



FY 2022 Annual Report to FHWA-Texas

Local Government Projects Program (Local Public Agencies)

November 1, 2022

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.

- The Federal FY 2022 end of year report (data collected at the end of September 2022 from TxDOTCONNECT) includes 1001 active LG projects with total funding in the amount of \$7.12 billion. The total amount of federal funds committed to these projects is \$4.56 billion (64.01%).
- During Federal FY 2022 there were a total of 109 LG projects let (either by TxDOT or local governments) totalling \$825 million in construction costs. The breakdown of LG projects let in Federal FY 2022 includes:
 - 45 LG projects let by TxDOT totalling \$558 million in construction dollars
 - 63 projects let by local governments totalling \$267 million in construction dollars
- During Federal FY 2022, LGs were reimbursed approximately \$103.99 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. When federal funds are participating in a LG project, FHWA issues a Federal Project Authorization Agreement (FPAA) 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 2022 LG Activities

The following paragraphs of this document report TxDOT's LG Project Program activities during TxDOT's FY 2022 (September 2021-August 2022).

Training of LG and TxDOT personnel administering LG projects

Two specific classes have been developed for the LG program. Both classes provide guidance and information on developing and delivering LG projects. A LG that enters into agreement with TxDOT to manage a LG project must have an individual involved in the project management structure that has taken Local Government Project Procedures Qualification (LGP101). This individual can be a LG employee or a consultant hired by the LG. The second course that is available to TxDOT, LG or consultant staff is? Local Government Projects Construction Administration (LGP102). This class provides an overview of contract management and documentation needed during the construction phase of a project.

During FY 2022, TxDOT conducted 27 LGP101 classes using an online training platform. For the fiscal year there were 671 students who completed LGP101, including 60 TxDOT employees, 332 local government employees and 279 consultant employees.

At the end of FY 2022, there were 1,652 qualified individuals who have taken LGP101. This includes 237 TxDOT employees, 755 local government employees, 659 consultant employees and 1 FHWA employee. In order to remain qualified, individuals are required to take the 12-hour LGP101 class and pass the exam every three years.

For FY 2022 the content and format for LGP101 had minor revisions from the FY 2021 class content. The class is organized and taught to ensure class participation and discussion. The class consists of the following modules:

- Module 1 Program Overview – Module covers that program compliance with laws and regulations is necessary for LGs to receive project approval and maximum reimbursement. The module also introduces participants to TxDOT's structure and the program resources and tools that are available.
- Module 2 Project Initiation – Module discusses the steps involved in the project initiation phase, including the language and intent of the Advanced Funding Agreement
- Module 3 Professional Services Procurement – Module covers the federal and state requirements of procuring professional services for project development design and engineering.
- Module 4 Non-Construction Projects – Module covers the requirements and compliance necessary for non-construction projects.
- Module 5 Project Development for Design – Module covers the activities related to developing plans for a construction project including preliminary engineering, environmental compliance, right of way, utilities and development of the plans, specifications and estimates (PS&E) and bidding document.

- Module 6 Letting and Award – Module discusses the requirements and procedures for letting a project including advertisement, issuing and receiving proposals, bid analysis, TxDOT concurrence process and awarding contracts.
- Module 7 Construction for Local-Let Projects – Module covers program requirements and compliance during the construction phase of a project.
- Module 8 Project Close-out and Maintenance – Module reviews the actions necessary for closing out a project and initiating maintenance of the project.
- Module 9 Final Review and Test – Module answers any questions about the course content and program requirements before taking the exam.

During FY 2022, TxDOT conducted 11 LGP102 classes with 61 TxDOT employees, 92 LG employees and 49 consultant employees (total of 202 participants) completing the 6-hour training class. The learning objectives of this class includes:

- review of the LGP pre-letting phases;
- outline the elements and importance of construction administration with an emphasis on proper documentation during construction;
- cover the details of a LG project close-out process; and
- connect participants to LG tools and resources.

