existing inventory purchased in a prior year from federal funds.*  **\***a. Identify equipment acquired and trace selected purchases to the property records. Verify that the property records contain the required information.  b. Verify that the required physical inventory of equipment was performed. Test whether any differences between the physical inventory and equipment records were resolved.  **\***c. Select a sample from all equipment acquired under Federal awards from the property records and physically inspect the equipment and determine whether the equipment is appropriately safeguarded and maintained.  3. Disposition of Equipment Acquired Under Federal Awards  **\***a. Identify equipment dispositions for the audit period and perform procedures to verify that the dispositions of equipment acquired under Federal awards were properly reflected in the property records.  b. For dispositions of equipment acquired under grants and cooperative agreements with a current per-unit fair market value of $5,000 or more, verify whether the Federal awarding agency was reimbursed for the Federal portion of the current market value or sales proceeds.  c. For dispositions of equipment acquired under cost-reimbursement contracts, verify that the non-Federal entity followed Federal awarding agency disposition instructions.  4. Disposition of Real Property Acquired Under Federal Awards  a. Identify real property dispositions for the audit period and determine whether such real property was acquired or improved under Federal awards.  b. For dispositions of real property acquired or improved under Federal awards, perform procedures to verify that the non-Federal entity followed the instructions of the Federal awarding agency or pass-through entity, which normally require reimbursement to the Federal awarding agency for the Federal portion of net sales proceeds or fair market value at the time of disposition, as applicable. |

### Audit Implications Summary

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| *Consider the adequacy of the system and controls, and the effect on sample size, significant deficiencies/material weaknesses, material non-compliance and management letter comments.*  *Auditors should review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*   1. **Results of Test of Controls:** *(including material weaknesses, significant deficiencies and management letter items)* 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## G. MATCHING, LEVEL OF EFFORT, EARMARKING

### OMB Compliance Requirements

The specific requirements for matching, level of effort, and earmarking are unique to each Federal program and are found in the statutes, regulations, and the terms and conditions of awards pertaining to the program. For programs listed in this Supplement, these specific requirements are in Part 4, “Agency Program Requirements,” or Part 5, “Clusters of Programs,” as applicable.

However, for matching, 2 CFR 200.306 provides detailed criteria for acceptable costs and contributions. The following is a list of the basic criteria for acceptable matching:

- Are verifiable from the non-Federal entity’s records;

- Are not included as contributions for any other Federal award;

- Are necessary and reasonable for accomplishment of project or program objectives;

- Are allowed under 2 CFR Part 200, Subpart E (Cost Principles);

- Are not paid by the Federal Government under another award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

- Are provided for in the approved budget when required by the Federal awarding agency; and

- Conform to other provisions of this part, as applicable.

“Matching,” “level of effort,” and “earmarking” are defined as follows:

1. *Matching* or cost sharing includes requirements to provide contributions (usually non-Federal) of a specified amount or percentage to match Federal awards. Matching may be in the form of allowable costs incurred or in-kind contributions (including third-party in-kind contributions).

2. *Level of effort* includes requirements for (a) a specified level of service to be provided from period to period, (b) a specified level of expenditures from non-Federal or Federal sources for specified activities to be maintained from period to period, and (c) Federal funds to supplement and not supplant non-Federal funding of services.

3. *Earmarking* includes requirements that specify the minimum and/or maximum amount or percentage of the program’s funding that must/may be used for specified activities, including funds provided to subrecipients. Earmarking may also be specified in relation to the types of participants covered.

**Source of Governing Requirements**

The requirements for matching are contained in 2 CFR 200.306, program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The requirements for level of effort and earmarking are contained in program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

**1. Matching**

a. A recipient’s matching share for a project may be credited by FHWA-approved toll revenues used to build or improve highways, bridges, and tunnels (23 USC 120(i)).

b. Donations of funds, materials, and services by a person or local government may be credited towards a recipient’s matching share. Donated materials and services must meet the eligibility requirements of the project (23 USC 323(c)) and 2 CFR 200.306.

The value of land provided by recipients or subrecipients for highway purposes is eligible for a credit towards the non-Federal share of project costs. The value of the donated land shall not include any increase or decrease in value of donated land caused by the project. The value of donated land shall be based on the fair market value of the land, established as of the earlier of (1) the date on which the donation becomes effective, or (2) the date on which equitable title to the land vests in the State. Real property acquired with State funds and required for federally-assisted projects may be credited toward the non-Federal share of project costs (23 USC 323(b); 23 CFR section 710.507).

c. For Transportation Enhancement (TE) projects, funds from Federal agencies (except U.S. DOT) may be credited toward the non-Federal share of the cost of a project. The value of other non-cash contributions may be credited toward the non-Federal share. The non-Federal share may be calculated on a project, multiple-project, or program-wide basis. The total cost of an individual project may be funded with up to 100 percent Federal funds; however, for a fiscal year, the ratio of Federal funds to non-Federal funds for all TE funded projects must comply with the maximum Federal share provisions in 23 USC 120(b). FHWA guidance on these provisions is available at <http://www.fhwa.dot.gov/environment/transportation_enhancements/guidance/>.

d. For projects funded under 23 USC or 49 USC Chapter 53, any Federal funds (except for funds available under 23 USC and 49 USC) may be used to pay the non-Federal share of any transportation project that is within, adjacent to, or provides access to Federal land (23 USC 120(j)).

e. FLTTP funds may be used to pay the non-Federal share of projects which provide access to or within Federal or Indian lands which are funded under 23 USC or 49 USC Chapter 53 (23 USC 120(k)).

f. Any cost in excess of 20 percent of the cost of the replacement or rehabilitation of a bridge not on a Federal-aid highway that is wholly funded with State and local funds may be used to meet the matching share requirement of projects funded under 23 USC 133 (23 USC 133(f)(3)).

