

Indianapolis MPO Federal Funds Exchange Program Guidance



INDIANAPOLIS METROPOLITAN PLANNING ORGANIZATION

ADOPTED AUGUST 18, 2021

This page intentionally left blank.

Contents

Acronyms Used in this Document	1
1. Introduction	2
1.1 Reason for document	3
1.2 Outline of document	4
2. Program Development and Management	5
2.1 Metropolitan Transportation Plan and Congestion Management Process (CMP)	5
2.2 Policy guidelines	5
2.3 Air Quality Determination and Reporting Requirements	6
2.4 Approval process	6
2.5 Public involvement	7
2.6 Cost Savings	10
3. Project Application Requirements	11
3.1 Eligibility	11
3.2 Timeframe/Schedule	13
3.3 Background Documentation	14
4. Project Selection	15
4.1 MiTIP	15
4.2 Submittal documents	15
4.3 Environmental review	15
4.4 Scoring process	15
4.5 Approval Process and Scope/Schedule Considerations	15
5. Project Development and Management	18
5.1 Overview	18
5.2 Grant agreement	18
5.3 Tracking and reporting	18
5.4 Project Development	18
6. Construction Letting and Award	41
6.1 The Letting Process	41
6.2 Shop Drawings and False Work-Review Procedure	41
6.3 Advertisement of the Contract for Bids	41
6.4 Contract Questions and Answers	42
6.5 Contract Revisions	42
6.6 Evaluation of Bids and Contract Award	42
6.7 Letting with Exceptions	43
6.8 IMPO Federal Fund Exchange Funds for Construction	43
7. Construction Process	46
7.1 Construction Inspection	46
7.2 Project Engineer/Supervisor (PE/S)	46
7.3 Preconstruction Conference	47
7.4 Construction Administration	47
7.5 Critical Elements	48
7.6 FATAL FLAWS	49
8. Payment Process	50
8.1 Construction Purchase Order	50
8.2 Advice-of-change	50
8.3 Final payout	50
9. Q&A	51
10. Appendices/Forms	55

This page intentionally left blank.

Acronyms Used in this Document

ADA	Americans with Disabilities Act
AMP	Asset Management Plan
CAAA	Clean Air Act Amendments
CCMG	Community Crossings Matching Grant
CE	State Categorical Exemption
CFP	Call for Projects
CI	Construction Inspection
CMP	Congestion Management Process
EA	State Environmental Assessment
EIS	State Environmental Impact Statement
EJCDC	Engineers Joint Contract Documents Committee
FCR	Final Construction Record
FFE	Federal Funds Exchange
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GIFE	General Instructions to Field Employees
HBPA	Historic Bridge Programmatic Agreement
IMPO	Indianapolis Metropolitan Planning Organization
INDOT	Indiana Department of Transportation
IRTIP	Indianapolis Regional Transportation Improvement Program
LPA	Local Public Agency
L RTP	Long Range Transportation Plan
LTAP	Local Technical Assistance Program
MiTIP	Metropolitan Indianapolis Transportation Improvement Program
MPA	Metropolitan Planning Area
MTP	Metropolitan Transportation Plan
NEPA	National Environmental Policy Act
NTP	Notice to Proceed
PE/S	Project Engineer/Supervisor
PIP	Public Involvement Plan
RFP	Request for Proposals
ROW	Right of Way
RFQ	Request for Qualifications
SEPA	State (of Indiana) Environmental Policy Act
TPC	Transportation Policy Committee
TTC	Transportation Technical Committee
USDOT	United States Department of Transportation

Additional acronyms for Federal and State agencies pertinent to environmental review procedures can be found in Section 5.4.2 (d), below; similarly, definitions of Federal and State environmental laws and procedures can be found in Section 5.4.2 (e).

1. Introduction

Each Urbanized Area with a population of more than 50,000 is required to have a designated Metropolitan Planning Organization (MPO) with the responsibility of conducting a continuing, cooperative, and comprehensive transportation planning process per current Federal transportation legislation. The metropolitan transportation planning process is required for central Indiana to receive Federal funds for transportation improvements, including transit, highway, and other modes.

The Indianapolis Metropolitan Planning Organization (IMPO) is the designated IMPO for the Central Indiana region. The Indianapolis Transportation Policy Committee (TPC) is the governing body of the IMPO, which also includes an Executive Committee and a Transportation Technical Committee (TTC). The IMPO operates under by-laws most recently approved in February of 2021.

The IMPO develops, in collaboration with its planning partners and the public, the Indianapolis Regional Transportation Improvement Program (IRTIP), which is a four-year schedule of transportation projects proposed by government and transportation agencies in the Central Indiana region using Federal Highway Administration (FHWA) funds, Federal Transit Administration (FTA) funds, and Indiana Department of Transportation (INDOT) funds. In addition, other projects that are considered “regionally significant” (for air quality conformity purposes) are included, regardless of the funding source. The IRTIP is incorporated into the Statewide Transportation Improvement Program (STIP), which is developed and maintained by INDOT.

The IMPO programs projects in the IRTIP for the Indianapolis Metropolitan Planning Area (MPA), defined as the Census-determined urbanized area, plus additional areas that are anticipated to be urbanized within the next 20 years. The current MPA is based on the 2010 Census and includes all of Marion County and portions of the surrounding counties of Boone, Hamilton, Hancock, Hendricks, Shelby, Morgan, and Johnson.

A key objective of the IRTIP is to assist local public agencies (LPAs) in providing a coordinated transportation system for citizens in the Indianapolis Metropolitan Planning Area (MPA) by ensuring that the limited amount of transportation funding allocated to the region is directed to projects that provide the greatest benefit consistent with the goals of the Metropolitan Transportation Plan (MTP). In addition, the IRTIP provides the following:

- a schedule to coordinate project implementation among jurisdictions and agencies;
- a required step for implementation of the MTP priority projects using Federal funds;
- an aid to financial programming and administration; and
- a source of information to the public for a comprehensive list of Federally- and State-funded transportation projects in the Indianapolis MPA.

Under Federal law, the IRTIP:

- covers a minimum four-year period of investment;
- is updated at least every two years (the IRTIP is generally amended every quarter);
- is realistic in terms of available funding (fiscally-constrained) and is not just a “wish list” of projects;
- conforms with the State Implementation Plan (SIP) for air quality standards;
- is approved by the IMPO, the Anderson IMPO, and FHWA/FTA for air quality; and

- is incorporated into the Statewide Transportation Improvement Program (STIP) administered by INDOT.

The IRTIP is one of the three core functions of the IMPO, the other two being the Metropolitan Transportation Plan (MTP) and the Unified Planning Work Program (UPWP). The relationship between the UPWP, the MTP and the IRTIP is shown in the following graphic:

	Time/Horizon	Contents	Update Requirements
UPWP	1-2 Years	Planning Studies & Tasks	Annually
MTP	20 Years	Future Goals, Strategies & Projects	Every 4 Years
IRTIP	4 Years	Transportation Investments	Every 4 Years

Figure 1- Relationship between UPWP, MTP and IRTIP

The funding for projects shown in the IRTIP reflects a variety of sources; however, all Federally-funded transportation projects must be included in the IRTIP regardless of the type of Federal funds. Many of these projects are defined and selected through separate processes. Eligibility of projects for specific funding programs is determined by State and Federal review agencies, as well as the IMPO. The Federal Funds Exchange (FFE) Agreement executed with INDOT on August 28, 2020 expands the list of funding programs encompassed by the IRTIP to State funds offered in exchange for the IMPO's allotment of FHWA funds.

