

# **CDOT/LOCAL AGENCY INTER-GOVERNMENTAL AGREEMENTS CHAPTER 3**

## **Introduction**

After the Local Agency project has been selected for funding, a detailed sequence of events is initiated by CDOT and the Local Agency to bring the project to completion. The Federal Highway Administration (FHWA) requires all Federal-Aid Highway funds available to the Local Agency to be administered by CDOT, and it assigns responsibility to CDOT for proper expenditure of the funds and proper completion of the work. CDOT assumes this responsibility on state-funded Local Agency projects and those projects funded by other Federal Awarding Agencies, such as the US Treasury. CDOT's main objective is to assist the Local Agency in completing each project successfully with as little administrative oversight as possible while ensuring that all federal and state requirements are fulfilled.

If the Local Agency has been working on the project during the application and selection process, all work and right-of-way acquisition should stop until the necessary project agreements described below are in place.

This Desk Reference uses “CDOT Project Manager” to refer to the CDOT staff member responsible for providing assistance to the Local Agency. The CDOT Project Manager is also referred to as the CDOT Local Agency Coordinator.

## **Inter-Governmental Agreement Overview**

An Inter-Governmental Agreement (IGA) is the umbrella term used for any agreement with a Local Agency. An IGA is required between CDOT and the Local Agency to define project scope, project responsibilities, detailed funding amounts, and payment obligations. Project maintenance responsibilities must also be defined and are typically set out in a separate stand-alone IGA. Projects containing features with shared responsibilities between multiple entities which continue after project completion may have multiple IGAs. The maintenance IGA should be signed first and must be signed

before the project goes to advertisement. Maintenance IGAs are written for the useful life of the project.

Also, work within CDOT right-of-way may require additional licensing agreements or special use permits.

There are several "standard" agreements templates for Local Agency projects and the CDOT Agreements Unit determines the appropriate agreement template for each project. The "Fed \$ LA Work" Outline IGA is the most commonly used template on Local Agency projects. The Outline IGA is the originating agreement or contract from which all subsequent documents pertaining to a project stem. Information used to develop the agreement is based on the written scope of work (or CDOT Form 463 - Design Data), Local Agency Contract Administration Checklist (CDOT Form 1243), required phases (i.e., design, environmental, right-of-way, utilities, miscellaneous, and construction), *Title 2 CFR 200* risk assessment, and associated funding. This information is gathered during meetings with the Local Agency or simply submitted to the CDOT Project Manager by the Local Agency. Templates for projects with federal funds follow the requirements outlined in *Title 2 CFR 200.332(a)*.

More detail on the information needed for the Outline IGA is provided below:

- The scope of work should provide sufficient detail to fully explain the project yet allow for unanticipated conditions during project development. The scope should be narrative and explain who will do the work, what work will be done, where the work will be done, why the work will be done, and who will maintain the project after completion. Once an IGA is fully executed, the project scope can only be modified by amendment which can be a lengthy process and have a significant impact on the project schedule.
- The Local Agency Contract Administration Checklist (CDOT Form 1243) identifies the contract administration responsibilities of the individual parties to the IGA and is part of the contractual agreement between the Local Agency and CDOT. After the IGA is executed, the CDOT Form 1243 can only be modified by amendment.
- Under 2 CFR 200.332(b), CDOT, as an entity that passes-through federal funds to a Local Agency (also referred to as a subrecipient), must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the

terms and conditions of the (sub) award. The Local Agency should complete the *Title 2 CFR 200* risk assessment spreadsheet provided by CDOT and return it to the CDOT Project Manager who will complete the evaluation and file it in CDOT's electronic document management system.

For state-funded projects, a 2 CFR 200 risk assessment is not required.

The CDOT IGA Unit always generates the CDOT/Local Agency IGA and coordinates the review with the CDOT Project Manager and then the Local Agency. The Local Agency is responsible for reviewing the IGA, providing comments, and confirming the name of the approvers and signatories to the IGA. After all review comments are addressed and any outstanding issues resolved, the IGA Unit uploads the document into OnBase for State Controller review. The State Controller forwards the IGA via DocuSign to the Local Agency for signature. The Local Agency electronically signs the agreement committing to provide its share of project costs. The agreement is automatically routed to CDOT for final signature and all parties receive a fully executed copy of the document. The steps to an Outline IGA are depicted in Figure 1, "Inter-Governmental Agreement (IGA) Process" on Page 3-9.

