

20.205

HIGHWAY PLANNING AND CONSTRUCTION

State Project/Program: **ENHANCEMENT PROGRAMS: SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS (SAFETEA-LU)**

U. S. Department of Transportation

Federal Authorization: 23 U.S.C and SAFETEA-LU, 23 CFR and 49 CFR

State Authorization:

N. C. Department of Transportation

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The auditor should not consider the Supplement to be “safe harbor” for identifying audit procedures to apply in a particular engagement, but the auditor should be prepared to justify departures from the suggested procedures. The auditor can consider the supplement a “safe harbor” for identification of compliance requirements to be tested if the auditor performs reasonable procedures to ensure that the requirements in the Supplement are current. The grantor agency may elect to review audit working papers to determine that audit tests are adequate.

Auditors may request documentation of monitoring visits by the State Agencies.

This compliance supplement must be used in conjunction with the OMB 2023 Compliance Supplement which will be issued in the summer. This includes “Part 3 - Compliance Requirements,” for the types that apply, “Part 6 - Internal Control,” and “Part 4 - Agency Program” requirements if the Agency issued guidance for a specific program. The OMB Compliance Supplement is Section A of the State Compliance Supplement.

The Single Audit Compliance Unit of the Office of Inspector General reviews all single audits, financial audits, and management letters of all “grantees”. We are looking at both the presentation (information as to program, pass through and state funding, NCDOT identification numbers) and the dollar amounts presented versus our records. Any reports not received will be requested.

Grants must be properly identified by program name, CFDA number (20.205-2), and WBS number on the Schedule of Expenditures of Federal and State Awards. This information is available from the agreement with NCDOT; program name is in the second/third paragraph while the WBS number is on the upper right hand corner of the first page. Grantor and/or pass through grantor

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and program title should also be included. Please do not combine like projects into one-dollar amount since we would need to call you for the breakdown; please report award amount, Federal Pass through, State share and local share.

On NCDOT's confirmation from the Grant Master List (GML), these moneys are shown by CFDA number 20.205-2. If the "grantee" is a non-governmental entity subject to N.C.G.S. 143C-6-23 "Use of State Funds by Non-State Entities," and North Carolina Administrative Code Chapter 9, Subchapter 03M "Uniform Administration of State Grants" the reporting requirements may be different.

I. PROGRAM OBJECTIVES

Federal funds are provided through the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Enhancement Program funds, which are matched by the department and/or the public agency receiving the grant. One part of SAFETEA-LU provides federal funds for "transportation enhancements," activities which can creatively integrate transportation into our communities and the natural environment. Transportation Enhancement activities must have a direct relationship to the surface transportation system, but not necessarily to a currently planned highway project.

II. PROGRAM PROCEDURES

The program is administered by the State. Enhancement projects may be funded up to 80% with federal transportation enhancement dollars and are paid on a reimbursement basis. The remaining share must come from other public sources. In some cases, state funds are to provide part of the "match". All or part of the match may be required of the public agency sponsoring the project. NCDOT oversees the implementation of the project and the recipient usually is responsible for architectural and engineering and construction services. A legal agreement between the NCDOT and the sponsor specifies the terms of the project and defines the responsibilities.

**THE DECISION FOR ALLOCATION OF ENHANCEMENT FUNDS IS CURRENTLY
COORDINATED BY THE STATE TRANSPORTATION IMPROVEMENT PROGRAM,
PROGRAM DEVELOPMENT BRANCH.**

III. COMPLIANCE REQUIREMENTS

Below on the matrix are the types of compliance requirements are applicable to the federal program, noted as “Y,” as determined by the federal granting agency if the federal program is listed in Part 2 of the OMB 2023 Compliance Supplement. A State agency may have added a Type. If the program is not listed in Part 2, the State Agency has determined the applicable Types. If a Type, applicable by OMB, does not apply at the local level or if the State has modified the federal requirements at the local level, this should be explained in the supplement under the Type. A Type that is not applicable at the local level is noted by “N.”