1.1 Reason for document

This document will outline the policies and procedures the IMPO uses in developing, maintaining, and implementing the IRTIP under the FFE Agreement. In addition, it will outline the eligibility, evaluation, approval, and implementation processes through which LPAs can submit proposed projects to the IMPO for funding consideration. By clearly outlining the process, LPAs can determine their project eligibility, what criteria projects are selected by, and the steps needed to receive and use approved funds. This document will further provide information and resources to all parties involved in the local project development process to ensure compliance with applicable standards and policies. The overall goal of this program is to efficiently develop and implement well-planned and designed projects that improve Central Indiana's transportation system.

1.2 Outline of document

The following guidelines provide a complete overview of information required for Local Public Agencies (LPAs) to use in managing IMPO- FFE projects, and includes the following subject areas:

- Program Development and Management
- Project Application Requirements
- Project Selection
- Project Development and Management
- Construction Letting
- Construction Process
- Payment Process
- Frequently Asked Questions and Answers
- Appendices/Forms

2. Program Development and Management

The IMPO will apply certain policies to manage and allocate funds for local transportation projects under the Federal Exchange Agreement. This section provides a high-level overview of these procedures.

2.1 Metropolitan Transportation Plan and Congestion Management Process (CMP)

A key objective of the IRTIP is to assist local public agencies in providing a coordinated transportation system for citizens in the Indianapolis Metropolitan Planning Area by ensuring that the limited funds available to the area are directed to projects that provide the greatest benefit consistent with the goals of the Metropolitan Transportation Plan (MTP). Per Federal regulation, projects that are non-exempt from Air Quality Conformity requirements or otherwise deemed “regionally significant” must be consistent with the MTP to be considered for inclusion in the IRTIP. The MTP also provides policy support for all planning and programming activities, as exhibited in its approved “goals and objectives” and the associated resource allocation goals.

IRTIP projects must also be consistent with the requirements of the IMPO’s Congestion Management Process (CMP), which monitors and analyzes the magnitude of congestion on a multi-modal transportation system, and facilitates the planning and implementation of actions that alleviate congestion and enhance the performance of the transportation system.

2.2 Policy guidelines

General policy guidelines are incorporated into a series of project scoring criteria that provide an objective measure of relative project quality to guide the selection of projects to be funded in each funding category. The general guidelines followed are listed below (in no particular order):

- POLICY GUIDELINE 1 – The proposed program should emphasize preservation of and efficiency improvements to the existing transportation system without placing excessive reliance on projects which increase roadway capacity (and the reliance on single occupancy vehicles) and their subsequent impact upon the region’s air quality (Goal 1 of the Metropolitan Transportation Plan). Emphasis should be placed on system preservation projects rather than transportation systems expansion projects.
- POLICY GUIDELINE 2 – The Indianapolis Regional Transportation Improvement Program (IRTIP) should follow the priority established in the MTP in implementing projects of regional significance. Project recommendations for IMPO funds will be based as closely as possible on the Metropolitan Transportation Plan’s resource allocation goals. Although program equity is a key component of the IRTIP, no sub-allocation of Federal funds will replace the project staging and priorities established in the MTP to advance the overall interrelated regional interests.
- POLICY GUIDELINE 3 – Proposed projects within the region that have a proven potential to enhance economic development, stimulate the economy, and assist in job creation should be given additional consideration for inclusion in the program. Projects that have the potential to positively impact the quality of life for the area’s residents should be considered in the development of the program. Projects should:

- Be consistent and not in conflict with local and/or county comprehensive plans (i.e. the project implements a solution or addresses a problem identified in the plan)
 - Provide improvements to air quality (improvement is consistent with the CMAQ eligibility requirements)
 - Provide aesthetic improvements where appropriate (provision of landscaping or other scenic beautification)
 - Provide access to major generators (including multi-modal and intra-modal facilities, cultural and recreational sites)
- **POLICY GUIDELINE 4** – Due to continued growth of the urban area and limited funding availability, IMPO funds are eligible for the construction (CN) and construction engineering (CE) phases only.

2.3 Air Quality Determination and Reporting Requirements

In order to comply with the regulations of the 1990 Clean Air Act Amendments (CAAA), a detailed analysis is performed on non-exempt projects included in the IRTIP. The analysis is typically performed as part of an update or amendment to the MTP. The analysis assesses how well the MTP conforms to the air quality goals and whether or not any of the emissions budgets are exceeded. All non-exempt IRTIP project submittals must be consistent with the conforming MTP in order to be considered for inclusion in the IRTIP.

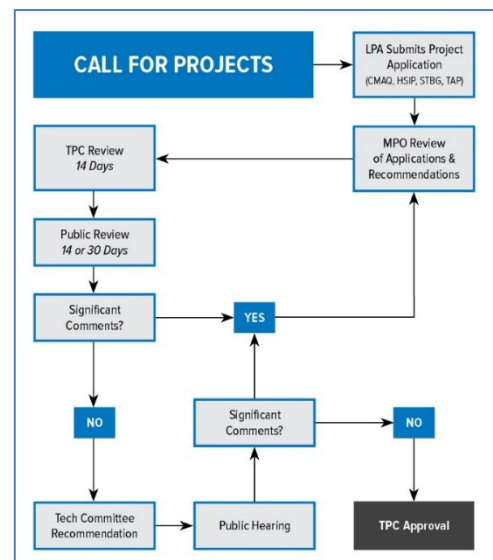
Formally, the IRTIP is reviewed relative to air quality status and a conformity determination is reached. However, provided that the IRTIP non-exempt projects are included in the MTP, then theoretically no obstacles to a successful conformity determination should exist.

The resolution approving the conforming MTP is included in the Appendix of the final IRTIP and the air quality conformity documentation is available for review at the IMPO's office and on the IMPO's website.

2.4 Approval process

The draft IRTIP, including new or amended project recommendations, is presented to the Executive Committee for informational purposes before being offered to the TPC for review and comment. The staff recommendations, as well as comments from the Executive Committee, are then provided to the full Transportation TTC and TPC for review and comment.

After the TPC review and comment period, the final draft of a new IRTIP is made available for a 30-day public review and comment. Recommendations for an additional Illustrative year are made available for a 14-day public review and comment period leading up to the TPC meeting for final approval.



It should be noted that any new IRTIP or IRTIP amendment that is being processed concurrently with an amendment to the MTP, must be approved after the approval of the MTP amendment, even if the approvals are at the same meeting.

2.5 Public involvement

Per the IMPO's approved Public Involvement Plan (PIP), the public is given an opportunity to review the draft IRTIP and project recommendations, including the associated Air Quality analysis.

2.5.1 Amendments and Modifications

The IRTIP is dynamic and subject to change due to the nature of project development, and often requires changes of varying significance to ensure the program is current and reflects the most current project information available. As such, the IMPO provides a variety of amendment processes that allow maximum flexibility in maintaining an accurate program at all times. Described below are the processes for formal and emergency amendments as well as administrative modifications. All amendment and modification requests must be submitted via the IMPO's MiTIP database and include a detailed justification. Requests submitted without detailed justification or missing information will be returned to "In Progress" and the LPA will be notified that the request requires additional information. If the required information is not provided before the amendment deadline, the request will be placed on the next amendment schedule once the required information is submitted. The amendment deadlines are listed on the IMPO's website. If the amendment deadline is modified from that published on the IMPO website at the beginning of each calendar year, the IMPO will notify the LPAs of such changes a minimum of 10 days prior to the revised deadline.