**2. Level of Effort** – Not Applicable

**3. Earmarking** – Not Applicable

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

### Additional Program Specific Information

**Add program specific requirements from:**

* **The individual grant application, agreement, and policies,**
* **The pass-through agency, and**
* **Federal agency guidance not included in the compliance supplement (such as federal agency grant manuals, references to CFR, etc.)**

**Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

2. *Matching* – Determine whether the minimum amount or percentage of contributions or matching funds was provided.

3. *Level of Effort* – Determine whether specified service or expenditure levels were maintained.

4. *Earmarking* – Determine whether minimum or maximum limits for specified purposes or types of participants were met.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Control Documentation and Testing**

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| *Auditors should clearly document what control procedures address the compliance requirement. Reference or link to documentation or where testing was performed.*  **Basis for the control** *(Ex. reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors)*:  **Control Procedure** *(Description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors)*:  **Person(s) responsible for performing the control procedure** *(Title)*:  **Description of evidence documenting the control was applied** *(i.e. sampling unit)*: |

### Suggested Substantive Audit Procedures – Compliance

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| Consider the results of control testing above in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.  *(Source: 2023 OMB Compliance Supplement Part 3)*  **1.** **Matching**  a. Perform tests to verify that the required matching contributions were met.  b. Ascertain the sources of matching contributions and perform tests to verify that they were from an allowable source.  c. Test records to corroborate that the values placed on in-kind contributions (including third party in-kind contributions) are in accordance with 2 CFR 200.306, 200.434, and 200.414, and the terms and conditions of the award.  d. Test transactions used to match for compliance with the allowable costs/cost principles requirements. This test may be performed in conjunction with the testing of the requirements related to allowable costs/cost principles.  **2. Level of Effort – Not Applicable**  **3. Earmarking – Not Applicable** |

### Audit Implications Summary

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| *Consider the adequacy of the system and controls, and the effect on sample size, significant deficiencies/material weaknesses, material non-compliance and management letter comments.*  *Auditors should review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*   1. **Results of Test of Controls:** *(including material weaknesses, significant deficiencies and management letter items)* 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## I. PROCUREMENT AND SUSPENSION AND DEBARMENT

### OMB Compliance Requirements – Procurement

***Procurement—Grants and Cooperative Agreements***

*Non-Federal Entities Other than States*

Non-Federal entities other than States, including those operating Federal programs as subrecipients of States, must follow the procurement standards set out at 2 CFR 200.317 - 200.327. They must use their own documented procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal statutes and the procurement requirements identified in 2 CFR Part 200. A non-Federal entity must:

1. Meet the general procurement standards in 2 CFR 200.318, which include oversight of contractors’ performance, maintaining written standards of conduct for employees involved in contracting, awarding contracts only to responsible contractors, and maintaining records to document history of procurements.

2. Conduct all procurement transactions in a manner providing full and open competition, in accordance with 2 CFR 200.319.

3. Use the micro-purchase and small purchase methods only for procurements that meet the applicable criteria under 2 CFR 200.320(a)(1) and (2). Under the micro-purchase method, the aggregate dollar amount does not exceed $10,000 ($2,000 in the case of acquisition for construction subject to the Wage Rate Requirements (Davis-Bacon Act)). Small purchase procedures are used for purchases that exceed the micro-purchase amount but do not exceed the simplified acquisition threshold ($250,000). Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable (2 CFR 200.320(a)). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources (2 CFR 200.320(b)).

4. For acquisitions exceeding the simplified acquisition threshold, the non-Federal entity must use one of the following procurement methods: the sealed bid method if the acquisition meets the criteria in 2 CFR 200.320(b); the competitive proposals method under the conditions specified in 2 CFR 200.320(b)(2); or the noncompetitive proposals method (i.e., solicit a proposal from only one source) but only when one or more of four circumstances are met, in accordance with 2 CFR 200.320(c).

5. Perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications (2 CFR 200.324(a)). The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used (2 CFR 200.324(d)).

6. Ensure that every purchase order or other contract includes applicable provisions required by 2 CFR 200.326. These provisions are described in Appendix II to 2 CFR Part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.”

*All Non-Federal Entities (including both states and other non-federal entities)*

Effective May 14, 2022, the non-Federal entity must ensure that all applicable programs comply with section 70914 of the Build America, Buy America Act (BABA), including through incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project. Each covered Federal agency must ensure that “none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. The Act requires the following Buy America preference:

1. All iron and steel used in the project are produced in the United States;

2. All manufactured products used in the project are produced in the United States; and

3. All construction materials are manufactured in the United States.

Important Notes:

• A non-federal entity must comply with the BABA requirements to the extent that the non-federal entity has been informed of these requirements, such as through the award terms and conditions.

• Several Federal agencies, in consultation with OMB, issued “waivers” as an exception from or waiver of the Made in America laws. For a listing of waivers by agency see <https://www.madeinamerica.gov/waivers/financial-assistance>. For a listing of waivers by category see <https://www.madeinamerica.gov/waivers>. If additional information is needed, see the agency contact found in Appendix III.