If a particular Type is noted as “Y,” the auditor must determine if the Type has a direct and material effect on the federal program for the auditee. For each Type of compliance requirement, the auditor must use the OMB 2023 Compliance Supplement, Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and Part 4 (which includes any program-specific requirements) to perform the audit.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/ Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Suspension	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y

A. ACTIVITIES ALLOWED OR UNALLOWED

Examples of Transportation Enhancement Activities: (1) pedestrian and bicycle facilities (including safety and educational activities for pedestrians and bicyclists), (2) acquisition of scenic easements and scenic or historic sites, (3) scenic or historic highway programs (including tourist and welcome center facilities), (4) landscaping and other scenic beautification, (5) historic preservation, (6) rehabilitating and operating historic transportation buildings, structures or facilities (including historic railroad facilities and canals), (7) preserving abandoned railway corridors (including the conversion and use as pedestrian or bicycle trails), (8) controlling and removing outdoor advertising, (9) archaeological planning and research, (10) environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity, (11) and establishment of transportation museums.

Audit Objective – The Department reviews all applications and requests for assistance to ensure they meet eligibility requirements.

Suggested Audit Procedure

No testing is required.

B. ALLOWABLE COSTS/COST PRINCIPLES

1. **Compliance Requirement** – Enhancement Program is a cost reimbursement program. Funds must be expended as specified in the project application, the project award letter, the project agreements, and specifications that incorporates the agency’s application (scope of services) by reference.

See Compliance Requirement I. Procurement, Suspension and Debarment for state thresholds.

2. **Compliance Requirement** - In-house equipment used by municipalities can be billed at rates only on documented historical cost records. If the municipality does not have historical cost records to support rates, rates must be approved by the NCDOT. (NCDOT approves rates using GMAC, U.S. Corps of Engineers or Blue Book rental.)
3. **Compliance Requirement** - Agency in house work must be pre-approved by NCDOT after receipt of agency letter documenting cost savings or effectiveness of administration versus contract labor.
4. **Compliance Requirement** - Local units of government including cities and counties, chartered by the General Assembly are eligible for grants. These local units of government should be eligible for sales tax refunds under GS 105-164.14 (b) or (c); if they cannot qualify, then these local units of government should take the steps necessary to become eligible. Sales tax paid which may be requested from the NC Department of Revenue as a refund is an ineligible charge.

Audit Objective - Determine that the authority is eligible for the refund and that NCDOT did not reimburse any sales taxes eligible for refund.

Suggested Audit Procedure - Review financial records including contractors’ sales tax affidavits and ascertain that no sales taxes were billed to the project.

C. CASH MANAGEMENT

The grant is funded on the reimbursement basis; therefore, no testing is required at the local level.

E. ELIGIBILITY

North Carolina cities, counties, tribal governments, and other political subdivisions may be granted funds to pay for a defined portion of the planning, development, engineering, right of way acquisition, construction, and mitigation costs of approved projects. Grants are governed by agreements entered into between NCDOT, the municipality, and/or other political subdivisions. The legal agreement specifies the terms and conditions of the projects. The local government is not allowed to suballocate funds to a subrecipient without prior approval from the Department, therefore, no testing is required at the local level.

F. EQUIPMENT AND REAL PROPERTY MANAGEMENT

1. **Compliance Requirement** –The local government should charge, at a minimum, fair market value for the sale, use, lease, or lease renewal of real property acquired with Federal assistance. The municipality should use the income for other local highway planning and construction projects eligible under 23 USC.

Audit Objective – Determine whether the proceeds from the sale or lease of real property acquired or improved under Federal awards are used to fund other eligible projects.

Suggested Audit Procedure – Identify real property dispositions for the audit period and determine whether the real property was acquired or improved with Federal funds passed through NCDOT. Perform procedures to determine if the income from the sale of real property was used to fund other eligible projects under 23 USC.

Special Note: The NCDOT Equipment Rental Rate Schedule is updated periodically. Please contact your local NCDOT Division Engineer’s office for the equipment rates.

G. MATCHING, LEVEL OF EFFORT, EARMARKING

1. Matching

Compliance Requirement - The municipality is generally required to pay a portion of the project costs. Portions vary according to the type of funds authorized and are stated in project agreements. A copy of the agreement is available at the municipality or through NCDOT’s respective program contact. Auditors should report amounts total received from NCDOT as well as total program expenditures reported. Federal funds may not be used to match other Federal funds.

