



Local Government Risk Assessments and Oversight Level Special Approval

Process Guidance

Local Government Programs Section, Transportation Programs Division

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Introduction

The [Negotiated Contracts Policy Manual](#), developed by the Contract Services Division (CSD), presents statutory authority and policies for negotiated contract management. Negotiated contracts involve services whose authorizing statute requires TxDOT to select a performing entity using a process other than competitive bids. An Advance Funding Agreement (AFA) between TxDOT and a local government (LG), another state agency, or another state where both parties agree to a funding arrangement to contribute funds, labor, raw materials, or land in order to develop or maintain a transportation project is a negotiated contract. In an AFA, TxDOT and a LG will conduct separate “typical” procurements for each of the tasks assigned to them (if any) by the AFA. It is each party’s responsibility to fulfill all of its respective obligations under the AFA and applicable laws, rules, and regulations.

Texas Administrative Code, Title 43, Part 1, Chapter 15, Subchapter E defines available methods for federal, state, and local cost participation in highway improvement projects. In addition to identifying the scope of the transportation project and the amount of funding provided by each party, the decision of which party is responsible for performing the various phases of the project development process must be made by TxDOT and the LG prior to execution of an AFA.

This document includes guidance on how to address this topic consistently throughout the state. It is based upon a review of applicable laws and regulations and discussion with many districts, divisions, and the Administration. Additional information regarding this topic is also available within [Chapter 2](#) of the Local Government Project Management Guide.

Responsibilities Overview

As stated in federal law, federal regulations, and state regulations, TxDOT has a responsibility to determine that each LG is qualified and has adequate resources and controls to perform the project work prior to authorizing it to perform any element of the project development process.

Title 23 United States Code (USC) 106(g)(4) states:

(4) Responsibility of the States –

(A) In general – The States shall be responsible for determining that subrecipients of Federal funds under this title have:

- (i) adequate project delivery systems for projects approved under this section; and
- (ii) sufficient accounting controls to properly manage such Federal funds.

(B) Periodic review – The Secretary shall periodically review the monitoring of subrecipients by the States.

Title 23 Code of Federal Regulations (CFR), Chapter I, Subchapter A, Part 1 §1.11 (b)

states:

Governmental engineering organizations – The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of other governmental instrumentalities for making surveys, preparing plans, specifications, and estimates, and for supervising the construction of any project.

23 CFR, Subpart A §635.105 states:

Supervising agency –

- (a) The State Department of Transportation (DOT) has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The State DOT shall be responsible for ensuring that such projects receive adequate supervision and inspection to ensure that projects are completed in conformance with approved plans and specifications.
- (b) Although the State DOT may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the State DOT shall provide a full-time employed State engineer to be in responsible charge of the project.
- (c) When a project is located on a street or highway over which the STD does not have legal jurisdiction, or when special conditions warrant, the State DOT, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.
 - (1) In the case of force account work, there is full compliance with subpart B of this part.
 - (2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.
 - (3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and
 - (4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