***Procurement—Cost-Reimbursement Contracts under the Federal Acquisition Regulation***

When awarding subcontracts, non-Federal entities receiving cost-reimbursement contracts under the Federal Acquisition Regulation (FAR) must comply with the clauses at [48 CFR 52.244-2](48_CFR_52.244-2.pdf) (consent to subcontract), [52.244-5](48_CFR_52.244-5.pdf) (competition), [52.203-13](48_CFR_52.203-13.pdf) (code of business ethics), [52.203-16](48_CFR_52.203-16.pdf) (conflicts of interest), and [52.215.12](48_CFR_52.215-12.pdf) (cost or pricing data); and the terms and conditions of the contract. The FAR defines “subcontracts” as a contract, i.e., a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

**Source of Governing Requirements – Procurement**

The requirements that apply to procurement under grants and cooperative agreements are contained in 2 CFR 200.317 - 200.327, program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The requirements that apply to procurement under cost-reimbursement contracts under the FAR are contained in 48 CFR Parts [03](48_CFR_Part_3.pdf), [15](48_CFR_Part_15.pdf), [44](48_CFR_Part_44.pdf) and the clauses at [48 CFR 52.244-2](48_CFR_52.244-2.pdf), [52.244-5](48_CFR_52.244-5.pdf), [52.203-13](48_CFR_52.203-13.pdf), [52.203-16](48_CFR_52.203-16.pdf), and [52.215-12](48_CFR_52.215-12.pdf); agency FAR Supplements; and the terms and conditions of the contract.

*(Source: 2023 OMB Compliance Supplement Part 3)*

### OMB Compliance Requirements – Suspension and Debarment

Non-Federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred. “Covered transactions” include contracts for goods and services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed $25,000 or meet certain other criteria as specified in [2 CFR 180.220](2_CFR_Part_180.pdf). All non-procurement transactions entered into by a pass-through entity (i.e., subawards to subrecipients), irrespective of award amount, are considered covered transactions, unless they are exempt as provided in [2 CFR 180.215](2_CFR_Part_180.pdf).

When a non-Federal entity enters into a covered transaction with an entity at a lower tier, the non-Federal entity must verify that the entity, as defined in [2 CFR 180.995](2_CFR_Part_180.pdf) and agency adopting regulations, is not suspended or debarred or otherwise excluded from participating in the transaction. This verification may be accomplished by (1) checking the System for Award Management (SAM) Exclusions maintained by the General Services Administration (GSA) and available at [SAM.gov | Home](https://www.sam.gov/) (click on Search Record, then click on Advanced Search-Exclusions) (**Note:** The OMB guidance at 2 CFR part 180 and agency implementing regulations still refer to the SAM Exclusions as the Excluded Parties List System (EPLS)), (2) collecting a certification from the entity, or (3) adding a clause or condition to the covered transaction with that entity ([2 CFR 180.300](2_CFR_Part_180.pdf)).

Non-Federal entities receiving contracts from the Federal Government are required to comply with the contract clause at [48 CFR 52.209-6](48_CFR_52.209-6.pdf) before entering into a subcontract that will exceed $30,000, other than a subcontract for a commercially available off-the-shelf item.

**Source of Governing Requirements – Suspension and Debarment**

The requirements for nonprocurement suspension and debarment are contained in OMB guidance in [2 CFR Part 180](2_CFR_Part_180.pdf), which implements Executive Orders 12549 and 12689, “Debarment and Suspension;” Federal awarding agency regulations in Title 2 of the CFR adopting/implementing the OMB guidance in 2 CFR Part 180; program legislation; and the terms and conditions of the award.

Most of the Federal agencies have adopted or implemented 2 CFR Part 180, generally by relocating their associated agency rules in Title 2 of the CFR. [Appendix II](OMB_Appendix_II.pdf) to the Supplement includes the current CFR citations for all agencies adoption or implementation of the nonprocurement suspension and debarment guidance.

Government-wide requirements related to suspension and debarment and doing business with suspended or debarred subcontractors under cost reimbursement contracts under the FAR are contained in [48 CFR 9.405-2(b)](48_CFR_9.405-2.pdf) and the clause at [48 CFR 52.209-6](48_CFR_52.209-6.pdf).

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

**Administration of Contracts for Construction**

In general, recipients and subrecipients must award construction contracts on the basis of the lowest responsive bid submitted by a bidder meeting the contracting agency’s criteria for responsibility. Competitive bidding is required unless the contracting agency is able to demonstrate to FHWA that some other method is more cost effective or that an emergency exists (23 USC 112(b)(1); 23 CFR sections 635.104 and 635.114), Contracting agencies also may procure construction services through competitive proposals by using design-build contracts (23 USC 112(b)(3); 23 CFR Part 636) or construction manager/general contractor contracts (23 USC 112(b)(4)).

For construction contracts, bidding documents must be advertised for at least three weeks, unless a shorter period is justified in the project files. Recipients may not negotiate with the potential contractors during the time between bid opening and contract award (such negotiations would be noted in the contract files). Awards must be made to the lowest responsible bidder. If the award was made to a bidder other than the low bidder, then the project files must contain justification (23 CFR sections 635.112(b), 635.113, and 635.114).

