



# FY 2019 Annual Report to FHWA-Texas

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## Local Government Projects Program (Local Public Agencies)

November 29, 2019

Local Government Projects Section  
Transportation Programs Division

# Introduction

This report has been prepared to fulfill requirements in the “Stewardship and Oversight Agreement on Project Assumption and Program Oversight by and between Federal Highway Administration, Texas Division and the State of Texas Department of Transportation,” dated Dec. 8, 2015. Federal government laws, rules and regulations refer to local government entities as local public agencies (LPAs). TxDOT refers to LPAs as local governments (LGs) since the state of Texas laws related to LG entities are codified in the Texas Local Government Code. For the purpose of this report, the use of LGs is to be considered interchangeable with LPAs. TxDOT defines a LG project as a transportation project for which at least one phase of project development (environmental, design, right of way, utility relocation or construction) or the program is managed by a LG entity and is reimbursed with FHWA or TxDOT funds. Even though projects being reimbursed with FHWA or TxDOT funds are considered LG projects by TxDOT, only projects that include reimbursement with FHWA funds are included in this report.

- At the start of FY 2019 (Sept. 1, 2018), 599 active LG projects with total funding in the amount of \$4.48 billion were identified. The total amount of federal funds committed to these projects was \$2.57 billion (57.4 percent).
- The latest FY 2019 report (provided in July 2019 due to the deployment of TxDOTCONNECT) includes 590 active LG projects with total funding in the amount of \$4.59 billion. The total amount of federal funds committed to these projects is \$2.68 billion (58.4 percent).
- Entering FY 2019, 71 projects with federal funds were scheduled for letting by LGs during FY 2019 with estimated total funding of \$295 million.
- LGs actually let 50 projects with federal funds in FY 2019 and awarded 46 of those projects totalling \$168 million in construction cost (four of those projects received TxDOT concurrence in early FY 2020).
- TxDOT provided concurrence-in-award during FY 2019 on 53 LG-let projects totalling \$192 million in construction cost (eight of those projects were let in FY 2018 and received TxDOT concurrence in FY 2019).
- During FY 2019, LGs were reimbursed approximately \$123 million in FHWA funds on highway planning and construction projects.

In accordance with federal regulations, TxDOT is ultimately responsible for LG compliance with applicable federal laws, rules and regulations on LG projects. FHWA issues a Federal Project Authorization Agreement (FPAA) for each project to TxDOT. TxDOT has a funding agreement with a LG for each project. FHWA has no agreement with each LG. Therefore, FHWA holds TxDOT accountable for LG compliance with all applicable federal regulations.

# FY 2019 LG Activities

The following paragraphs of this document report TxDOT's LG Project Program activities during TxDOT's FY 2019 (September 2018-August 2019).

## ***Training of LG and TxDOT personnel administering LG projects***

During FY 2019, TxDOT provided 36 Local Government Project Procedures (LGPP) classes in 11 districts (Austin, Bryan, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Laredo, Pharr, San Antonio and Waco) with 693 students (136 TxDOT employees, 337 LG employees and 232 LG consultant employees). At the end of FY 2019, there were 374 qualified persons (TxDOT) and 1,394 (other agency and consultant) qualified persons. Since July 1, 2016, qualified persons are required to re-take the 12-hour LGPP training class and pass the exam at least once every three years to remain qualified. Anyone qualified prior to July 1, 2016, was given until July 1, 2019, to re-take the class to remain qualified for an additional three years.

During FY 2019, additional training for LG project personnel has been developed by the following TxDOT divisions and TxDOT partners:

*Civil Rights Division and FHWA* – Two full-day Title VI workshops for TxDOT and LG staff were conducted on Aug. 28 and 29, 2018, in Austin. The training provided staff with the tools and information needed to prevent discrimination and potential impacts across multidisciplinary areas and activities.

*Contract Services Division and LGP Section* – Two WebEx presentations were conducted on July 30 and Aug. 1, 2019 to TxDOT staff across the state which provided an overview of recent program changes including:

- changes to the Texas Administrative Code related to Advanced Funding Agreements;
- updated TxDOT manuals;
- updated TxDOT contracts and forms; and
- updated procedures in execution of Advanced Funding Agreements.