2.5.2 Formal amendments

Formal amendments are changes to the IRTIP that require an opportunity for public review and comment and require approval by the TPC at a public hearing. Formal amendments include, but are not limited to:

- the addition or deletion of a significant project
- the addition or deletion of a project phase other than preliminary engineering (PE) regardless of funding source
- a significant change in project scope or design that changes the intent or the significance of project impacts
- a significant change in cost, usually in excess of \$100,000 or 50% increase from the project's awarded bid amount, when using IMPO funds.

The process by which formal IRTIP amendments are considered and approved is as follows:

- The IMPO will provide a calendar to each LPA as well as to INDOT and will post this calendar on the IMPO website in the fourth quarter of each year with the amendment request deadline and approval dates. All amendment requests must be submitted to the IMPO via MiTIP by the deadline listed to be considered. Late requests will not be accepted.

- Staff will review all requests that have been received by the deadline to determine the appropriateness of the request, the impact on funding and air quality conformity, consistency with the MTP, and other factors as appropriate. IMPO staff may request additional information from the requesting agency at any time.
- All formal amendment requests require a justification memorandum submitted at the time of request that includes detailed financial information, estimates, scope and design changes and additional information the LPA believes is needed to explain the request.
- The IMPO will provide a copy of the proposed amendments to the Interagency Consultation Group and the IMPO's Interested Citizens/Agencies list via e-mail prior to or concurrent with the beginning of the public comment period.
- Per the IMPO's PIP, a public comment period of at least ten (10) calendar days will be provided.
- The IMPO staff will provide the TTC and TPC with the list of proposed amendments and a cover memorandum summarizing the amendment requests at least one week prior to the date of the TTC and TPC meetings. A representative from each LPA with an amendment request on the agenda must be present at both the TTC and TPC meetings to answer any questions and provide additional justification and details. If questions arise at the TTC and TPC meetings and there is no representative from the requesting agency at the meeting who can answer questions sufficient enough to allow for a vote, the amendment will be postponed until the next scheduled meeting.
- The IRTIP amendment will be considered by the TPC at its regularly scheduled meeting during a public hearing.
- Once the IMPO approves the amendment, it will be documented via e-mail to the Interagency Consultation Group as well as the requesting agency with the signed resolution and amendment attached in PDF format. No hard copy will be provided. The approved amendment will be posted at the time of approval in the IMPO's MiTIP Public Access Portal and amendments will be posted on the IMPO's website within seven (7) days.

2.5.3 Administrative Modification

Administrative modifications are minor changes to projects or the IRTIP that do not require TPC approval and do not require public review. These modifications are minor or technical in nature and do not significantly impact the overall program.

Administrative modifications will be considered when the following conditions apply:

- The project is air quality neutral (does not involve land acquisition or construction phases of a nonexempt project);
- The project is consistent with the current Metropolitan Transportation Plan;
- The project is not considered controversial in nature and has not received significant negative public comment.
- The project scope or change is considered minor in nature (bridge painting, signage, lighting, etc...) or safety related (guardrails, railroad crossing upgrade, etc...).

Administrative modifications include, but are not limited to:

- General editorial or data entry corrections;

- Moving a project from one funding category to another provided that no eligibility finding is required;
- Currently programmed projects or project phases requesting a change in fiscal year only;
- Moving any project phase programmed in a previous IRTIP into a new IRTIP (rollover of projects);
- Splitting or combining projects without affecting the original project intent;
- Minor change in project cost (i.e. increase in funding by less than \$100,000 or 50% of the project's original bid amount if less than \$100,000) or up to the final award amount if programmed with IMPO Federal Fund Exchange (FFE) funds;
- Minor scope modification that does not change overall impact of project on capacity or air quality or overall intent of project and does not trigger a project rescore.

Once the IMPO approves the modification, it will be documented via e-mail to the Interagency Consultation Group as well as the requesting agency with the signed modification attached in PDF format. No hard copy will be provided. The approved modifications will appear at the time of approval in the IMPO's MiTIP Public Access Portal.

Per the IMPO's PIP, no public review is required for administrative modifications of the IRTIP. All administrative modifications will be posted on the IMPO's website once each quarter.

2.5.4 Emergency Amendment

The IMPO recognizes that there are circumstances that do not allow an IRTIP amendment to be accomplished in a timely manner through the formal amendment process and/or do not meet the requirements for an Administrative Modification. In such cases, the IMPO will consider an emergency amendment.

NOTE: Because emergency amendments require a vote by the TPC outside of the normal meeting schedule, they are considered only in the most extreme situations and the IMPO is not obliged to process an emergency amendment if it determines that the proposed amendment is either inappropriate due to avoidable circumstances or infeasible due to demands on the IMPO staff's limited resources. All amendment requests **MUST** be submitted in MiTIP to be considered.

Emergency Amendments are considered only when one or more of the following apply:

- Amendment has an immediate and direct impact on public safety;
- Project need is the result of a natural disaster;
- Project is needed for maintenance of traffic during a current or near-term construction project;
- Need to maintain air quality conformity of the MTP or IRTIP; or
- Amendment would prevent conflicts or delays with other current or near-term significant projects.

In addition, the proposed amendment must conform to the current MTP and accompanying air quality conformity finding if it involves a non-exempt project. Staff will review all requests to determine the appropriateness of the request, the impact on funding and air quality conformity, consistency with the MTP, and other factors as appropriate. IMPO staff may

request additional information from the requesting agency at any time. Once the IMPO determines the appropriateness of the requested emergency amendment the following process will be used:

- The IMPO will provide a copy of the proposed amendment to the Interagency Consultation Group via e-mail prior to or concurrent with the public comment period;
- Any public comments received will be provided to the TPC prior to their vote;
- Final action will be taken by the TPC at its regularly scheduled meeting, or at a special meeting called by the Chair, which will be a public hearing;
- A simple majority of the voting membership of the TPC must vote in favor of the amendment in order for the amendment to be approved;
- Once the TPC approves the amendment, it will be documented via e-mail to the Interagency Consultation Group as well as the requesting agency with the signed amendment and approving resolution attached in PDF format. No hard copy will be provided; and
- The approved amendment will be posted on the IMPO's website within 7 days after approval by the TPC.

Per the IMPO's public involvement plan (PIP), a public comment period of at least ten (10) days will be provided.

2.6 Cost Savings

Projects that are completed under the bid award amount will have remaining funds that must be returned to the IMPO within 60 days of project close out. Failure to return excess funds may affect the LPA's ability to submit for future calls for projects.

3. Project Application Requirements

All applications submitted for project funding must meet certain requirements both in the content and material provided.

3.1 Eligibility

Both Local Public Agencies (LPAs) and their proposed projects must meet eligibility requirements set forth by the Indianapolis IMPO in order to be considered for funding.

3.1.1 Applicants

LPAs must be up-to date in Local Membership Dues per the current IMPO By-Laws.

Specific to applicants within Marion County, excluded cities as defined by I.C. 36-3-1 are eligible to apply for funding. Excluded cities submitting regionally significant projects and projects involving a thoroughfare on the *Marion County Thoroughfare Plan* should coordinate with the consolidated City of Indianapolis and provide evidence of such coordination. LPAs defined as Included Towns under I.C. 36-3-1, with the exception of the Town of Cumberland, are not eligible to submit applications unless under the auspices of the consolidated City of Indianapolis.