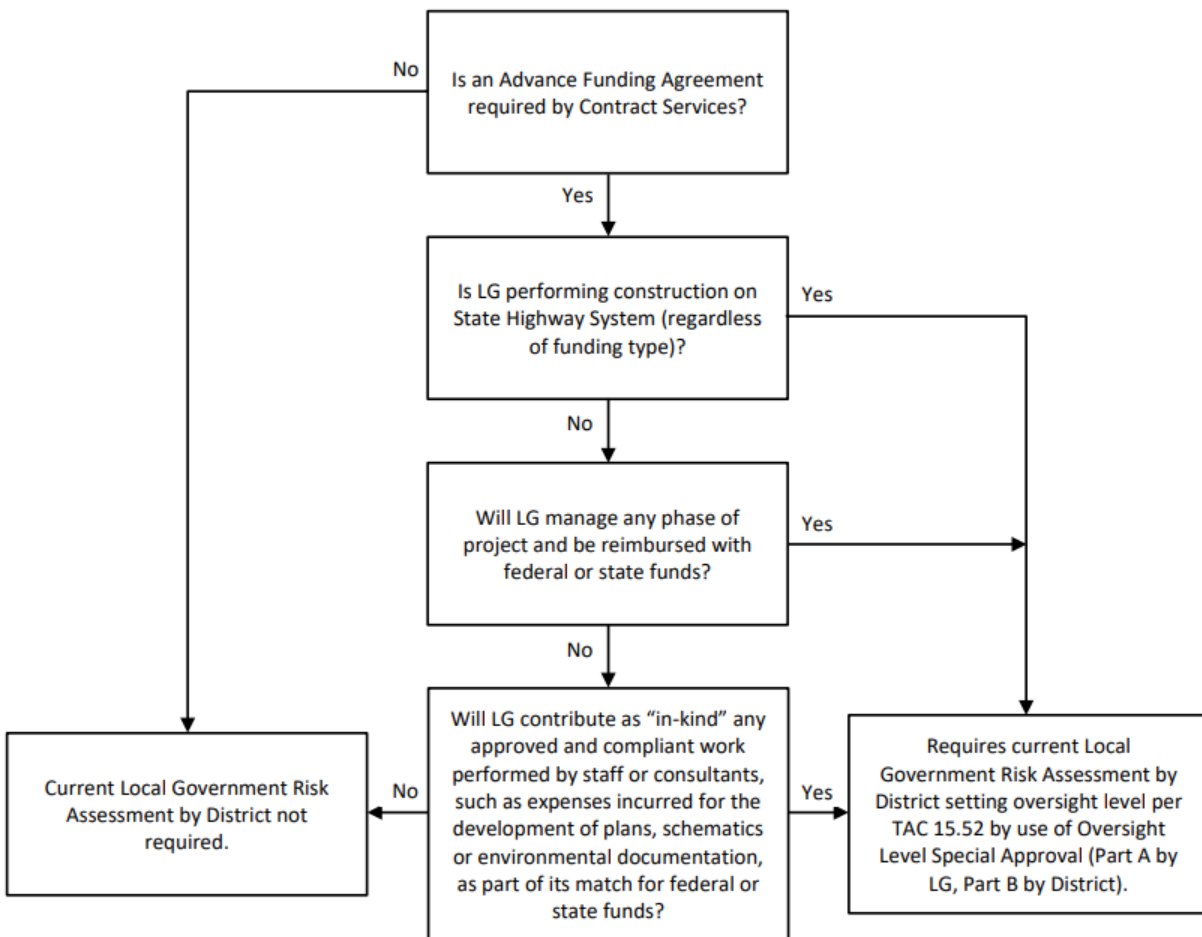
Paragraph 15.52 (3)(D) of Texas Administrative Code (TAC), Title 43, Part 1, Chapter 15, Subchapter E states:

Approval: ...In determining its approval or disapproval of local government's request to manage one or more elements of performance and management of a project, the Department will evaluate the following criteria:

- (i) availability of department resources to perform or manage the highway improvement or other transportation project in an efficient and timely manner;

- (ii) the demonstrated capability of the local government to perform the type of work proposed or to award and manage a contract for that work in a timely manner, consistent with federal, state, and department regulations, standards, and specifications;
- (iii) the percentage of total project cost to be provided by the local government;
- (iv) the Department's determination of cost effectiveness of local performance of the work as compared to the department's performance of the project; and
- (v) any other considerations relating to the benefit of the state, the traveling public, and the operations of the Department.

The below matrix supports the determination of which projects will require the implementation of these requirements.



LG Risk Assessment and Qualifications Review Process

To fulfil this requirement, and as good business practice, TxDOT has developed a standardized process and a series of forms to evaluate each LG's qualifications for performance of one or more elements of the project development process. The process includes the following forms:

- LG Agency Risk Assessment
- Oversight Level Special Approval
- TxDOT Project Update Evaluation of LG Qualifications

LG Agency Risk Assessment

The [LG Agency Risk Assessment](#) is to be completed by the respective district/division engaged in partnerships with LGs that have received federal funding awards. The LG Agency Risk Assessment form uses multiple evaluation criteria to evaluate the overall risk to TxDOT if the LG is allowed to manage one or more elements of the project development process. This form assigns an Overall Risk Score to the LG, which determines the frequency for subsequent evaluations.