*Environmental Affairs Division* – Half-day training classes for National Environmental Policy Act (NEPA) document preparation for LG entity and consultant personnel. During FY 2019, ENV429 training was conducted 36 times in 11 districts on the afternoon following the LGPP training discussed above.

*Public Transportation Division (PTN) and LGP Section* – PTN and LGP staff conducted 10 half-day workshops around the state on the 2019 Transportation Alternatives (TA) and Safe Routes to School (SRTS) Program Call. Participants in the workshop included local government officials and TxDOT district staff involved in the TA/SRTS programs. The workshops provided an overview of the programs, federal and state requirements, and guidance and best practices in developing a project application.

## ***TxDOT's verification process that LGs have adequate project delivery systems and sufficient accounting controls to properly manage federal-aid funds***

Prior to submitting a draft funding agreement to TxDOT's Contract Services Division for legal review and approval, district personnel must complete a LG Risk Assessment and a Special Approval form, and submit a recommendation to the deputy executive director for approval. This Special Approval form includes obtaining a qualifications statement from the LG for the proposed project and the district's completion of an evaluation of the LG's capabilities to manage one or more elements of project delivery. It also includes a commitment from the TxDOT district to provide a specified minimum level of oversight for the LG-performed project elements. As part of this procedure:

- For entities that have previously submitted a single audit to TxDOT, the department's External Audit section furnishes a summary of relevant findings or observations to the district for use during its evaluation of the LG's qualifications.
- Entities that have not previously submitted a single audit to TxDOT are required to submit an audited financial statement to the district as part of their qualifications statement for district review during its evaluation of the LG's qualifications.

The review of the single audit or an audited financial statement for the LG and TxDOT's completion of the evaluation portion of the Special Approval form are TxDOT's procedure to determine if the LG has adequate project delivery systems and sufficient accounting controls to properly manage federal-aid funds. LG Risk Assessments are required to be updated either once per year or once every two years depending upon the rating score on the LG's most recent previous Risk Assessment. All existing projects are required to have a Project Update form completed within 90 days after an entity's Risk Assessment is created or updated. The Project Update form evaluates the LG's project performance to-date and commits the district to providing a certain minimum level of oversight for the future.

As of Aug. 31, 2019, TxDOT has completed Risk Assessments for 214 LGs and has Special Approval forms or Project Update forms for 565 individual projects for these entities.

## ***TxDOT's oversight structure, resources and program elements that provide effective oversight of LG projects***

Predominantly, TxDOT assigns responsibility to oversee LG projects to the district where the project is located. In some instances, a division is assigned this responsibility for overseeing the LG subrecipient. Based upon the quantity of LG projects and other demands on district/division resources, each district/division assigns personnel to oversee the LG project activities. In many districts, the environmental, right-of-way, design and letting activities are overseen by personnel within the Transportation Planning and Development Office and the construction phase of the LG project is monitored by Area Office or District Construction Office personnel. In a few districts, dedicated district resources have been established to oversee and monitor the LG project throughout the project development life cycle. In divisions, LG projects are predominantly managed by the same group throughout the duration of the project.

In 2012, TxDOT established a Local Government Projects (LGP) Office to dedicate additional resources to oversight of LG projects. In February 2016, LGP became a section within the Transportation Planning and Programming Division. In December 2018, LGP section moved into the Transportation Programs Division. The responsibilities of the LGP are to:

- develop policy and standardized LG project processes;
- provide training to TxDOT and LG personnel;
- provide guidance, advice and support to districts;
- monitor district performance of overseeing LGs; and
- serve as the primary point of contact with FHWA on LG projects.

LGP personnel co-teach the training classes, provide direct support to the districts/divisions managing LG projects, and make regular visits to district/area offices and project worksites to observe project activities, records and documentation. Throughout FY 2019, every district with an active LG project was visited at least once. Districts with a significant number of LG projects were visited by LGP personnel five or more times during the fiscal year. LGP personnel made more than 110 district visits throughout FY 2019.