**Administration of Contracts for Engineering and Design-Related Services**

In general, state DOTs and LPAs must use qualifications-based selection procedures (Brooks Act) when acting as contracting agencies to procure engineering and design-related services from consultants and sub-consultants for projects using federal highway funds (23 USC 112(b)(2); 23 CFR Part 172). Requirements applicable to engineering and design-related services contracts include:

1. Contracting agencies (state DOTs and LPAs) must have written policies and procedures for each method of procurement used to procure engineering and design services. State DOT policies and procedures, or recipient LPA policies and procedures, must be approved by FHWA. LPAs that are subrecipients may adopt written policies and procedures prescribed by the awarding State DOT or prepare and maintain their own written policies and procedures approved by the State DOT (23 CFR section 172.5(b)).
2. Contracting agencies (state DOTs and LPAs) are required to accept the indirect cost rates for consultants and sub-consultants that have been established by a cognizant agency in accordance with the Federal Acquisition Regulation (48 CFR Part 31) for one-year applicable accounting periods if such rates are not currently under dispute. Consultants and sub-consultants providing engineering and design-related services contracts must certify to contracting agencies that costs used to establish indirect cost rates are in compliance with the applicable cost principles contained in the Federal Acquisition Regulation (48 CFR Part 31) by submitting a “Certificate of Final Indirect Costs” (23 USC 112(b)(2)(C); 23 CFR section 172.11(c)(3)).
3. Contracts for a consultant to act in a management support role on behalf of a contracting agency or subrecipient for engineering or design related services must be approved by FHWA before the consultant is hired unless an alternative approval procedure has been approved by FHWA (23 CFR section 172.7(b)(5)).

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

***Written Procedure Requirements:***

*2 CFR 200.318(c)(1) requires non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.*

*2 CFR 200.318(c)(2) requires non-Federal entities maintain written standards of conduct covering organizational conflicts of interest when the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe.*

*2 CFR 200.320(b)(2) requires non-federal entities to have a written method for conducting technical evaluations of the competitive proposals received and for selecting contract recipients.*

*2 CFR 200.319(d) requires non-federal entities to have written procedures for procurement transactions to ensure all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.*

### Additional Program Specific Information

**LPA Agreements**

7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC Section 9.24, that the contractor has taken the appropriate remedial steps required under ORC Section 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State’s website at <https://ohioauditor.gov/findings.html>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.

*(Source:* [*Local-Let Project Agreement*](https://www.transportation.ohio.gov/programs/local-programs/local-let-manual-of-procedures/agreements/lpa-federal-local-let-project-agreement-cfda20.205)*)*

It is important to review applicable local government agreements to determine if the language is consistent with the guidance/reference above, as applicable.

*(Source: Michael Miller, ODOT Office of External Audits, on 09/27/2023)*

**Add program specific requirements from:**

* **The individual grant application, agreement, and policies,**
* **The pass-through agency, and**
* **Federal agency guidance not included in the compliance supplement (such as federal agency grant manuals, references to CFR, etc.)**

**Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

2. Determine whether procurements under federal awards were made in compliance with applicable federal regulations and other procurement requirements specific to an award or subaward.

3. For covered transactions determine whether the non-federal entity verified that entities are not suspended, debarred, or otherwise excluded.

*(Source: 2023 OMB Compliance Supplement Part 3)*

***Additional Control Test Objectives for Written Procedures:***

*When documenting and identifying the key control(s) in place to address the compliance requirement, consider if the client has written procedures to document the control process.*

* *UG requires a written policy for the requirements outlined in 2 CFR 200.318(c)(1), 2 CFR 200.318(c)(2), 2 CFR 200.320(b)(2), and 2 CFR 200.319(d).*
* *Document whether the non-Federal entity established written procedures consistent with the following requirements:*
  + *2 CFR 200.318(c)(1) for employee conflicts of interest.*
  + *2 CFR 200.318(c)(2) for organizational conflicts of interest.*
  + *2 CFR 200.320(b)(2) for selection and awarding of contracts for competitive proposals.*
  + *2 CFR 200.319(d) for minimum evaluation criteria for bids and proposals.*
* *It is auditor judgment how to report instances where the entity either lacks having a written policy or their written policy is insufficient to meet the requirements of 2 CFR 200.318(c)(1), 2 CFR 200.318(c)(2), 2 CFR 200.320(b)(2), and 2 CFR 200.319(d).*
  + *While auditors would normally use a written policy as the basis for the compliance control, there could be other key controls in place to ensure program compliance.*
  + *The lack of a policy would be noncompliance, which could rise to the level of material noncompliance and even a control deficiency (SD / MW) if there were underlying internal control deficiencies.* 
    - *If there are key controls in place operating effectively, AOS auditors would report the lack of the required UG policy as a management letter citation. However, in subsequent audits, evaluate if the noncompliance should be elevated if not adopted. Written policies aid in consistency and adherence to requirements strengthening internal control processes.*

**Control Documentation and Testing**

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| *Auditors should clearly document what control procedures address the compliance requirement. Reference or link to documentation or where testing was performed.*  **Basis for the control** *(Ex. reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors)*:  **Control Procedure** *(Description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors)*:  **Person(s) responsible for performing the control procedure** *(Title)*:  **Description of evidence documenting the control was applied** *(i.e. sampling unit)*: |