Risk Scores

| Rating | Description | Evaluation Frequency |
|--------|---------------------------------|----------------------|
| A | Low level of risk to TxDOT | Every 2 years |
| B | Moderate level of risk to TxDOT | Every 2 years |
| C | High level of risk to TxDOT | Annual |
| D | Highest level of risk to TxDOT | Annual |

As described in the above chart, LG's rated A or B will be evaluated every two years. LG's rated C or D will be evaluated annually. The Overall Risk Score is a component used in the evaluation process on other forms discussed in this guidance.

It is recommended that a group of individuals within the district/division familiar with the LG's capabilities and performance work together to complete the form for acknowledgement by the District Engineer/Division Director. When a meeting is conducted to complete the evaluation, please also utilize a [Record of Meeting form](#) to document who participated.

Oversight Level Special Approval (OL SPA)

The purpose of the [OL SPA form](#) is to document the intent of and evaluate the qualifications of the LG agency that is executing an AFA with TxDOT. Any third-party participation, such as a consultant or another LG, is not to be incorporated in lieu of the experience of the LG agency executing the AFA.

“Part A – LG Qualifications Statement” of the OL SPA form is to be completed by the LG requesting approval to perform or manage one or more elements of the project development process. As indicated at the end of page four of the form, it must be signed and dated by a LG representative. It should then be submitted to the local district/division office to initiate the evaluation process. If the LG has any specific questions about the form, they should be directed to work with their TxDOT project manager or coordinator.

The district/division will review the information furnished by the LG and complete its evaluation using “Part B - TxDOT Evaluation and Special Approval of LG Qualifications” of the OL SPA form. The Overall Risk Score (A, B, C, or D) from the LG Agency Risk Assessment form is entered as one of the factors to be considered. Upon completion of the evaluation, the district/division recommends which elements, if any, be performed or managed by the LG and establishes an Oversight Level, as further described, by which the district/division will monitor the specific project. This recommendation will be signed and dated by the District Engineer/Division Director and submitted through CSD for review and concurrence by the Executive Director or delegated authority.

Oversight Levels

Level 1 Oversight – Relatively Low Risk Non-construction Projects and Very Low Risk Construction Projects

Level 2 Oversight – Higher Risk Non-construction Projects and Low to Moderate Risk Construction Projects

Level 3 Oversight – Higher Risk Construction Projects

| 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 details on oversight activities

² Greater frequency may be at District or Division discretion

³ Minimum of two times

TxDOT Project Update Evaluation of LG Qualifications

Each district/division may complete a [TxDOT Project Update Evaluation of LG Qualifications form](#) at any time deemed appropriate by the District Engineer/Division Director. Should the Overall Risk Score of a LG change in a material fashion, the district/division may determine that active projects with the LG require a modification to the oversight provided on a project-by-project basis.

For example, a form may be completed if there has been an observable improvement or decline in the LG's performance in the following criteria that results in an updated Overall Risk Score.

- Timeliness and quality in acquisition of right of way
- Timeliness and quality in relocation of utilities
- Timeliness and quality of preparing environmental documents and obtaining required permits and clearances
- Timeliness and quality of project design and developing contract documents
- Timeliness and quality letting and awarding construction contract
- Quality of performance in managing construction contractor and contract change orders
- Quality of performance in project inspection and documentation during construction
- Timeliness and quality of reimbursement requests throughout project
- Timeliness and quality of project close-out after project acceptance
- Timeliness of submitting supplemental funding when required
- Timeliness and adequacy in responding to audits

Examples of other conditions that may warrant the completion of a TxDOT Project Update Evaluation of LG Qualifications are a change in letting and construction management responsibility, or the original agreement did not meet the criteria for completing an OL SPA form, but an amendment changes the project so that now it does.

The district/division may find it appropriate to review the portfolio of projects with the LG and establish updated oversight coordination, especially if the district/division determines that the conditions may have changed materially since the initial Oversight Level was established.

Districts/divisions will submit an electronic copy of all LG Agency Risk Assessment forms, and TxDOT Project Update Evaluation of LG Qualification forms, if any, to the Local Government Programs Section via email to lgpo@txdot.gov within 30 days of completion along with a Record of Meeting form outlining those that participated in the process.