In June 2015, TxDOT released its LG Online Toolkit that includes the following:

- Interactive website (<http://www.txdot.gov/government/processes-procedures/lgp-toolkit.html>)
- User-friendly, project development process-based format that leads the user to requirements and guidance for each phase within the project development process.



- Links to training resources and the documents below.



- Local Government Projects Policy Manual
  - General discussion of each phase of the project development process.
  - Itemized listing of applicable federal and state laws and regulations.
  - Links to federal and state laws and regulations.
- Local Government Project Management Guide
  - Discussion of required practices for each phase of the project development process.
  - Definition of LG responsibilities for each phase.
  - Definition of TxDOT responsibilities for each phase.
  - Links to internal and external websites (including FHWA Federal-aid Essentials).
  - Links to internal and external manuals.
- Local Government Best Practices Workbook
  - Project specific workbook to be completed by project personnel.
  - Links to internal and external forms and tools.
  - Each document has links to other documents and additional resources. Use of the Toolkit is integrated within and provides the curriculum for the LGPP training class.

Effective Aug. 1, 2016, the LG Risk Assessment process described above was implemented to ensure a uniform, consistent procedure is in place to properly evaluate LG capabilities prior to execution of funding agreements and to establish minimum levels of TxDOT oversight of subrecipient performance throughout the project development process. The Risk Assessment Guidance document and forms are available online (<http://www.txdot.gov/government/programs/local-government-projects.html>).

In June 2019 TxDOT submitted to FHWA proposed updates to the Local Government Projects Policy Manual. The proposed changes to the document are reflective of the rule changes (pending at the time and later adopted as final) to the Texas Administrative Code related to Advanced Funding Agreements. On July 8, 2019, FHWA approved the proposed changes to the manual. In late July LGP staff submitted the document for publication in TXDOT online manual library.

### ***Quality control performed by TxDOT in its day-to-day oversight of LG projects to assure they comply with the following requirements***

As discussed above, district/division personnel perform direct oversight of LG performance on active projects through site visits, meetings with LG personnel, review and approval of LG reimbursement requests, review of LG project records and documentation, and project acceptance/close-out. District/division personnel also reach out to receive technical expertise from TxDOT division personnel in the areas of roadway and bridge design, traffic operations and intelligent transportation system (ITS), environmental, transportation, construction, transportation planning, funding, safety, rail, aviation and other areas when the need arises. A summary of the quality control activities included within the LG Online Toolkit and documents that are implemented on projects by TxDOT personnel are as follows:

- **Applicable environmental requirements**

The district environmental coordinator is the primary point of contact on LG-performed environmental activities. The LG and TxDOT work collaboratively to develop a project scope that defines a mutual understanding of:

- applicable requirements;
- expectations for completed environmental work; and
- plan and schedule for addressing environmental requirements.

Environmental concerns need to be identified early in the project so that any mitigation may be addressed in the environmental document and permits, as well as accurately reflected in the design documents using the Environmental Permits, Issues and Commitments (EPIC) sheet. These may include: sole source aquifer coordination; wetland permits; storm water permits; traffic noise abatement; threatened or endangered species coordination; archaeological permits; and any mitigation or other environmental commitments.

Prior to obtaining the FPAA for construction from FHWA or TxDOT issuing the State Letter of Authority (SLOA) to the LG, Environmental Affairs Division personnel verify the appropriate environmental document has been approved, and district staff review and approve the construction plans and specifications

(including the EPIC sheet). Prior to approving significant change orders, the district checks the environmental document to ensure the changed work is part of the approved environmental document.

As part of its monitoring of the LG performance during construction site visits, TxDOT reviews LG documentation of maintenance of storm water pollution prevention plans and implementation of items identified on the EPIC sheet, including monitoring compliance during the project and for a defined period of time after construction completion (if required).