### Suggested Substantive Audit Procedures – Compliance

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| Consider the results of control testing above in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.  *(Source: 2023 OMB Compliance Supplement Part 3)*  ***The local government is required to be in compliance with applicable state and local procurement requirements regardless of whether the local government procures item(s) itself or relies upon an intergovernmental arrangement with co-op or another entity to procure on its behalf. Auditors need to test procurement files whether they're from the local government, the co-op, or another entity.***  ***AOS Auditors:*** *Steps marked with an asterisk (\*) are addressed via the attributes in the Procurement Federal Testing Template available on the Intranet.*  *Procedure 1 is omitted as it is only applicable to States.*  *(Procedures 2 – 5 apply to non-Federal entities other than States.)*  2. Obtain the entity’s procurement policies and verify that the policies comply with the compliance requirements highlighted above.  3. Verify that the entity has written standards of conduct that cover conflicts of interest and govern the performance of its employees engaged in the selection, award, and administration of contracts (2 CFR 200.318(c) and [48 CFR 52.203-13](48_CFR_52.203-13.pdf) and [52.203-16](48_CFR_52.203-16.pdf)).  4. Ascertain if the entity has a policy to use statutorily or administratively imposed in‑State or local geographical preferences in the evaluation of bids or proposals. If yes, verify that these limitations were not applied to federally funded procurements except where applicable Federal statutes expressly mandate or encourage geographic preference (2 CFR 200.319(c)).  5. Select a sample of procurements and perform the following procedures:  **\***a. Examine contract files and verify that they document the history of the procurement, including the rationale for the method of procurement, selection of contract type, basis for contractor selection, and the basis for the contract price (2 CFR 200.318(i) and [48 CFR Part 44](48_CFR_Part_44.pdf) and [52.244-2](48_CFR_52.244-2.pdf)).  **\***b. For grants and cooperative agreements, verify that the procurement method used was appropriate based on the dollar amount and conditions specified in 2 CFR 200.320. Current micro-purchase and simplified acquisition thresholds can be found in the FAR (48 CFR Subpart 2.1, “Definitions”)  \*c. Verify that procurements provide full and open competition (2 CFR 200.319 and [48 CFR 52.244-5](48_CFR_52.244-5.pdf)).  d. Examine documentation in support of the rationale to limit competition in those cases where competition was limited and ascertain if the limitation was justified (2 CFR 200.319 and 200.320(c) and [48 CFR 52.244-5](48_CFR_52.244-5.pdf)).  **\***e. Ascertain if cost or price analysis was performed in connection with all procurement actions exceeding the simplified acquisition threshold, including contract modifications, and that this analysis supported the procurement action (2 CFR 200.324 and [48 CFR 15.404-3](48_CFR_15.404-3.pdf)).  OMB Note: A cost or price analysis is required for each procurement action, including each contract modification, when the total amount of the contract and related modifications is greater than the simplified acquisition threshold.  f. Verify consent to subcontract was obtained when required by the terms and conditions of a cost reimbursement contract under the FAR ([48 CFR 52.244-2](48_CFR_52.244-2.pdf)).  OMB Note: If the non-Federal entity has an approved purchasing system, consent to subcontract may not be required unless specifically identified by contract terms or conditions. The auditor should verify that the approval of the purchasing system is effective for the audit period being reviewed.  *The Federal Acquisition Regulations (FAR) defines cost-reimbursement contracts in 48 CFR Subpart 16.3. Cost-reimbursement contracts are contracts which establish an estimate of total costs (or a ‘ceiling’) which a contractor may not exceed (except at its own risk) without the approval of a contracting officer. Cost-reimbursement contracts are only allowable when the circumstances described in 48 CFR 16.301-3 have been met.*  *(Procedures 6 and 8 apply to all non-Federal entities)*  6. Review the non-Federal entity’s procedures for verifying that an entity with which it plans to enter into a covered transaction is not debarred, suspended, or otherwise excluded (2 CFR 200.213 and 200.318(h); [2 CFR 180.300](2_CFR_Part_180.pdf); [48 CFR 52.209-6](48_CFR_52.209-6.pdf)).  **\***7. Select a sample of procurements and subawards and test whether the non-Federal entity followed its procedures before entering into a covered transaction.  *If an internal control deficiency or noncompliance is noted with Suspension and Debarment requirements, AoS auditors must consult with Legal for an evaluation. IPAs should review the Federal agency adoption of the Suspension and Debarment requirements as well as the specific terms and conditions in the grant agreement to ensure the comment is accurate.*  8. Select a sample of procurement agreements for infrastructure projects subject to BABAA and test whether the non-federal entity included the Buy America domestic preference provisions in each agreement, or obtained a BABAA waiver. |

### Audit Implications Summary

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| *Consider the adequacy of the system and controls, and the effect on sample size, significant deficiencies/material weaknesses, material non-compliance and management letter comments.*  *Auditors must review the Federal agency adoption of the Uniform Guidance (2 CFR Part 200) and nonprocurement suspension and debarment requirements (2 CFR Part 180) prior to issuing noncompliance citations to verify the Federal agency requirements. Auditors should also review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*   1. **Results of Test of Controls:** *(including material weaknesses, significant deficiencies and management letter items)* 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## M. SUBRECIPIENT MONITORING

OMB Note: Transfers of Federal awards to another component of the same auditee under 2 CFR Part 200, Subpart F, do not constitute a subrecipient or contractor relationship.

### OMB Compliance Requirements

A pass-through entity (PTE) must:

- *Identify the Award* *and Applicable Requirements* – Clearly identify to the subrecipient: (1) the award as a subaward at the time of subaward (or subsequent subaward modification) by providing the information described in 2 CFR 200.331(a)(1); (2) all requirements imposed by the PTE on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the award (2 CFR 200.331(a)(2)); and (3) any additional requirements that the PTE imposes on the subrecipient in order for the PTE to meet its own responsibility for the Federal award (e.g., financial, performance, and special reports) (2 CFR 200.331(a)(3)).

- *Evaluate Risk* – Evaluate each subrecipient’s risk of noncompliance for purposes of determining the appropriate subrecipient monitoring related to the subaward (2 CFR 200.331(b)). This evaluation of risk may include consideration of such factors as the following (see here for 2 CFR 200.332(b)-(f)):

1. The subrecipient’s prior experience with the same or similar subawards;
2. The results of previous audits including whether or not the subrecipient receives single audit in accordance with 2 CFR Part 200, Subpart F, and the extent to which the same or similar subaward has been audited as a major program;
3. Whether the subrecipient has new personnel or new or substantially changed systems; and
4. The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

- *Monitor* – Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, complies with the terms and conditions of the subaward, and achieves performance goals (2 CFR 200.332(d) through (f)). In addition to procedures identified as necessary based upon the evaluation of subrecipient risk or specifically required by the terms and conditions of the award, subaward monitoring must include the following:

1. Reviewing financial and programmatic (performance and special reports) required by the PTE.
2. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the PTE detected through audits, on-site reviews, and other means.
3. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the PTE as required by 2 CFR 200.521.

