

CHAPTER 17

STATE-LOCAL AGREEMENT CLOSE-OUT

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NOTE: This Chapter has associated appendices and forms that can be found on our website at: www.nysdot.gov/plafap

17.1 INTRODUCTION

This chapter explains the requirements for closing out the State-Local Agreement (SLA) of a locally administered Federal aid transportation project. Close-out is important because it allows funding commitments no longer needed for the project to be released and reallocated. The close-out process involves the project's Federal aid sub-recipient (Sponsor), Regional Local Project Liaison (RLPL), and various NYSDOT Main Office program areas. NYSDOT requires project close-out be completed within six months of the Sponsor's final acceptance of the construction project. Failure to close out a project in a timely manner could result in the Federal Highway Administration (FHWA) withdrawing its participation, i.e., the Sponsor could lose federal funding for all or a portion of the project.

The construction contract (see Chapter 15) must be closed out before the SLA. Occasionally the construction contract component of a project is not funded with Federal aid. In those instances, a final reimbursement request must be submitted and the funded portions, such as design or right-of-way (ROW) must be closed out prior to SLA close-out.

If an outstanding issue exists (consultant or construction contractor dispute, ROW claim, etc.), the Sponsor must suspend close-out and resolve the matter, keeping the RLPL informed of the progress. Resolution must be expeditious in order to avoid de-obligation of funding, which occurs when the Sponsor has not submitted any bills within 12 months. Upon resolution of the issue, the Sponsor will proceed as discussed below.

17.2 SPONSOR'S RESPONSIBILITIES

The Responsible Local Official (RLO), who represents the Sponsor, must confirm that the final inspection has been performed (in accordance with Chapter 15), all required reports have been submitted, and the terms of the construction contract have been satisfied. The Sponsor also needs to determine if additional payments are to be made to contractors, consultants, or others.

For consultant contracts greater than \$300,000, the Sponsor must ensure an audit is performed on both the consultant *and* sub-consultant contracts (regardless of sub-consultant contract value). Fees paid to conduct contract audits are reimbursable projects costs (23 CFR 140.803 and 140.807). Guidance is provided in OMB Circular A-87 [Cost Principles for State, Local and Indian Tribal Governments](#)¹, OMB Circular A-133 [Audits of States, Local Governments and Non-Profit Organizations](#)², and the AASHTO [Uniform Audit and Accounting Guide](#)³.

Upon completion of applicable audits, the Sponsor must notify the RLPL in writing that the project is complete, including providing an estimate of the final reimbursement request as well as items identified in the following sections.

When the Sponsor considers the project complete, the RLO must request an RLPL site visit along with assistance in completing NYS 1446-LA, *Final Acceptance of Locally Administered Federal-Aid Project*. Prior to requesting the final RLPL site inspection, the Sponsor should prepare a summary of field changes and any other departures from original contract

¹ http://www.whitehouse.gov/omb/circulars_a087_2004

² http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf

³ <http://sp.audit.transportation.org/Documents/UAAG-3%20FINAL.pdf>

documentation. The Sponsor will be notified in writing, with rationale, if the RLPL deems the project incomplete. The RLPL will then schedule a site visit when completion seems likely.

For all Emergency Relief (ER) projects, the Sponsor must also complete form FHWA-1448C (NYSDOT modification) *Final Inspection of Federal-aid Project NYSDOT Emergency Relief Project*. If the project's final costs have changed, this should be detailed in section 7 of form FHWA-1448C. If the final costs have increased, a revised form FHWA 1547 *Detailed Damage Inspection Report* (DDIR) showing final costs must also be submitted. Any increase in final costs beyond the amount approved must be approved by FHWA through a revision to the Program of Projects for the ER event. Pending such approval, the Sponsor may be reimbursed for up to the approved amount.