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 an Oversight Level Special Approval form, and submit a recommendation to the deputy executive director for approval. The Oversight Level 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 Oversight Level 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.

The LG Risk Assessment process described above was implemented several years ago to ensure a uniform, consistent procedure was 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 at <https://www.txdot.gov/business/resources/lgp.html>.

As of the end of August 2022, TxDOT completed Risk Assessments for 221 LGs and has Oversight Level Special Approval forms or Project Update forms for 638 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. 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 lifecycle. 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 for oversight of LG projects. In February 2016, LGP became a section within the Transportation Planning and Programming Division. In December 2018, the 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. During FY 2022 LGP staff conducted 190 virtual meetings (MS Teams) with district staff to provide program guidance and support.

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

- Interactive website (<https://www.txdot.gov/business/resources/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 LGP101 training classes.

Since the introduction of the LG Projects Toolkit the LGP staff have made minor updates to the documents. However, during FY 2021 all three of the Toolkit documents were reviewed and updated. A summary of the document updates includes:

- additional guidance added to program requirements in procuring professional services when federal funds participating;
- expanded guidance and information on non-construction projects;
- updated guidance on PS&E development by the LG;
- additional guidance and content on program requirements during the construction phase;
- expanded guidance on federal program provisions such as Buy America and the Disadvantaged Business Enterprise (DBE) program;
- added language and guidance on the prohibition of the use of certain telecommunication equipment on federal-aid projects;
- added new documents and removed unneeded documents from the Best Practices Workbook; and
- updated internal and external links.

For FY 2022 only minor updates were made to the Toolkit documents. These updates were to help clarify program guidance and did not change program requirements.

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 Projects 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. Right of way district and division staff are responsible to ensure the LG complies with 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:

- Reviews the LG's professional services provider selection process. The district contacts the LGP Section 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 DBE 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.

- Reviews 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 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 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 ¹	Minimum Frequency ²		
	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 ³	Monthly	Weekly
TxDOT review LG project documentation/records	Annually ³	Monthly	Monthly
LG submit and TxDOT review and approve reimbursement requests	Monthly	Monthly	Monthly

¹ Refer to TxDOT LG Project Management Guide for additional detail on oversight activities

² Greater frequency may be at District discretion

³ 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 conducting virtual meetings that include a review of district project records 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 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 (AUD) 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.

During FY 2021 AUD completed an audit that focused on LG pre-award (prior to Advanced Funding Agreement execution) activities. While conducting the audit, the scope was expanded to cover additional activities after

the AFA is executed. The audit included 4 Management Action Plans and outlined that a workgroup should be created to look at the noted issues and to develop best practices and recommendations to address the findings. A workgroup consisting of representatives from 10 districts and 3 divisions met regularly throughout 2021 and into 2022 to address the noted items in the audit.

The workgroup reviewed different district practices on how direct state oversight costs were being developed on LG projects. Based on this review, the workgroup developed recommended best practices for estimating direct state oversight costs on LG projects. Additionally, the workgroup made recommendations for tracking and monitoring direct state oversight and projects costs on LG projects. The LGP Section held a series of virtual meetings with district and division staff outlining the recommended best practices and enhancements to PeopleSoft and TxDOTCONNECT related to tracking and monitoring project costs.

The workgroup also developed guidance to further define phases for LG projects, including when the project phase can be changed in TxDOTCONNECT. This included further definitions and phase gates for the major categories of LG projects including local-let projects, state-let projects and non-construction projects. The workgroup made recommendations for enhancements to TxDOTCONNECT that allow projects to be tracked by the defined project phases. The recommended enhancements to TxDOTCONNECT were developed and launched in July 2021. The LGP Section held a series of virtual meetings (both in FY 2021 and FY 2022) with district and division staff on the enhancements and changes to TxDOTCONNECT and the roles and responsibilities of the project managers in updating LG project information in TxDOTCONNECT.

In FY 2021, AUD conducted a review of 3 of the 4 Management Action Plans and reported that the procedures and guidance that were developed and implemented addressed the findings in the audit for these 3 Management Action Plans.