Only those LPAs which can enter into an agreement with the IMPO can apply for transportation funds. Private individuals and organizations may recommend projects to an eligible LPA as long as the project application is submitted, sponsored, and managed by the LPA in which the project is located. Applications will not be accepted from LPAs who are not current on member dues, nor by private or neighborhood agencies.

All LPAs should be compliant with ADA and Title VI requirements as reported by INDOT at the time of the application and at the time of letting. If an LPA is not compliant at the time of the Call for Projects (CFP), the IMPO will accept applications provided the LPA submits a copy of their "Indiana Nondiscrimination and Accessibility Letter of Commitment" that was provided to INDOT.

3.1.2 Projects

Projects submitted for funding consideration must be focused on improving regional transportation, as determined by IMPO performance measures, as well as be consistent with the goals and objectives of the current IMPO Metropolitan Transportation Plan.

a) *Location and activity eligibility*

Eligible projects must be within the currently designated Metropolitan Planning Area. Roadway projects must be on facilities that are functionally classified as a major collector or above. Other eligible project types include bicycle and pedestrian facilities and some transit projects. Specific project types will be detailed in the annual call for projects application packet but will generally follow similar categories established under the Surface Transportation Block Grant (STBG), Highway Safety Improvement Program

(HSIP), Congestion Mitigation and Air Quality (CMAQ) and Transportation Alternatives Program (TAP) programs (or their equivalents) that would be administered by the IMPO absent the FFE agreement. The Transportation Funding Summary table that details project types, eligibility and funding percentages can be found in the annual call for projects (CFP) application packet.

b) Regional Significance.

As per Policy Guideline #2 (Section 2.4, above), projects that are defined as regionally significant must be consistent with the project listings in the IMPO's MTP before they can be considered eligible for funding.

3.1.3 Costs

IMPO funding is only available for phases listed in the call for projects application packet. Generally, these include construction, including utility relocations that are reimbursable by state law, and construction engineering (inspection) on infrastructure projects, as well as costs associated with some transit related activities such as bus replacement purchases and other rider sharing activities. The IMPO does not participate in costs associated with Preliminary Engineering (PE) or Right-of-Way (ROW) acquisition.

3.1.4 Cost Estimation

All cost estimates must be prepared and signed by a certified engineer and must be in Year of Expenditure (YOE) dollars. The **IMPO Project Scoping and Cost Estimating Form** must be completed and submitted with each application. This form is intended to assist LPAs in project scoping to better define project components, estimate costs, and identify risks during development. LPAs may also include additional scoping documents with their applications or may submit a project scoping document in place of the **IMPO Project Scoping and Cost Estimating Form** with authorization from the IMPO. The IMPO also strongly encourages LPAs to use the **Planning-Level Project Cost Estimating Spreadsheet Tool** as a check on detailed cost estimates. All applicants are required to submit a detailed cost estimate based on unit price data. Unit price data from INDOT or LPA sources (documentation required) may be used; however, cost estimates should use the INDOT bid tab form or a similar form that provides itemized unit and quantity details. All cost estimates must provide itemized unit and quantity detail. The YOE inflation rate will be provided in the Call for Projects (CFP) Application Packet. A suggested contingency rate will also be provided in the Application Packet; though other contingency rates may be used with proper justification.

3.1.5 Initial and Final Award Amounts

An **initial project award** amount based on the cost estimate submitted with the LPA's application will be recommended by the IMPO staff as part of the project selection and approval process. If recommendations are approved by the TPC, the project will be included in the IRTIP based on the initial award amount.

Upon advancement of the project design, the LPA may submit one (1) cost increase request per approved project for consideration by the IMPO no later than 18 months after the TPC award

approval date. The LPA may only submit a cost increase request if the revised cost estimate is based on unforeseen circumstances discovered after substantial design progress. Detailed information must be submitted to the IMPO to justify the revised estimate. Revised cost estimates will not be accepted after the 18-month time period. Cost increase requests may not exceed more than 10% of the initial project award.

To accommodate possible cost increases, the IMPO will set aside 5% of the total available funds for each call for projects. IMPO staff will review the proposed cost estimate revisions and determine if funds (past the initial award amount) are available. If acceptable, the cost increase request will be taken to the TPC as a formal IRTIP amendment for consideration. If approved by the TPC, the revised cost estimate will be considered the **final project award** amount and will be the amount programmed in the IRTIP and used by the IMPO in the IMPO-LPA Grant Agreement.

Additional funding is not guaranteed by the IMPO and is subject to funding availability and proper justification. Additional adjustment limitations and deadlines for submittal of revised cost estimates will be determined by the IMPO and included in each Call for Projects packet.

Any unused funds from the 5% set aside will be rolled into the total available funds for the next Call for Projects.

3.1.6 Maximum Construction Engineering

To ensure consistent rates across all IMPO LPA funded projects and to help the IMPO manage and plan annual allocation obligations, the IMPO will allow 10% of the awarded construction cost as the maximum IMPO participation in the CE phase of a project.

The CE amount will be adjusted based on bid results but will not exceed the maximum percentage stated above.

3.2 Timeframe/Schedule

IMPO funding for transportation projects will be made available on an annual basis.

3.2.1 Annual call for projects

An annual call for projects (CFP) for a specific State Fiscal Year(s) will be issued each year, usually on October 1. Variation from this schedule will be communicated to the TPC. The type and amount of funds available, as well as the State Fiscal Year(s) in which they will be made available, is determined and communicated to the TTC and TPC each year prior to the CFP. Once the CFP is issued, LPAs will have approximately eight weeks (with the tentative deadline usually being the Wednesday before Thanksgiving) to submit a complete application. Late applications will not be accepted. Additional information during the review period may be submitted with approval of or as requested by IMPO staff. Once the draft recommendations are completed by staff, no additional information will be accepted unless specifically requested by the IMPO staff.

3.2.2 Application packet

An application packet will be developed by the IMPO staff for each CFP that will contain general application information as well as detailed information specific to each CFP. This application packet will be emailed to all LPAs and posted on the IMPO's website at the time of the CFP. The application packet will provide an estimate of funds available for programming in each funding category as well as specific information regarding cost estimating procedures and average score information from the previous two CFPs.

3.3 Background Documentation

3.3.1 Asset Management Plan

LPAs submitting system preservation projects for funding consideration, when allowed, must have an up-to-date Asset Management Plan (AMP) consistent with the Local Technical Assistance Program (LTAP) and Community Crossings Matching Grant (CCMG) program requirements to demonstrate awareness of infrastructure needs and organization assets. An asset management plan is a standard document required by INDOT.

3.3.2 ADA Transition Plan

To ensure equal access to resident users, a current ADA Transition Plan is required by the LPA to ensure the organization is making efforts to improve accessibility within their community.

4 Project Selection

4.1 MiTIP

Agencies interested in funding for new projects will submit an application via the IMPO's on-line interactive IRTIP database known as MiTIP.

4.2 Submittal documents

The following elements are required by the LPA.