### ***Uniform Act for right-of-way acquisitions and relocations***

Projects may involve the use of local, state or federal funds for the purchase of right of way and may be subject to the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments thereto. Even projects entirely locally funded require TxDOT oversight if the project impacts the State Highway System. The completion of the Environmental Compliance phase and the subsequent issuances of the FPAA for right of way by FHWA and the second SLOA by TxDOT allow the LG to proceed with right-of-way acquisition or utility accommodations. During FY 2016, TxDOT transferred some right-of-way personnel from the Right of Way Division to the Metro districts. Urban and Rural districts have ROW Division personnel assigned to support their districts. These personnel are responsible to ensure the LG uses TxDOT's procurement process, policies and forms to acquire title to the property and complies with the requirements of the federal and state funding program that is the source of the funds. Prior to issuance of the SLOA for construction, district personnel review LG right-of-way acquisition and relocation documentation, receive right-of-way certification from the LG indicating if all right of way is clear or not clear, verify compliance with relocation assistance requirements, and the status of utility accommodations/relocations.

### ***Applicable federal consultant and contractor selection procedures***

For all projects with state or federal funds, and all projects on the State Highway System, the district performs the following:

- Review the LG's professional services provider selection process. The district contacts TxDOT's Professional Engineering Procurement Services (PEPS) Division or LGP for assistance, as needed. During this review, the TxDOT district submits the proposed scope of services to the Civil Rights Division in order for a Disadvantaged Business Enterprise goal to be assigned. The TxDOT district grants approval of the proposed procurement process if it complies with applicable federal and state rules and regulations.
- Review proposed agreements between the LG and the professional services provider. This may include providing the agreement to the Civil Rights Division for review for confirmation the required language from Title VI of the Civil Rights Act of 1964 is included. TxDOT grants approval of the proposed agreements if the approved procedures in the consultant selection process were followed and the required federal and state requirements are included in the agreement.



***Designed in accordance with applicable federal and state design criteria and standards***

TxDOT oversight during preliminary engineering and plans, specifications and estimates (PS&E) development includes verification that the design criteria selected by the LG follows federal and state guidelines when state or federal funds are used or if the project is on the State Highway System. For all projects where TxDOT will review and approve the final PS&E, the districts review and approve the plans to assure they either meet the required criteria or have an approved exception. During the design process, district/division personnel review the progress drawings prepared by the LG or its consultant to assure the following areas comply with applicable federal and state design criteria and standards: level of service; hydraulics; longitudinal barriers; pavement; road closure/detours; specifications/special provisions; traffic engineering; illumination/electrical; ITS; pavement markings; railroad crossings; signing and signals; design speed; temporary and permanent traffic control; bridges and structures; etc. These interim reviews of the LG-produced plans and specifications and final approval of the bid documents occur prior to TxDOT requesting issuance of a FPAA for construction from FHWA and prior to TxDOT issuance of a SLOA for the LG to advertise the project for bids.

***Received adequate inspection to ensure projects were completed in conformance with approved plans and specifications***

District personnel provide periodic site visits by Area Office, District Construction Office or dedicated LG project personnel during the construction phase. The frequency of visits can vary based upon the level of activity on the LG project site at various stages of construction. As part of the new LG Risk Assessment process, the district commits to a certain minimum level of oversight during the construction phase as indicated in the following chart.

TxDOT District Oversight Activity <sup>1</sup>	Minimum Frequency <sup>2</sup>		
	Level of Oversight		
	1	2	3
LG submit and TxDOT review project reports	Quarterly	Monthly	Monthly
TxDOT host project review/coordination meetings with LG	Quarterly	Monthly	Semi-monthly
TxDOT conduct worksite/project site visits	Annually <sup>3</sup>	Monthly	Weekly
TxDOT review LG project documentation/records	Annually <sup>3</sup>	Monthly	Monthly
LG submit and TxDOT review and approve reimbursement requests	Monthly	Monthly	Monthly

<sup>1</sup> Refer to TxDOT LG Project Management Guide for additional detail on oversight activities

<sup>2</sup> Greater frequency may be at District discretion

<sup>3</sup> Minimum of two times

District personnel document their site visits in their daily diary or in project records. Personnel from LGP provide support to districts in this activity by making periodic district visits including accompanying district personnel to project sites during the construction phase.