The CDOT/Local Agency agreement defines the financial responsibilities of both parties. The IGA includes the total amount payable to the Local Agency. CDOT's payment obligation is the amount of Federal or State funds that are to be paid to the Local Agency. Exhibit C of every agreement contains the financial and budget details of the agreement. Local Agencies may provide additional local funds to a project above the required match, which are known as overmatch. Overmatch must be shown in the STIP. In most cases overmatch is not identified on Exhibit C.

The term of the IGA is most commonly set at 10 years; however, the CDOT IGA Unit has the flexibility to set a shorter term depending on project characteristics. The Local Agency should be aware that any work performed outside the term dates of the IGA are not reimbursable. If the term dates are set to expire during an encumbered phase of the project, the Local Agency should contact the CDOT Project Manager to amend the existing agreement. Also, the Local Agency should be cognizant of the project's funding program and any nuances of that program. For example, Permanent Water Quality Program funds must currently be expended within three years of approval/award, even though the term of the IGA may be longer.

Typically, the first three letters of the project number indicate the fund type. For a list of funding categories, prefixes, and funding splits, see the “Federal Funds Crosswalk” and “State Funds Crosswalk” in Appendix B.

After the Outline IGA is fully executed by CDOT, the project phase is authorized (See Chapter 4) and project funds are encumbered by phase via a unilaterally signed (by CDOT) Option Letter prepared by the CDOT IGA Unit. The CDOT Project Manager will then issue a Notice to Proceed to the Local Agency. Any work performed by the Local Agency prior to receipt of the Notice to Proceed is not eligible for reimbursement.

On federally funded projects, work that occurs outside the performance phase period or is invoiced after the phase end date is not eligible for reimbursement. However, if a project is in transition from one phase to a different phase (e.g., design to construction) and the phases overlap, the performance phase end date will adjust to the date of the later phase. Under *Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, greater emphasis and scrutiny is now placed upon phase end dates and performance periods. The Local Agency should work with the CDOT Project Manager to establish end dates. While an end date can be modified during project development, the approval process can add two to four weeks to the project schedule.

On state-funded projects, end dates are not shown on Exhibit C, but are used by the CDOT Project Manager to monitor compliance with funding program requirements such as to expend funds within a specific number of years from project award.

The Local Agency is financially responsible for all cost overruns. If the Local Agency becomes aware that the costs will exceed the agreement amount, the Local Agency must immediately contact the CDOT Project Manager to determine if additional Federal or State funds are available. If funds are available, the Local Agency then submits a request with justification to the CDOT Project Manager. If CDOT approves the request, the IGA will be amended, which will revise the funding and/or scope. In certain circumstances, an additional TIP/STIP amendment may be necessary.

On Federal-aid Highway funded projects, the IGA contains FHWA Title VI assurances. On projects funded by other Federal Awarding Agencies, such as the US Treasury, a different assurance is required as specified in the IGA.

If the Local Agency plans to request reimbursement for design phase costs and plans to hire a consultant to do the work, the Local Agency is allowed to begin the Request for Proposal/Consultant Selection process simultaneously with development of the IGA. See Chapter 5, Section 5.4 - Conduct Consultant Selection/Execute Consultant Agreement of this *Desk Reference*. The Local Agency must comply with all federal rules and requirements of *Title 23 CFR 172* if the design phase is funded with Federal-Aid Highway funds, or *CRS 24-30-1401, et seq.* if state funded. Other Federal Awarding Agencies may require compliance with different consultant selection processes. While the Local Agency can begin the selection process, the Local Agency shall not execute a contract with the selected firm until after both the Local Agency and CDOT fully execute the IGA Option Letter.

### 3.1 Roles and Responsibilities on Federal Projects

- **Local Agency**
  - Work with the MPO to ensure the project is listed in the Transportation Improvement Program (TIP), if applicable, and is consistent with the local Transportation Plan.
  - Prepare the written narrative scope of work, project schedule, phasing information, funding information, and *Title 2 CFR 200* risk assessment (if applicable). Forward to the CDOT Project Manager along with the name/address of LA Project Manager
  - Review the CDOT Form 1243/Grantee Contract Administration Checklist in conjunction with this *Desk Reference* to ensure understanding of the Local Agency's roles and responsibilities in delivery of the project.
  - Review the draft Outline IGA upon receipt and provide comments to the CDOT Contract Writer.
  - Confirm the name of the Local Agency signers. Sign the Outline IGA.
  