17.2.1 Sponsor's Submission to the Region

The following documents must be submitted to the RLPL for determination that the requirements of the SLA (scope, contract duration, appropriate funding, etc.) and the project completion process have been met:

- A final *Sponsor Payment Request* forms (see Chapter 5).
- Final agreement between the Sponsor and contractor, which may be the American Institute of Architects (AIA) form the contractor submits to the Sponsor for payment or a final estimate with all quantities and costs.
- Material Certification ([CONR 193](#))⁴.
- Confirmation that all change orders and time extensions were processed.
- Releases for any Uncompleted Work Agreements.
- *Final Acceptance of Locally Administered Federal-aid Project* (NYS 1446-LA) indicating completion of all project related contracts including construction, engineering services, utility agreements, railroad agreements, and ROW transactions.
- A project financial summary.
- Certification for Construction Inspection.
- Certification for Construction Acceptance.
- Most recent *Federal Single Audit Report* (see Chapter 16).
- *Consultant Audit Report* for projects with consultant contracts greater than \$300,000.
Note: If major findings are identified in any audit during a RLPL's review, the request for final payment will be withheld until evidence of corrective action has been provided to NYSDOT.
- Final *Disadvantaged Business Enterprise (DBE) Utilization* (AAP-19LL) and a final *Contractor Report of Contract Payments* (AAP-21LL). These reports are required for any project that has DBE utilization. (See Chapter 13). **NOTE:** The AAP-21LL is to be compared to the AAP-19LL for each firm listed therein. Any discrepancies between the amount paid and the committed amount must be resolved with supporting documentation.
- A final *Employment Utilization Report* (AAP-33LL). This report is required for all projects (see Chapter 13).

In addition to the above, the following may be required:

⁴ <https://www.nysdot.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/finalizing-a-contract>

For bridge projects

- Two (2) copies of as-built plans and a load rating report, as well as one (1) copy of the formal request for a bridge inspection (see Chapter 8).

For highway projects involving NYSDOT facilities

- Two (2) full-sized copies of as-built plans.
- Final Time Extension (TE) Summary Report - List all TEs approved for project and final completion date, as appropriate.
- Final Change Order and Overrun/Underrun report
 - Change Orders approved through #_____.
 - Overrun/Underrun report with justification for significant changes.
- A copy of the Highway Work Permit indicating acceptance by NYSDOT.
- Identify location and maintenance of project records at archive facility.
- Identify any outstanding issues.
- Identify the final cost for all phases of the project and for all budget shares and assure that the final Sponsor payment request has been submitted for all phases, as suggested in the chart contained in the Close-Out Documentation Letter contained in the Appendices to this chapter.

For ER projects

- *Final Inspection of Federal-aid Project: NYSDOT Emergency Relief Project* (FHWA 1448C) which is completed by NYSDOT and FHWA.
- *Final Detailed Damage Inspection Report* (DDIR) [FHWA 1547].

17.2.1.1 Additional Submission Requirement for State Agency Sponsors

In addition to the documents listed above, current practice requires Sponsors which are NYS agencies (Education Department, Office of Parks Recreation and Historic Preservation, Department of Environmental Conservation, etc.) to submit a completed journal voucher, signed by the Sponsor, to the NYSDOT Main Office Accounting Bureau (Expenditures Unit). NYSDOT countersigns the voucher and sends it to the Office of the State Comptroller (OSC).

The NYSDOT Region typically does not see the journal voucher. When the Expenditures Unit receives payment request forms submitted by NYS agencies through the RLPL, the relevant agencies are contacted, and the transactions concerning the required journal voucher are handled directly by the Expenditure Unit.

17.3 REGIONAL RESPONSIBILITIES

The RLPL will visit the project site within 30 days of the Sponsor's request, and if the project is complete, will sign the Final Acceptance form (NYS 1446-LA) and proceed with SLA close-out. If the RLPL determines the project is incomplete, the RLPL will notify the Sponsor in writing (with an explanation) and will arrange another site visit for when it is expected to be complete.

For ER projects, the RLPL and FHWA will complete FHWA 1448C *Final Inspection of Federal-aid Project: NYSDOT Emergency Relief Project*.