### ***Performed proper contract administration to comply with applicable federal and state rules, requirements and regulations***

District personnel review some LG contract administration documentation on a monthly basis along with review and approval of reimbursement requests. The specific items reviewed each month vary by district and by type of project. Additional documentation is reviewed at key stages of the project development process. The new LG Risk Assessment process also includes a commitment by the district engineer for personnel to perform a minimum level of oversight (including review of project documentation) as indicated in the table above. The culmination of these reviews is the audit of project records upon completion of the project prior to TxDOT payment of the final reimbursement request to the LG. Personnel from LGP also provide support to districts in this activity by spot-checking project documentation and accompanying district personnel on reviews of project records during the construction phase.

### ***Quality Assurance performed through development and implementation of a risk-based audit program for LG projects***

The Internal Audit Division of TxDOT conducts independent appraisals and reports on internal TxDOT operations and procedures that are guided by a philosophy of adding value to improve the operations of TxDOT. The division employs a systematic and disciplined approach to evaluate and improve the effectiveness of TxDOT's risk management, control and governance processes. Each fiscal year, a department-wide audit plan is prepared based upon perceived risk to the department. In FY 2015, Internal Audit conducted an audit of the local letting process within TxDOT, including TxDOT oversight of federally funded projects being let by LGs. This audit was published in August 2015 and addressed the following LG project process items:

- organizational tone;
- policies/procedure development and maintenance;
- supporting evidence/records availability;
- segregation of duties;
- safeguarding assets; and
- information processing.

All items received a "satisfactory" rating. In addition, the summary assessment for the LG-letting process was "satisfactory."

In FY 2016, the state of Texas hired an independent firm to perform an audit of multiple state agencies, including TxDOT, for FY 2015. The audit included many areas within the FHWA "highway planning and construction cluster." The audit issued a finding of "significant deficiency and non-compliance" in the area of "subrecipient monitoring" and provided four recommendations, which were listed in the FY 2016 version of this report. TxDOT provided documentation to the auditors that a corrective action plan has been implemented. With regard to the recommendation that TxDOT continue to enhance and standardize the subrecipient monitoring across all districts, TxDOT responded that the department strives for 100% compliance across all

project types and throughout all districts and divisions. Due to the great diversity of federal funding programs for which TxDOT oversees subrecipient delivery of projects, standardization of monitoring processes for all subrecipient projects can be challenging. However, compliance with regulations is fully expected.

During federal performance year 2017 (June 1, 2016, through May 31, 2017), FHWA's nationwide Compliance Assessment Program (CAP) conducted reviews of 63 federal-aid projects within the Texas Division. All projects reviewed were let by TxDOT and no projects were local government let during this CAP review. The final report was issued by FHWA-Texas in April 2018 (within TxDOT's FY 2018).

During federal performance year 2018 (June 1, 2017, through May 31, 2018), FHWA's nationwide CAP conducted reviews of 65 federal-aid projects within the Texas Division. A total of three LG projects were reviewed with two projects having non-compliance issues including lack of required ROW, Utility and Railroad Certification statements, lack of documentation on prevailing wage rate interviews, and lack of documentation on material testing. In response to these findings TxDOT prepared newsletters covering these three topics and distributed the newsletters electronically to all TxDOT district coordinators who are involved in overseeing LG projects throughout the state. The newsletters were also posted on the LGP Section's web page on TxDOT's intranet site.

During federal performance year 2019 (June 1, 2018, through May 31, 2019), FHWA's nationwide CAP conducted reviews of 66 federal-aid projects within the Texas Division. Three LG projects were reviewed with one project having non-compliance issues including lack of certification and/or verification of a search that shows the prime contractor was not excluded to be awarded a federal-aid contract due to suspension or debarment. The proposed action is that the LGP Section will modify the current language in the Local Government Project – Plan Development Review Checklist to clarify the LG must confirm, before they execute the construction contract, that the prime contractor is not excluded by suspension or debarment. The added language will state that LGs will conduct a search using sam.gov that the prime contractor was not excluded by suspension or debarment. Additionally, the LG will document that it conducted the verification search and keep the information in its project files. When the language is modified in the Local Government Project – Plan Development Review Checklist, the LGP Section will send an email to district Local Government coordinators who are involved in overseeing LG projects to notify them of this program guidance.