In FY 2022, AUD completed a review of the final Management Action Plan and reported that the procedures and guidance that were developed and implemented addressed the findings in the audit for this final Management Action Plan. The audit was finalized on March 31, 2022.

During the most recent (FY 2021 – Oct. 1, 2020 to Sept. 30, 2021) FHWA Compliance Assessment Program (CAP) review that was released in December 2021, FHWA conducted reviews of numerous federal-aid projects within the Texas Division. The CAP review was conducted using a 15-question review guide. The review guide included the following 15 key areas of federal program requirements:

- Does the executed contract include the appropriate minimum wage rates determined by the Secretary of Labor to be prevailing where the construction is located (state and county) for the date of bid opening?
- Was the contract awarded for the bid as submitted (no modification to price or contract terms between bid opening and award based on negotiation with the contractor)?

- Are the bidding/contract documents free from any applicable provision or requirement that limit submission of a bid, or prohibit consideration of a bid based on national, state or local boundaries, or race, color, religion, sex, national origin, age, or disability?
- Are the contract documents free from any impermissible procedure or requirement which discriminates or operates to discriminate against the employment of labor from any other state, possession, or territory of the United States, in the construction of a federal-aid project?
- Are the bidding/contract documents free from any procedure or requirement that favors articles or materials produced within the state, or discriminates against the use of articles or materials from any other state, possession, or territory of the United States?
- Does the contract include a clause requiring prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment by the State DOT to the prime contractor?
- Does the contract include one of the three methods provided in 49 CFR 26.29(b) to ensure prompt and full payment of retainage by the prime contractor to the subcontractor?
- Did the state follow its documented process for adjusting the project cost estimate recorded in the project agreement after procurement (e.g., bid approval or contract award)?
- Based on a review of at least one applicable contract pay item paid in one progress payment, did the state provide adequate assurance that completed work quantities were determined accurately, in accordance with the state's statewide uniform procedures?
- Based on a review of the work for one approved DBE that is listed on the DBE commitment plan and has an approved subcontract, does the work subcontracted to the DBE meet or exceed the work committed to that DBE at the time the subcontract was approved?
- For the approved addenda, did TxDOT provide documentation of its approval and assure that all bidders received all issued addenda?
- Did TxDOT ensure that this awarded contract was to a responsible bidder that submitted the lowest responsive bid?
- Did TxDOT determine that the lowest bid was not responsive, or the bidder was not responsible and award to the next lowest bidder?
- Did the state provide a statement regarding the status of all railroad, utility, and ROW work prior to the date of authorization to advertise for construction?
- Were personnel involved with operation of work zone related traffic control trained in accordance with the agency's processes or procedures?

One LG project was part of the FY 2021 CAP review. The finding was that the construction contract was not awarded to a responsible bidder.

The reviewed LG project is located off the State Highway System on a city roadway. Under the Local Government Program, the LG for off-system projects may require or choose not to require that potential bidders be TxDOT prequalified. Based on the project location (off-system) the LG and TxDOT district staff, as part of the development of the Plans, Specification and Estimate document for the project, decided that it would not be a requirement that bidders be TxDOT prequalified for this project. The bid document did include LG-developed qualification requirements for bidders. As part of TxDOT oversight responsibilities, district staff reviewed the qualification requirements in the proposal document and determined that the language was in compliance with federal code (23 CFR 635.110) in that the qualification requirements did not restrict competition, prevent submission of a bid by a responsible bidder or prohibit the consideration of a bid submitted by a resident or nonresident of the state. Additionally, the LG as part of the bid analysis confirmed that the apparent low bidder was not currently suspended or debarred from being awarded a contract with federal funds. After reviewing the project proposal, bid analysis and supporting documentation and program requirements, it is the interpretation of LGP staff that the project was awarded to the lowest responsive bid submitted by a responsible bidder.

The integrity of the bidding process is a key aspect of the federal-aid construction program and LGP staff will continue to provide guidance and training on this item to district and LG staff.