The RLPL verifies that the payments received by the Sponsor are consistent with the approved Sponsor payment requests.

The RLPL confirms the SLA provides sufficient Federal, State, and Marchiselli funding to cover the total charges, including the estimate of the final reimbursement request. If the funding in the SLA is not sufficient, a Supplemental Agreement may be processed to allow for reimbursement of eligible expenditures, consistent with the terms of the applicable funding program. If the State is unable to add funds to an Agreement, the Sponsor will be responsible for all amounts beyond those previously agreed to.

- If funding is sufficient, the RLPL will notify the Sponsor and will request submission of the final Sponsor payment request. If funding is not sufficient, the RLPL will notify the Sponsor, and will request submission of the final Sponsor payment request only up to an amount equal to the funds remaining.
- Once the final reimbursement payments have been made by NYSDOT, the RLPL will notify the Sponsor in writing that the SLA is closed.
- At the close-out of State-let locally administered projects, the Sponsor's funds on deposit are reconciled with all expenditures for the project, and a bill is issued to recoup the difference, or the Sponsor will be refunded any overpayment.

17.4 LOCAL PROJECT AUDITS

By entering into a SLA, the Sponsor acknowledges that prior to final payment and close-out of the project an audit by NYSDOT, the State Comptroller, NYS Inspector General, the Federal Highway Administration (FHWA) or other federal agencies may occur at the discretion of these entities and may identify disallowances. Funds paid by NYSDOT to the Sponsor become disallowed by such audits are subject to recovery.

17.5 REPAYMENT PROCESS

On occasion, a Sponsor may be requested to repay Federal funds. The following are common reasons for requesting such a refund:

- Federal Aid Ineligibility Notice (FAIN) issued by FHWA indicating they are withdrawing their participation in a project, or portion thereof, because of noncompliance with Federal law and/or regulations. After receiving the FAIN, the State is required to repay FHWA for any Federal reimbursements deemed ineligible.
- NYSDOT project review finds noncompliance with State or Federal laws and/or regulations, identifies ineligible activities, and determines Federal and State funds will be withdrawn from the project.
- FHWA's Project Funds Management is based on the requirements of 23 CFR 630.106 for NYSDOT to review projects which have been inactive for 12 months or more (no bill

received). Based on 23 CFR 630.106(5), FHWA may withdraw or de-obligate their participation in an inactive project which may require repayment of expenditures incurred. Withdrawal involves the release of funds on projects with little or no expenditure activity since Federal authorization. This action removes all Federal authorization to perform the work and revokes all Federal participation in a project. The funds and obligation authority are released to be used on other projects. Costs may not be incurred on this project until the project is placed back on the State Transportation Improvement Program (STIP) and is reauthorized by FHWA.

- Title 23 CFR 630.112(c)(2) requires NYSDOT to repay the sum of Federal funds for preliminary engineering (PE) if the project has not progressed to ROW acquisition or construction within 10 years of the PE authorization date. NYSDOT may request a time extension from FHWA. If the time extension is denied, then FHWA will require repayment of expenditures.
- The requirements of 23 CFR 630.112(c)(1) specifically require NYSDOT repay FHWA for ROW acquisition project charges incurred when projects have not progressed to construction within 20 years of PE authorization.

17.5.1 Process for Requesting Repayment of Federal Funds

When it is determined that a Sponsor will need to repay funds, NYSDOT will send a request for repayment to the Sponsor specifying the amount of the repayment and reason for it. The Sponsor will be expected to comply or respond to the request for repayment within the time specified.

Failure to repay will result in NYSDOT reducing its participation in any other transportation projects it may have ongoing with the Sponsor. Moreover, if the Sponsor has no other ongoing transportation projects in which NYSDOT participates, NYSDOT will petition the Office of the State Comptroller to reduce State aid or another State grant the Sponsor may be receiving and to apply that amount to the outstanding deficit. Sponsors will also be required to repay any Marchiselli aid which was used as a local match for aid determined to be ineligible. For Non-Governmental Organizations a civil repayment process will be pursued.