- **Metropolitan Planning Organizations (PMOs) and Transportation Planning Regions (TPRs)**
  - Notify the Local Agency and CDOT of project selection for funding.
  - List project in the TIP, if applicable, and verify consistency with the local Transportation Plan.
  - Monitor the progress of the project and work with the Local Agency to prevent and/or mitigate project delays

- **CDOT**

- **Project Manager/Local Agency Coordinator**

1. Collect documents required to prepare the IGA from the Local Agency and meet with the Local Agency as necessary to coordinate development of the information.
2. Set up the project in CDOT's financial system. Create the Outline IGA shopping cart in the Supplier Relationship Module (SRM). Check that the project is listed in the Statewide Transportation Improvement Program (STIP) and is consistent with the Statewide Transportation Plan.
3. Prepare, send, and obtain approval of the CDOT Form 1243/Grantee Contract Administration Checklist from the Local Agency.
4. Send the request for preparation of the Outline IGA, the Purchasing Approval Routing sheets (PARS) and all other documents to the IGA Contract Writer in the Agreements Unit.
5. Review the draft IGA and notify the IGA Contract Writer of changes as required.
6. Coordinate with the IGA Contract Writer to send the IGA to the Local Agency.
7. Work with the Region Business Office to budget the project. (OFMB will seek project funding authorization from FHWA (if a PoDI project<sup>1</sup>) or provide authorization (if a non-PoDI project)). Prepare shopping cart in SRM for the Option Letter.
8. Prepare request documents for the Option Letter and forward to the IGA Contract Writer.
9. Review draft Option Letter.
10. After execution of the Option Letter, issue the Notice to Proceed to the Local Agency.
11. Obtain DBE/OJT goals from the Region Civil Rights Office, if applicable, and provide to the Local Agency.

---

<sup>1</sup> Projects of Division Interest (PoDI) – Projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement and oversight to enhance meeting project objectives or advancing key initiatives. Very few Local Agency projects are selected to be PoDI projects.

- **IGA Contract Writer in Agreements Unit and State Controller**
  1. Review the request for Outline IGA, PARS, and documents provided by the CDOT Project Manager and draft the Outline IGA.
  2. Send the Outline IGA for review to the CDOT Project Manager and address/resolve any comments.
  3. Send for internal Quality Assurance/Quality Control Review and address comments.
  4. Send the draft Outline IGA to the Local Agency for review and to confirm the name of the Local Agency signers.
  5. Upload the Outline Agreement and accompanying documents into OnBase for State Controller review.
  6. State Controller forwards the final Outline IGA to the Local Agency for signature via DocuSign. After the Local Agency signs, the document is automatically routed to the Chief Engineer for signature and then to the State Controller who signs last. All parties receive a copy of the fully signed Outline IGA.
  7. The State Controller then uploads the fully signed document into the Supplier Relationship Module of SAP.
  8. The IGA Contract Writer drafts the phase Option Letter and coordinates with the CDOT Project Manager for review. The Contract Writer uploads the Option Letter into OnBase for State Controller review. Once the State Controller reviews, it is uploaded into DocuSign for CDOT signature. (The CDOT Project Manager and Local Agency are copied on the executed document.)
- **FHWA**
  - Authorize and obligate funds/approve Federal-aid Highway project agreement and modifications.
  - Review project documents and authorize the project, as required.
- **Other Federal Awarding Agency**
  - Seek funding approval as required.

### 3.2 Roles and Responsibilities on State-Funded Projects

Most roles and responsibilities of the parties are the same except for activities pertaining to the following:

- *Title 2 CFR 200* compliance is not required.
- DBE/OJT Program compliance is not required.
- Buy America requirements are not required
- Davis Bacon Wages are not required.
- FHWA roles and responsibilities are assumed by CDOT Office of Financial Management and Budget (OFMB)



**FIGURE 1 - INTER-GOVERNMENTAL AGREEMENT (IGA) PROCESS**