4.2.1 IMPO Scoping and Cost Estimating Form

While the IMPO understands that project details are determined as a project moves through the design process, it is nevertheless incumbent upon applicants to consider all major components of a project's total cost estimates at the time of application. The **IMPO Project Scoping and Cost Estimating Form** is required to be submitted with each application. Unit price data from INDOT or LPA sources (for which documentation will be required) may be used; however, cost estimates should use the INDOT bid tab form or a similar form that provides itemized unit and quantity details. Cost estimates must be signed and sealed by a Licensed Engineer. Applications submitted without the required cost estimate or a cost estimate that is incomplete or not in the required format will be returned to the "In Progress" section of MiTIP for modification, for continued edits and information prior to any further processing, before it will be accepted.

A letter of local match commitment signed by the LPA's designated Transportation TPC representative or highest elected official must be submitted with each application.

4.3 Environmental review

While not formally required, the IMPO encourages LPAs to provide a Red Flag Investigation (RFI) or Abbreviated Engineering Assessment (AEA) with their application. Refer to www.indympo.org for further information on Red Flag Investigations.

4.4 Scoring process

Submitted projects are scored based on the IMPO Transportation Improvement Program Scoring Criteria (May 2018 as amended). The current selection criteria for each funding allocation can be found on the IMPO's website at www.indympo.org.

4.5 Approval Process and Scope/Schedule Considerations

See Section 2.5, above, for a general description of the approval process following project scoring. Some additional topics pertinent to project approval are discussed below.

4.5.1 Awarding of project bids

The IMPO will issue construction purchase orders on the basis of the lowest bid submitted to the LPA, provided that the project is awardable per statutory requirements. If the lowest awardable bid amount is in excess of the final award amount from the IMPO as specified in the IMPO-LPA Contract, any costs above the final award amount are the responsibility of the LPA.

The IMPO's participation in all IMPO FFE projects will be detailed in an executed IMPO - LPA contract for the final awarded amount prior to the project going to letting.

4.5.2 Change in project cost

All requests for additional FFE funds must be submitted to the IMPO via MITIP for review. The IMPO encourages LPAs to coordinate with the IMPO prior to the submission of an amendment, modification, or advice of change request to allow ample time for the IMPO to assess the request in the context of the current annual allocation balance and the corresponding spending scenario. Requests for additional FFE funds **cannot** exceed the final award amount.

4.5.3 Significant change in scope

Because projects are evaluated, scored, and recommended for funding based on the benefits and costs of the project as originally submitted at the time of application, significant changes to the scope of work for IMPO FFE projects must be approved by the TPC via the amendment process.

4.5.4 Rescoring of projects

Upon project award, LPAs will sign an agreement to adhere to the project scope as submitted, which is subject to audit by the State Board of Accounts. Significant modifications to the original project scope that changes the intent of the project may be considered a new project and trigger the need for rescoring as recommended by the TTC. The project will be rescored in the appropriate project category and the score will be compared to the scores of projects from the original or next call for projects, whichever is appropriate. Note that the IMPO will not be monitoring projects through construction.

4.5.5 Change order process

A change order occurs when an unidentified aspect of the project from the preliminary design process or an unexpected factor at the construction site is found and results in an increase or decrease in the project's total construction budget. An advice-of-change occurs when the original construction purchase order is spent down due to positive change order(s) on the project necessitating additional funds for the project to be completed.

The on-site activities during the construction phase of an IMPO FFE project is managed by the Project Engineer/Supervisor (PE/S). The PE/S is usually employed by an engineering consulting firm that was selected through the Local Public Agency's (LPAs) Request for Proposals (RFP) process. When unforeseen changes to the planned scope of work are identified by the PE/S, a change order is submitted by the contractor to the PE/S to request coverage of the additional

costs and/or proposed time incurred during construction. Review and approval of change orders is the responsibility of the LPA.

If an advice-of-change is generated, the LPA can submit a request for additional funds from the IMPO via MiTIP if the request remains below the final award amount. Additional funding requests will be reviewed by the IMPO based on the available annual allocation remaining at the time of the request.

4.5.6 Missed lettings

A project should not be delayed more than one state fiscal year from the original award. If the LPA is not making a good faith effort to let the project, the IMPO will present an IRTIP amendment at the next available TTC and TPC meetings to remove the funds from the delayed project and will make the funds available to other projects in the program. The LPA may apply in the next regularly scheduled Call for Projects to request funds for the project as long as the LPA can justify and provide evidence that the project will make its letting if awarded funds again. If a project is awarded funds a second time and the letting is missed, the LPA will be ineligible to submit any applications for new projects in the next annual call for projects.

5 Project Development and Management

5.1 Overview

The project oversight and managing direction, provided by the IMPO, ensures that projects selected for funding are carried out in an efficient manner and receive allocated funds.

5.2 Grant agreement

The IMPO and LPA will enter into a contract confirming the total project funds awarded by the IMPO as well as the matching funds for a specific project scope.

5.3 Tracking and reporting

IMPO staff will track all projects to ensure projects are progressing and to help with any problems that may arise. Regular updates will be given to the TTC and TPC for all projects and programs to show what progress has been made. Through project tracking, the IMPO intends to better coordinate projects with LPAs and thereby avoid or mitigate potential conflicts. This coordination will also help to determine the best years to program the project within the IRTIP. If a project is found to not be making progress, IMPO staff will work with the sponsor to move the project to a later year.

Quarterly Tracking

In an effort to better manage and track IMPO funded LPA projects from award to completion, the IMPO adopted a [Quarterly Tracking Policy](#) in 2014 that applies to all LPAs utilizing IMPO-administered funds. An LPA that fails to adhere to the Quarterly Tracking Policy will be ineligible to receive additional FFE funds for any project currently funded by the IMPO and will not be eligible to submit new project applications through the IMPO's Annual CFP until the LPA adheres to the IMPO's adopted policy. See the Quarterly Project Tracking Policy for details.

5.4 Project Development

5.4.1 Consultant Selection

In accordance with IC 36-9-42.2-5(6) and (7), professional services must be performed by an entity that is prequalified by INDOT, and award of all contracts for professional services must be made on the basis of competence and qualifications. Reasonable compensation for such contracts must be negotiated by the LPA following selection of consultants for the project.

5.4.2 Environmental Review and Compliance

a) State Environmental Policy Act (SEPA)

For projects that are developed, designed and constructed using the Federal Fund Exchange (FFE) (State funds), the project sponsor must comply with Indiana's environmental policy statutes at IC 13-12-4, frequently referred to as the State

Environmental Policy Act (SEPA). The State of Indiana established an environmental process for projects and program activities directly undertaken by State agencies or supported in whole or in part through State contracts, grants, subsidies, loans, or other forms of funding assistance. The SEPA process is administered under the jurisdiction of the Indiana Department of Environmental Management (IDEM) as outlined at 327 IAC 11-1. Evaluation of environmental impacts are identified as State Categorical Exemptions (CE), State Environmental Assessments (EA), or State Environmental Impact Statements (EIS).

LPAs should note that several of the Memoranda of Understanding (MOUs) and Programmatic Agreements (PAs) utilized by INDOT under the National Environmental Policy Act (NEPA) are dependent on Federal funding or action for their use. For example, the Programmatic Agreement between the Federal Highway Administration, the Indiana Department of Transportation, the Advisory Council on Historic Preservation, and the Indiana State Historic Preservation Officer regarding the Implementation of the Federal Aid Highway Program in the State of Indiana (frequently referred to as the Minor Projects Programmatic Agreement or MPPA), as well as the Karst MOU, are not applicable for projects where there is only State funding.