* *Ensure Accountability of For-Profit Subrecipients* – Some Federal awards may be passed through to for-profit entities. For-profit subrecipients are accountable to the PTE for the use of the Federal funds provided. Because 2 CFR Part 200 does not make Subpart F applicable to for-profit subrecipients, the PTE is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients for the subaward. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits (2 CFR 200.501(h)).

**Source of Governing Requirements**

The requirements for subrecipient monitoring for the subaward are contained in 31 USC 7502(f)(2) (Single Audit Act Amendments of 1996 (Pub. L. No. 104-156)), 2 CFR 200.331, 200.332 and 200.501(h); Federal awarding agency regulations; and the terms and conditions of the award.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

There are no program-specific requirements for Subrecipient Monitoring which apply at the local level.

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

### Additional Program Specific Information

**Add program specific requirements from:**

* **The individual grant application, agreement, and policies,**
* **The pass-through agency, and**
* **Federal agency guidance not included in the compliance supplement (such as federal agency grant manuals, references to CFR, etc.)**

**Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

2. Determine whether the PTE identified the subaward and applicable requirements at the time of the subaward (or subsequent subaward modification) in the terms and conditions of the subaward and other award documents sufficient for the PTE to comply with Federal statutes, regulations, and the terms and conditions of the Federal award.

3. Determine whether the PTE monitored subrecipient activities to provide reasonable assurance that the subrecipient administered the subaward in compliance with the terms and conditions of the subaward.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Control Documentation and Testing**

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| *Auditors should clearly document what control procedures address the compliance requirement. Reference or link to documentation or where testing was performed.*  **Basis for the control** *(Ex. reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors)*:  **Control Procedure** *(Description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors)*:  **Person(s) responsible for performing the control procedure** *(Title)*:  **Description of evidence documenting the control was applied** *(i.e. sampling unit)*: |

### Suggested Substantive Audit Procedures – Compliance

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| **OMB Note**: The auditor may consider coordinating the tests related to subrecipients performed as part of C., “Cash Management” (tests of cash reporting submitted by subrecipients); E., “Eligibility” (tests that subawards were made only to eligible subrecipients); I., “Procurement and Suspension and Debarment” (tests of ensuring that a subrecipient is not suspended or debarred), and L, “Reporting (tests of performance data reported to funding sources) with the testing of “Subrecipient Monitoring.” |
| Consider the results of control testing above in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.  *(Source: 2023 OMB Compliance Supplement Part 3)*  ***AOS Auditors:*** *Steps marked with an asterisk (\*) are addressed via the attributes in subrecipient monitoring Federal Testing Template available on the Intranet.*   1. Review the pass-through entity’s (PTE’s) subrecipient monitoring policies and procedures to gain an understanding of the PTE’s process to identify subawards, evaluate risk of noncompliance, and perform monitoring procedures based upon identified risks.   **\***2. Review subaward documents including the terms and conditions of the subaward to ascertain if, at the time of subaward (or subsequent subaward modification), the PTE made the subrecipient aware of the award information required by 2 CFR 200.332(a) sufficient for the PTE to comply with Federal statutes, regulations, and the terms and conditions of the award.  **\***3. Review the PTE’s documentation of monitoring the subaward and consider if the PTE’s monitoring provided reasonable assurance that the subrecipient used the subaward for authorized purposes in compliance with Federal statutes, regulations, and the terms and conditions of the subaward.  **\***4. Ascertain if the PTE verified that subrecipients expected to be audited as required by 2 CFR Part 200, Subpart F, met this requirement (2 CFR 200.332(f)). This verification may be performed as part of the required monitoring under 2 CFR 200.332(d)(2) to ensure that the subrecipient takes timely and appropriate action on deficiencies detected though audits. |

### Audit Implications Summary

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| *Consider the adequacy of the system and controls, and the effect on sample size, significant deficiencies/material weaknesses, material non-compliance and management letter comments.*  *Auditors should review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*   1. **Results of Test of Controls:** *(including material weaknesses, significant deficiencies, and management letter items)* 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## N. SPECIAL TESTS AND PROVISIONS – Wage Rate Requirements

### OMB Compliance Requirements

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the statutes, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the compliance requirements, audit objectives, and suggested audit procedures for Special Tests and Provisions are in Part 4, “Agency Program Requirements.” or Part 5. “Clusters of Programs.” For programs not included in this Supplement, the auditor must review the program’s contract and grant agreements and referenced statutes and regulations to identify the compliance requirements and develop the audit objectives and audit procedures for Special Tests and Provisions which could have a direct and material effect on a major program. The auditor should also inquire of the non-Federal entity to help identify and understand any Special Tests and Provisions.

Additionally, both for programs included and not included in this Supplement, the auditor must identify any additional compliance requirements which are not based in statute or regulation (e.g., were agreed to as part of audit resolution of prior audit findings) which could be material to a major program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements which may have a direct and material effect on compliance with the requirements of that major program shall be included in the audit.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

All laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of $2,000 financed by federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the Department of Labor (DOL) (40 USC 3141–3144, 3146, and 3147.