Audit Objective – Determine whether the minimum amount or percentage of contributions or matching funds was provided from allowable sources.

Suggested Audit Procedure – Obtain and review a copy of the project agreement(s) to identify the local government’s portion of project costs. Perform tests to verify the required matching contributions were met. Ascertain the source of matching contributions and perform tests to verify the sources were from an allowable source.

2. Level of Effort – This requirement is not passed down to the local level. No testing is required.
3. Earmarking – This requirement is not passed down to the local level. No testing is required.

H. PERIOD OF PERFORMANCE

Each grant must disclose a period of performance in accordance The Local Government may charge only allowable costs incurred during the period of performance. Any costs incurred prior to the beginning of the period of performance must be authorized by NCDOT/FHWA. If additional time is needed to complete the project, a supplemental agreement must be executed extending the period of performance.

Audit Objective – Determine whether the project was only charged for (a) allowable costs incurred during the period of performance as stated in the original project agreement and any supplemental agreements; (b) any costs incurred prior to the period of performance were authorized by NCDOT/FHWA.

Suggested Audit Procedure – Review the local agreement to identify the period of performance and specific requirements related to the period of performance. For projects with performance periods beginning during the audit period, test cost recorded during the beginning of the period of performance to verify the costs were not incurred prior to the start of the period of performance unless authorized by FHWA/NCDOT.

I. PROCUREMENT, SUSPENSION & DEBARMENT

Construction projects cannot be advertised nor force account work commenced until FHWA/NCDOT (1) approves the plans, specifications, and estimates, (2) receives right-of-way (ROW) certification, utility/railroad certification, and (3) authorizes the SHA/municipality to advertise for bids or approves the force account work. The construction contract cannot be awarded until after FHWA/NCDOT reviews and recommends contract award subject to Board of Transportation approval. (23 CFR 630.205; 23 CFR 635.112). The local government will receive an authorization to proceed with the phase of work. All construction contracts should be solicited in accordance with NC General Statutes §143, Article 8: Public Contracts. In addition, the federal-aid highway funding requires that the bid procedures are in accordance with the NCDOT Standard Specifications, which are in accordance with 23 CFR 635, concerning bidding and letting a contract. The following procedures must be adhered to:

- The advertisement and the approved bid documents should be available to bidders at least three weeks before the time set for opening bids.
- No negotiation is allowed with the low bidder.

The Local government must award to the lowest responsible, responsive bidder. No contracts should be awarded until the Department provides concurrence. The local government will receive a notice of concurrence in award.

Audit Objective – Determine whether the local entity has an authorization to proceed, has solicited and awarded the contract as appropriate, and has received a concurrence in award.

Suggested Audit Procedure – Review the file to ensure the local government has advertised and selected the low bidder, has not entered into negotiations with the low bidder and has the appropriate letters/notices to proceed.

J. PROGRAM INCOME

Compliance Requirement - Income generated by the project (such as admission fees) should be used for the maintenance and/or operation of the project.

Audit Objective – Determine whether local entity generates any income from project and how it is used.

Suggested Audit Procedure – Review income and expenditure statements from local government to see if income is generated on completed project and determine where that income is utilized.

L. REPORTING

The auditor should look to [2 CFR Part 200](#) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Final Rule for government reporting. Auditor should report amount received from NCDOT as well as expenditures.

Non-governmentals – Reports made by non-State entities

Compliance Requirement – North Carolina General Statute 143C-6-23 “Use of State Funds by Non-State Entities,” and North Carolina Administrative Code Chapter 9, Subchapter 03M “Uniform Administration of State Grants” addresses reporting requirements for non-governmental entities.

Audit Objective – Determine applicable reporting requirements.

Suggested Audit Procedure

1. Determine if the organization is subject to G.S. 143C-6-23.
2. Determine what type of filing/report should be made with the NCDOT.