Additionally, if a Federal Fund Exchange (FFE) project may pursue Federal funding in the future, the LPAs should be aware that there are actions that could exclude the project from receiving/using any Federal funds in the future [i.e., Section 4(f)]. Similarly, actions completed using non-Federal funds could disqualify LPAs from using streamlined processes and/or programmatic agreements such as the Historic Bridge Programmatic Agreement (HBPA).

Projects using the Federal Fund Exchange (FFE) must still comply with all other applicable State and Federal laws, regulations, policies, and guidance. Coordination should be completed with State agencies that have jurisdiction by law or special expertise with respect to any environmental impact involved. Any Federal action (such as a Federal Highway Administration [FHWA] Interchange Justification [IJ] or a permit from a Federal agency) triggers NEPA review by the agency with approval authority. Project sponsors should be aware of these, and take care to ensure that they have satisfied all appropriate requirements.

Neither INDOT nor the IMPO will review, sign, or approve Federal Fund Exchange (FFE) projects environmental documents. It is the responsibility of the LPA to be compliant with SEPA (IC 13-12-4) and all other applicable State and Federal laws, regulations, policies, and guidance. LPAs will be required to complete an Environmental Compliance form prior to project letting certifying compliance with all applicable State and Federal laws, regulations, policies, and guidance.

b) Levels of Environmental Evaluation

Evaluation of environmental impacts under SEPA procedures is similar to the Federal NEPA process, with levels of documentation based on the extent of impacts associated with the project. The lowest level is the Categorical Exemption (CE), which are actions the State agencies consider to be minor in nature and will not significantly affect the human environment. Higher-level documentation is required for projects that are

considered major State actions and that may significantly affect the human environment; these include Environmental Assessments (EA) and Environmental Impact Statements (EIS).

1. State Categorical Exemption (CE)

Under 327 IAC 11-1-3(e), a list of Categorical Exemptions was prepared by INDOT with several being accepted by IDEM. These exemptions are listed in Table 1. Categories that were not accepted by IDEM are in gray in Table 1 and would require a State EA or EIS. All Federal Fund Exchange (FFE) projects qualifying under Table 1, should be documented on the State CE Memo citing the specific categorical exemption. The State CE memo does require the conclusion to be ascertained with accompanying documentation, including coordination with any State agencies that have jurisdiction by law or special expertise with respect to any environmental impact involved.

Table 1: State- Funding Categorical Exemptions

1	Pipe culvert replacement.
2	Bridge painting.
3	Mowing.
4	Installation, modernization or maintenance of signs, traffic signals, pavement markings, highway lighting, and channelization within existing right-of-way.
5	Patching and crack sealing of roadway surfaces.
6	Resurfacing existing pavement.
7	Guardrail and fence installation or repairs.
8	Herbicide treatment. (NOT ACCEPTED BY IDEM)*
9	Storage and winter application of ice melting chemicals or sand. (NOT ACCEPTED BY IDEM)*
10	Right-of-way abstracting, engineering appraising, property management and administration.
11	Landscaping and erosion control.
12	Safety projects such as pavement grooving, flare screen, safety barriers, and energy attenuators.
13	Addition or reconstruction of railroad crossing protection.
14	Rest area construction or modernization. (NOT ACCEPTED BY IDEM)*

15	Reconstruction or replacement of an existing bridge crossing a stream, railroad, or roadway.
16	Addition of special facilities to an existing highway for the exclusive use of buses.
17	Slide correction measures which are not emergencies but are necessary to preserve the highway facility.
18	Modernization of an existing highway by widening less than a single lane width, adding shoulders, adding auxiliary lanes for climbing, turning or weaving, and correcting substandard curves and intersection.
19	Construction of a new rural two-lane highway which does not provide new access to a new area and which would not be likely to precipitate significant changes in land use or development patterns. (NOT ACCEPTED BY IDEM)*

**These project types originally nominated by INDOT were not accepted by IDEM. They have been retained in the list to maintain numbering. All asterisk containing project types must have a State EA or EIS prepared.*

Federal Fund Exchange (FFE) projects that qualify as a CE must complete a State CE memo for the project file that summarizes the project's scope of work, environmental investigations, environmental impacts, compliance with SEPA, and the exemptions that the project meets. A template for a State CE memo can be found on the INDOT Environmental Services website, but must be adjusted accordingly to indicate the LPA as the responsible official and include the LPA's signature. The LPA is responsible for certifying that the project qualifies as a CE (i.e., the project does not require Federal funding or approval, is not a major action, and will not significantly affect the quality of the human environment).

2. Environmental Assessment (EA)

Federal Fund Exchange (FFE) projects that are not categorically exempted will require either a State Environmental Assessment (EA) or Environmental Impact Statement (EIS), depending on the impacts that are anticipated. The primary purpose of an EA is to help the project sponsor decide whether an Environmental Impact Statement (EIS) is needed. If the project is a major action, but is determined to not result in a significant impact, the EA will determine a Finding of No Significant Impact (FONSI). If the project is determined to result in a significant impact, or if the project is controversial, then an EIS must be prepared. The project sponsor may proceed directly to the preparation of an EIS if significant impacts are anticipated. According to 327 IAC 11-3-2(b), the EA includes the following:

1. Brief discussions of:
 - a. the need for the proposed action
 - b. alternatives to the proposed action

- c. environmental impacts of the proposed action and the alternatives.
2. Listing of the agencies and persons consulted in performing the assessment.

Federal Fund Exchange (FFE) projects that require an EA must use the State EA form (State Form 54278), which can be found on the INDOT Environmental Services website. Although the State EA form notes that the form should be signed by the Responsible State Official, it is the responsibility of the LPA to determine the impact finding for a Federal Fund Exchange (FFE) project and the LPA will be the “Responsible Official” that signs the State EA.

3. Environmental Impact Statement (EIS)

An EIS is a full disclosure document that details the process and analytical methodologies through which a transportation project was developed. It includes consideration of a range of reasonable alternatives, analyzes the potential impacts resulting from the alternatives in terms of context and intensity, describes mitigation measures and demonstrates compliance with other applicable laws. The EIS is prepared after consulting with and obtaining the comment of each State agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. According to 327 IAC 11-3-3, the EIS describes the following:

1. The potential environmental impact of the proposed action
2. Any adverse environmental impact that cannot be avoided should the proposal be implemented
3. Alternatives to the proposed action
4. The relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity
5. Any irreversible and irretrievable commitments of resources that would be involved if the proposed action should be implemented

LPAs are responsible for completing an EIS for Federal Fund Exchange (FFE) projects that will significantly affect the quality of the human environment, or else are determined controversial.

c) *Review of Publicly Available Data/Red Flag Investigation*

During the initial planning and development of the environmental document, an investigation should be conducted to determine areas of concern (red flags) within the project study area by reviewing publicly available GIS data and records. The purpose of the Red Flag Investigation (RFI) is to screen the project area for potential environmental, constructability, and engineering issues or concerns. Conducting a RFI early in the process allows the preparer to more closely examine areas or items of concern that might be impacted as a result of the proposed action and discard alternatives before devoting time and resources to their development. The RFI also aids in determining if additional coordination with specific local and/or State agencies will need to be conducted. An RFI report may include, but is not limited to: Infrastructure

Resources, Water Resources, Mining and Mineral Exploration Resources, Hazardous Material Concerns, and Ecological information.