Nonfederal entities shall include in their construction contracts subject to the Wage Rate Requirements (which still may be referenced as the Davis-Bacon Act) a provision that the contractor or subcontractor comply with those requirements and the DOL regulations (29 CFR Part 5, Labor Standards Provisions Applicable to Contacts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the nonfederal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls) (29 CFR sections 5.5 and 5.6; the A-102 Common Rule (section 36(i)(5)); OMB Circular A-110 (2 CFR Part 215, Appendix A, Contract Provisions); 2 CFR Part 176, Subpart C; and 2 CFR section 200.326).

This reporting is often done using Optional Form WH-347, which includes the required statement of compliance (OMB No. 1235-0008). The DOL, Employment Standards Administration, maintains a Davis-Bacon and Related Acts web page (<https://www.dol.gov/agencies/whd/government-contracts/construction>). Optional Form WH-347 and instructions are available on this web page.

*(Source: 2023 OMB Compliance Supplement, Part 4, Transportation Wage Rate Requirements Cross Cutting Section)*

### Additional Program Specific Information

**Add program specific requirements from:**

* **The individual grant application, agreement, and policies,**
* **The pass-through agency, and**
* **Federal agency guidance not included in the compliance supplement (such as federal agency grant manuals, references to CFR, etc.)**

**Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

*(Source: 2023 OMB Compliance Supplement Part 3)*

1. Determine whether the nonfederal entity notified contractors and subcontractors of the requirements to comply with the Wage Rate Requirements and obtained copies of certified payrolls..

*(Source: 2023 OMB Compliance Supplement, Part 4, Transportation Wage Rate Requirements Cross Cutting Section)*

**Control Documentation and Testing**

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| *Auditors should clearly document what control procedures address the compliance requirement. Reference or link to documentation or where testing was performed.*  **Basis for the control** *(Ex. reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors)*:  **Control Procedure** *(Description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors)*:  **Person(s) responsible for performing the control procedure** *(Title)*:  **Description of evidence documenting the control was applied** *(i.e. sampling unit)*: |

### Suggested Substantive Audit Procedures – Compliance

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| Consider the results of control testing above in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.  *(Source: 2023 OMB Compliance Supplement Part 3)*  Select a sample of construction contracts and subcontracts greater than $2,000 that are covered by the Wage Rate Requirements and perform the following procedures:   * 1. Verify that the required prevailing wage rate clauses were included in the contract or subcontract.   2. For each week in which work was performed under the contract or subcontract, verify that the contractor or subcontractor submitted the required certified payrolls.   (Note: Auditors are not expected to determine whether prevailing wage rates were paid.)  *AOS auditors should consult with their regional legal consultant if they encounter a purchase order and are unsure if it can be viewed as a contract.* |

### Audit Implications Summary

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| *Consider the adequacy of the system and controls, and the effect on sample size, significant deficiencies/material weaknesses, material non-compliance and management letter comments.*  *Auditors should review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*   1. **Results of Test of Controls:** *(including material weaknesses, significant deficiencies and management letter items)* 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## N. SPECIAL TESTS AND PROVISIONS – Quality Assurance Program

### OMB Compliance Requirements

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the statutes, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the compliance requirements, audit objectives, and suggested audit procedures for Special Tests and Provisions are in Part 4, “Agency Program Requirements.” or Part 5. “Clusters of Programs.” For programs not included in this Supplement, the auditor must review the program’s contract and grant agreements and referenced statutes and regulations to identify the compliance requirements and develop the audit objectives and audit procedures for Special Tests and Provisions which could have a direct and material effect on a major program. The auditor should also inquire of the non-Federal entity to help identify and understand any Special Tests and Provisions.

Additionally, both for programs included and not included in this Supplement, the auditor must identify any additional compliance requirements which are not based in statute or regulation (e.g., were agreed to as part of audit resolution of prior audit findings) which could be material to a major program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements which may have a direct and material effect on compliance with the requirements of that major program shall be included in the audit.

*(Source: 2023 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

State DOT or LPA must have a quality assurance (QA) program, approved by FHWA, for construction projects on the NHS to ensure that materials and workmanship conform to approved plans and specifications. Verification sampling must be performed by qualified testing personnel employed by the State DOT, or by its designated agent, excluding the contractor (23 CFR sections 637.201, 637.205, 637.207, and 637.209).

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

### Additional Program Specific Information

**MATERIALS QUALITY CONTROL**

The LPA, through its CPE, must provide for and ensure that all materials and Job Mix Formulas (JMF’s) incorporated into the project are tested, sampled, inspected, and/or certified according to plan specifications and ODOT’s Materials Management Process. This is an important process that is critical to both the quality of the finished project and the ability of the LPA to receive payment. Only laboratories certified by AASHTO resource (formally AMRL) and ASTM’s Cement and Concrete Reference Laboratory (CCRL) for the materials to be tested are permitted. At the Pre-Construction Meeting, the LPA must provide to ODOT an Implementation Plan listing the individuals responsible for testing and inspection, their certifications, and those of an independent testing laboratory to be utilized. The LPA shall adhere to the requirements of Appendix J which outlines the processes for materials management. Appendix J will assist LPAs in setting up controls to ensure materials meet ODOT specifications during construction management. The Project Bill of Materials (PBOM) shall be created to track material and quantities for each construction bid item. The expectations for material submittals shall be discussed at the preconstruction meeting.

*(Source:* [*ODOT Local-Let Manual of Procedures, Construction Contract Administration Chapter*](https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/local-programs/local-let-manual-of-procedures/8-construction-contracts-administration/8-construction-contract-administration)*)*

**Add program specific requirements from:**

* **The individual grant application, agreement, and policies,**
* **The pass-through agency, and**
* **Federal agency guidance not included in the compliance supplement (such as federal agency grant manuals, references to CFR, etc.)**

**Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

**Audit Objectives**

1. Obtain an understanding of internal control, assess risk, and test internal control as required by 2 CFR section 200.514(c).