M. SUBRECIPIENT MONITORING

Compliance Requirement: A pass through entity is responsible for identifying to the first-tier subrecipients the requirement to register in the Central Contractor Registration (CRC), including obtaining a Dun and Bradstreet Data Universal Numbering System (DUNS) number, and maintain the currency of that information (Section 1512(h), ARRA, and 2 CFR 176.50(c)).

Audit Objective – Determine whether the pass-through entity determined that subrecipients have current CCR registrations prior to making subawards and performed periodic checks to ensure that subrecipients are updating information as necessary.

Suggested Audit Procedure – Test the pass-through entity’s subaward review and approval documents to determine whether, before award, the pass-through entity checked CCR to determine whether subrecipients were registered. Auditor should report amount received from NCDOT as well as expenditures.

N. SPECIAL TESTS AND PROVISIONS

1. Wage Rate Requirements

Compliance Requirement – The Wage Rate Requirements are applicable to Federal-aid project located with the right of way of a Federal-aid highway. These requirements also apply to Federal-aid projects funded by the STBG program that are located outside the right of way of a Federal-aid highway, including projects funded under the Transportation Alternatives set aside.

Audit Objective – Ensure local government contracts have provisions for payment of minimum wage requirements and contractors have complied with the provision.

Suggested Audit Procedure

Examine Contracts to ensure wage rate provisions were included. Review a sample of contractor’s payroll to ensure contractor paid appropriate wages to employees.

Ensure recipient has programs in place that reflect these policies. Review contracts for compliance with stated policies.

2. Use of Other State or Local Government Agencies – N/A
3. Replacement of Publicly Owned Real property – N/A
4. Quality Assurance Program – N/A; LGAs follow NCDOT’s Quality Assurance Program
5. Contractor Recoveries – N/A; not applicable, NCDOT will reduce LGA reimbursement to account for any funds recovered from the contractor.
6. Project Approvals –

Compliance Requirement – FHWA authorization to proceed is required before costs are incurred for all phases or project. NCDOT is delegated authority under the oversight agreement to approve plans, specifications, and estimate, contract awards, and inspection of progress.

- PE Authorization – a municipal agreement must be executed between the LGA and the Department.
- ROW Authorization – a municipal agreement, Categorical Exclusion, and ROW plans must be approved, prior to the ROW phase being authorized.
- Construction Authorization – a municipal agreement, Categorical Exclusion, ROW Certification, Utility/Railroad Certification, Final Plans, Specifications, and Estimate (to include a Contract Proposal) must be approved, prior to the Construction phase being authorized.

Audit Objective – determine whether project activities are started with required Federal approval.

Suggested Audit Procedure

- Review a sample of projects and identify dates of the necessary approvals, authorizations, and concurrences.
 - Identify dates that projects were advertised and compare to the date of the authorization/NTP from the Department.
7. Value Engineering – N/A; LGAs do not have projects that meet VE thresholds.
 8. Utilities

Compliance Requirement – Local Governments are required to follow DOT policy for accommodating utilities. The local entity must provide a utility certification that states either no utilities are in conflict; conflicting utilities have been relocated; or utility relocation will occur as part of the approved highway construction.

Audit Objective – Determine whether the local government provided a utility certification on the project.

Suggested Audit Procedure – review a sample of projects to verify that there is a utility certification provided prior to construction authorization.

9. Administration of Engineering and Design-Related Service Contracts

Compliance Requirement – In general, LGAs must use qualifications-based selection procedures when procuring engineering or design-related services. LGAs must either have written policies and procedures for procurement of professional services, or must follow NCDOT's approved policy and procedure. Indirect costs for consultants must be reviewed and accepted by NCDOT prior to the LGA entering a contract for services. Any changes to the contracts, scope or fee, must be reviewed by NCDOT. Contracts must contain non-federal entity contract provisions per 2 CFR 200 and 23 CFR 172, as applicable.

Audit Objective – Determine whether the local government advertised for services, made a selection on the basis of qualifications, received review by DOT and incorporated appropriate provisions into contracts.

Suggested Audit Procedure – Review the local government's process of solicitation and selection of firms. Review contracts to see if contract provisions were incorporated, as applicable. Check to see if supplemental contracts were reviewed by NCDOT.