A formal RFI report may not need to be compiled for a State CE memo and instead the State CE memo could include a summary of identified red flags and any accompanying exhibits. A formal RFI report should be compiled for State EAs and EISs.

d) Coordination

Coordination should be conducted in the early stages of project development and the environmental document. The purpose of early coordination is to request feedback from resource agencies and local officials on potential impacts before significant time or effort has been invested in the project. Agencies are consulted on the project's impacts to resources under their jurisdiction and local officials are consulted to obtain information on impacts to communities, community facilities, and local infrastructure. If carried out conscientiously, it can reduce uncertainty in permitting and other agency approvals late in the development process, when delays are especially costly.

Agencies and/or organizations that may need to be coordinated with could include, but are not limited to, the following:

- US Fish and Wildlife Service (USFWS)
- Natural Resource Conservation Service (NRCS)
- National Park Service (NPS)
- US Environmental Protection Agency (EPA)
- US Army Corps of Engineers (USACE)
- US Coast Guard
- Indiana Geological and Water Survey (IGWS)
- Indiana Department of Natural Resources (IDNR)
- **Indiana Department of Environmental Management (IDEM)**
- INDOT Aviation
- Local emergency services
- School corporations
- Universities/colleges
- Historical societies
- Religious facilities
- Any other local agencies/organizations that may have a specific interest

e) Water Resources

For projects that extend beyond existing pavement limits, an investigation of water resources within the project area should be completed to identify any water resources that have the potential to be impacted by the project. The investigation should also determine if the identified resources may be jurisdictional waters of the State (IDEM), jurisdictional waters of the U.S. (USACE), or regulated floodplains under the jurisdiction of IDNR.

The below sections include various State and Federal laws, regulations, policies, and guidance that projects must be complied with if applicable. This is not an inclusive list

and there may be additional laws, regulations, policies, and guidance that projects must be complied with that are not discussed below. LPAs are responsible for meeting the requirements that result in a project being compliant with all State and Federal laws, regulations, policies, and guidance.

1. Clean Water Act (CWA)

Projects must be compliant with the Clean Water Act (CWA).

i. Section 404 of the CWA

Section 404 of the CWA pertains to the discharge of fill materials into waters of the US. The Section 404 regulatory program is administered by the USACE with oversight from the US EPA. Resources under USACE jurisdiction include:

- Traditionally navigable waters;
- Wetlands adjacent to traditional navigable waters;
- Non-navigable tributaries of traditional navigable waters where water flow is year round or relatively permanent (typically three months); and
- Wetlands directly adjacent to non-navigable tributaries;
- Additional resources could be jurisdictional if determined by USACE.

The USACE makes the final ruling on whether or not an aquatic resource is a jurisdictional feature (water of the U.S.) or whether or not a wetland is non-jurisdictional or “isolated.” An “isolated” wetland is not under the USACE’s jurisdiction, but is regulated by the State isolated wetlands program administered by IDEM. All activities that require a Section 404 Permit from USACE will also require a Section 401 Water Quality Certification from IDEM.

ii. Section 401 of the CWA

Under Section 401 of the CWA, states are required to certify that the discharge of fill will not violate their water quality standards. The Section 401 regulatory program in Indiana is administered by IDEM. Anyone who wishes to discharge dredged or fill material into waters of the U.S. must obtain a Section 401 Water Quality Certification from IDEM.

iii. Isolated Wetlands in Indiana (Waters of the State)

An isolated wetland is a wetland not subject to regulation under Section 404(a) of the CWA. These isolated wetlands are regulated by IDEM under IC 13-18-22, which establishes a wetland classification system, general permits and exemptions, and gives IDEM the authority to regulate the placement of dredged or fill material into isolated wetlands. Impacts to isolated wetlands require State Isolated Wetland Permits from IDEM.

iv. State Natural, Scenic, and Recreational Rivers (IC 14-29-6)

I.C. 14-29-6 designates the Indiana natural, scenic, and recreational river system to be set aside and preserved for the benefit of present and future generations. In accordance with I.C. 14-29-6-10, the impact to the natural, scenic, and recreational river system will be determined when planning for the use and development of water and associated land resources within the system. Indiana Administrative Code, 312 IAC 7-2, identifies three waterways included in the system:

- Cedar Creek from river mile 13.7 to the St. Joseph River;
- Wildcat Creek; and
- North fork from river mile 43.11 to river mile 4.82
- South fork from river mile 10.21 to river mile 0.0
- Blue River from river mile 57 to river mile 11.5.

Rivers that are designated as part of the natural, scenic, and recreational river system are also listed on IDNR's Outstanding Rivers List for Indiana (next section). Rivers on this list may affect the permits required or require special attention to during project development.

v. Outstanding Rivers List for Indiana (IDNR)

The IDNR has prepared the Outstanding Rivers List for Indiana to recognize scenic and recreational river resources of Indiana. This list designates rivers of high quality, which qualify for the list under one or more of the 22 categories listed on the Natural Resources Commission, 176 Indiana Procedural Manual Information Bulletin #4. The intent of this list is to provide guidance, except where the items are required by law (i.e. floodways, logjams). Rivers on this list may affect the permits required or require special attention during project development.

vi. Flood Control Act

Projects must be compliant with the Flood Control Act (IC 14-28-1), which regulates development activities within the 100-year floodway of any Indiana waterway. The rules implementing that act are listed under Indiana's Flood Plain Management rule (312 IAC 10) and are administered by IDNR. Under 312 IAC 10, project may be required to obtain a Construction in a Floodway (CIF) permit from IDNR.

vii. Indiana Drainage Law

The Indiana Drainage Law (IC 36-9-27) grants each county the authority to conduct and regulate activities within designated open drains and tiles for the purposes of maintaining efficient and effective flow through the drains. Each county has a drainage board with jurisdiction over regulated drains. Projects affecting regulated drains may be required to receive approval from a county drainage board. Projects must be compliant with any local ordinances or codes.

viii. IDEM Rule 5 Permit

Projects must be compliant with 327 IAC 15-5, which protects water quality by regulating the discharge of sediment and other construction

related pollutants into surface waters. All projects that will disturb land are required to incorporate appropriate erosion and sediment control measures into project design and construction. Depending on the amount of land disturbance, the project may be required to obtain a Rule 5 permit from IDEM.

ix. Indiana Navigable Waterways Act

Projects must be compliant with the Navigable Waterways Act (IC 14-29-1), which regulates development activities associated with navigable waterways by requiring a permit from IDNR prior to the start of construction. IDNR maintains a list of their navigable waterways on their website.