*(Source: 2023 OMB Compliance Supplement Part 3)*

1. Determine whether the recipient or subrecipient are following a QA program approved by FHWA.

*(Source: 2023 OMB Compliance Supplement, Part 4, Department of Transportation, Highway Planning and Construction Program)*

**Control Documentation and Testing**

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| *Auditors should clearly document what control procedures address the compliance requirement. Reference or link to documentation or where testing was performed.*  **Basis for the control** *(Ex. reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors)*:  **Control Procedure** *(Description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors)*:  **Person(s) responsible for performing the control procedure** *(Title)*:  **Description of evidence documenting the control was applied** *(i.e. sampling unit)*: |

### Suggested Substantive Audit Procedures – Compliance

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| Consider the results of control testing above in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.  *(Source: 2023 OMB Compliance Supplement Part 3)*   * 1. Obtain an understanding of the recipient’s QA program.   2. Verify that the QA program has been approved by FHWA.   3. Review documentation of test results on a sample basis to verify that proper tests are being taken in accordance with the QA program.   4. Verify that verification sampling activities are performed by qualified testing personnel employed by the agency, or by its designated agent, excluding the contractor. |

### Audit Implications Summary

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| *Consider the adequacy of the system and controls, and the effect on sample size, significant deficiencies/material weaknesses, material non-compliance and management letter comments.*  *Auditors should review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*   1. **Results of Test of Controls:** *(including material weaknesses, significant deficiencies and management letter items)* 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## Program Testing Conclusion

We have performed procedures sufficient to provide reasonable assurance for federal award program compliance requirements (to support our opinions). The procedures performed, relevant evidence obtained, and our conclusions are adequately documented. (If you are unable to conclude, prepare a memo documenting your reason and the implications for the engagement, including the audit reports.)

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| **Conclusion** | | |
| **The opinion on this major program should be:** | |  |
| **Unmodified:** |  | |
| **Qualified (describe):** |  | |
| **Adverse (describe):** |  | |
| **Disclaimer (describe):** |  | |

Per paragraph 13.39 of the **AICPA Single Audit Guide[Permalink to here](https://checkpoint.riag.com/app/view/docPermaLink?DocID=iAICPAIGS:767.2440&docTid=T0AICPAIGS:767.2440-1&feature=ttoc&lastCpReqId=97899&tlltype=AICPAIGS:767.2668)**, the **following are required to be reported** as audit findings in the federal awards section of the schedule of findings and questioned costs **(2 CFR 200.516):**

1. Significant deficiencies and material weaknesses in internal control over major programs.
2. Material noncompliance with the federal statues, regulations, or the terms and conditions of federal awards related to a major program.
3. Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. The auditor also must report (in the schedule of findings and questioned costs) known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program.
4. Known questioned costs that are greater than $25,000 for programs that are not audited as major.
5. Known or likely fraud affecting a federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs.
6. Significant instances of abuse relating to major programs.
7. The circumstances concerning why the opinion in the auditor's report on compliance for major programs is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs (for example, a scope limitation that is not otherwise reported as a finding).
8. Instances in which the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with 2 CFR 200.511(b) of the Uniform Guidance, materially misrepresents the status of any prior audit finding.

[Appendix I](2_CFR_Part_200.pdf) lists block grants and other programs excluded from the requirements of specified portions of 2 CFR Part 200.

*Auditors must review the Federal agency adoption of the Uniform Guidance (2 CFR Part 200) and nonprocurement suspension and debarment requirements (2 CFR Part 180) prior to issuing noncompliance citations to verify the Federal agency requirements. Auditors should also review this* [*link*](Agency_Adoption_of_the_UG_and_Example_Citations.pdf) *for a discussion on how to cite non-compliance exceptions based on agency adoption of the UG.*

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| **Cross-reference to internal control matters (significant deficiencies or material weaknesses), if any, documented in the FACCR:** |
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| **Cross-reference to questioned costs and matter of noncompliance, if any, documented in this FACCR:** |
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**Per paragraph 13.50 of the AICPA Single Audit Guide,** the schedule of findings and questioned costs must include all audit findings required to be reported under the Uniform Guidance. A separate written communication (such as a communication sometimes referred to as a management letter) may not be used to communicate such matters to the auditee in lieu of reporting them as audit findings in accordance with the Uniform Guidance. See the discussion beginning at paragraph 13.34 for information on Uniform Guidance requirements for the schedule of findings and questioned costs. If there are other matters that do not meet the Uniform Guidance requirements for reporting but, in the auditor's judgment, warrant the attention those charged with governance, they should be communicated in writing or verbally. If such a communication is provided in writing to the auditee, there is no requirement for that communication to be referenced in the Uniform Guidance compliance report. Per table 13-2 **a matter must meet the following in order to be communicated in the management letter:**

* Other deficiencies in internal control over compliance that are not significant deficiencies or material weaknesses required to be reported but, in the auditor's judgment, are of sufficient importance to be communicated to management.
* Noncompliance with federal statutes, regulations or terms and conditions of federal awards related to a major program that does not meet the criteria for reporting under the Uniform Guidance but, in the auditor's judgment, is of sufficient importance to communicate to management or those charged with governance.
* Other findings or issues arising from the compliance audit that are not otherwise required to be reported but are, in the auditor's professional judgment, significant and relevant to those charged with governance.

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| **Cross-reference to any Management Letter items and explain why not included in the Single Audit Compliance Report:** |
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