2. Cultural Resources

i. Indiana Historic Preservation and Archaeology Act (IHPAA)

Projects utilizing State funds must be compliant with the Indiana Historic Preservation and Archaeology Act (IHPAA) (I.C. 14-21-1-18). Under I.C. 14-21-1-18 (a) and (b), a Certificate of Approval (COA) is required to be obtained before using any State funds to alter, demolish, or remove an historic site or historic structure, if it is owned by the State or if it is listed in either the Indiana Register of Historic Sites and Structures (State Register) or the National Register of Historic Places (NRHP or National Register). Information concerning the process of obtaining a COA can be found on the IDNR, Division of Historic Preservation and Archaeology (DHPA) website. Projects without Federal funding are not required to be compliant with Section 106 of the National Historic Preservation Act (NHPA). However, FFE projects that must obtain Federal permits will be required by the agency with approval authority to be compliant with Section 106 of the NHPA within the agency's limits of jurisdiction.

ii. Local Historic Preservation Commissions

Various local historic preservation commissions exist that require a Certificate of Appropriateness or similar certificate/approval to be applied for and granted in order to construct any exterior architectural feature or reconstruct, alter, or demolish any exterior or designated interior structure or feature in a historic area/building designated by the local historic preservation commission. If it is determined that a project is within a designated historic area or will impact a designated historic building of a local historic preservation commission, the project will be required to obtain a certificate/approval from the local historic preservation commission.

iii. Indiana Cemetery Law

Projects must be compliant with I.C. 14-21-1-26.5, which requires that a person may not disturb the ground within 100-feet of a burial ground for the purpose of excavating or covering over the ground or erecting, altering, or repairing any structure without having an approved

cemetery development plan (CDP). This law does not prohibit construction near a cemetery, nor does it prohibit moving cemeteries if the proper permits are acquired. The process for completing and submitting a CDP is described under 312 IAC 22.5-2-3.

iv. Accidental Discovery of Human Remains

Projects must be compliant with I.C. 14-21-1-27 and I.C. 14-21-1-29, which define the actions that are required upon the discovery of buried human remains or burial grounds and artifacts or burial objects. Any discovery must be reported to IDNR DHPA within two business days of the time of disturbance and ground disturbance within 100-feet of the artifact or burial object must immediately be ceased.

v. Historic Bridges

As noted above, actions completed using non-Federal funds could disqualify LPAs from using streamlined processes and/or programmatic agreements such as the Historic Bridge Programmatic Agreement (HBPA). The Historic Bridge Programmatic Agreement (HBPA) states that if an LPA intentionally demolishes or otherwise diminishes the historic integrity of a Select Bridge under its ownership with non-Federal-aid funds, then any future Federal-aid bridge project by that LPA cannot fall under the HBPA and will be required to complete the full Section 106 process in the future.

3. **Public Involvement**

Depending on the public interest and/or scope of the project, public involvement may be warranted. Public involvement could include, but is not limited to: public involvement plans, public involvement meetings, community advisory committee meetings, public notices, and public hearings. Note that public involvement is not necessarily limited to public meetings.

The IMPO recommends public involvement for the following project impacts:

- i. The proposal requires significant amounts [interpreted by IMPO to be one-half acre or more] of permanent right-of-way (ROW). (Note: Any proposal resulting in the increase in right-of-way due to the factors listed below are exempt from this requirement.) Documentation of this determination should be provided to the IMPO and uploaded to the project document tab in MiTIP.
 - a. The proposal does not involve *new* ROW impacts but rather reacquiring past prescriptions (i.e. existing or apparent existing ROW)
 - b. The proposal involves the acquisition of donated ROW from property owner
 - c. Acquiring ROW presently within the LPA apparent ROW to establish legal documented ownership

- d. Additional ROW is needed for mitigation purposes, for projects with less than one-half acre of ROW impacts described in the original environmental document
- ii. The proposal substantially changes the layout or functions of connecting roadways or the facility being improved;
- iii. The proposal permanently alters an existing traffic pattern;
- iv. The proposal involves noise analysis wherein noise impact is identified and abatement is determined to be feasible and reasonable;
- v. The proposal may have a substantial adverse impact on abutting property;
- vi. The proposal may have a significant impact on the social, economic, and/or natural environments;
- vii. The proposal involves impact(s) to an environmental justice (EJ) population (as defined by the IMPO's MTP) determined to be potentially disproportionate;
- viii. The proposal involves the permanent closure of a road, bridge, or other facility;
- ix. The proposal involves a historic bridge.

4. Endangered, Threatened, and Rare Species

Federal Fund Exchange (FFE) projects that must obtain Federal permits for water resources will be required by the agency with approval authority to be compliant with the Fish and Wildlife Coordination Act (16 USC 661-667 (e)) within the agency's limits of jurisdiction. The act authorizes the USFWS to investigate all proposed Federal actions (and non-Federal actions requiring a Federal permit), which would impound, divert, deepen, or otherwise control or modify a stream or other body of water and to make mitigation or enhancement recommendations.

Federal Fund Exchange (FFE) projects that must obtain Federal permits will be required by the agency with approval authority to be compliant with the Executive Order 13112 within that agency's limits of jurisdiction. The executive order requires Federal agencies not to participate in actions that are likely to cause or promote the introduction or spread of invasive species unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

The Migratory Bird Treaty Act (MBTA) under 16 USC 700-719 makes it unlawful to take, import, export, possess, sell, purchase or barter any migratory bird, with the exception of the taking of game birds during established hunting seasons. In addition to providing protection for the birds themselves, the law also applies to feathers, eggs, nests and products made from migratory birds. In this context, "take" is defined as "to pursue, hunt, shoot, wound, kill, trap, capture or collect, or any attempt to carry out these activities." "Take" does not include habitat destruction or alteration, as long as there is not a direct taking

of birds, nests, eggs or parts thereof. Transportation projects, regardless of funding, must be compliant with the MBTA.

Indiana regulations for wildlife include several State laws relating to biodiversity. Some of the regulations pertaining to wildlife include the following; IC 14-22-34 (Nongame and Endangered Species Conservation), IC 13-12-4 (SEPA), and IC 14-22-25-2 (exotic animal species). Information on the regulation of exotic and invasive plants is available through IDNR. Projects must be compliant with the State laws listed above.

5. The Endangered Species Act (ESA)

Federal Fund Exchange (FFE) Project must be compliant with the Endangered Species Act of 1973 (ESA). Section 9 of the ESA prohibits persons from importing, exporting, transporting, or selling endangered species of fish, wildlife, and plants in interstate or foreign commerce. It is also illegal to “take” an endangered fish or wildlife species or possess taken species.

Additionally, Federal Fund Exchange (FFE) projects that must obtain Federal permits will be required by the agency with approval authority to be compliant with the ESA under Section 7 within the agency’s limits of jurisdiction. Section 7 of the ESA requires that Federal agencies (or agencies using Federal funds) assist in the conservation of federally listed threatened and endangered species (TES) and, in consultation with the USFWS, ensure that their actions do not jeopardize listed species or destroy or adversely modify critical habitat. The Bald Eagle was removed from the Federal Threatened and Endangered Species list as of August 8, 2007. The Bald Eagle will continue to be protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, which prohibit the take and disturbance to nesting eagles.

6. Permits

A permit is an authorization to perform a regulated activity in a specific manner. Permits are the primary means by which regulatory agencies achieve compliance with Federal, State, and local environmental regulations. Some environmental impacts require permits from the Federal or State agency charged with regulating the environmental resource. Projects must obtain required permits prior to project letting. Permits that may be required include, but are not limited to:

Permit Type	Agency	Applicability
Section 404	USACE	See Section 5.4.1.5.a.1 above
Section 10	USACE	See Section 10 of the Rivers and Harbors Act (33 USC 403)
Section 408	USACE	See Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408)

Section 9	US Coast Guard	See Section 9 of the Rivers and Harbors Act (33 USC 403)
Class V Injection Well	EPA	See 40 CFR 144 - 148
Notice of Proposed Construction	Federal Aviation Administration (FAA)	See 14 CFR 77
Indiana Tall Structure Permit	INDOT Aviation	See IC 8-21-10
Section 401 WQC	IDEM	See Section 5.4.1.5.a.2 above
Isolated Wetland	IDEM	See Section 5.4.1.5.b above
Rule 5 Erosion Control	IDEM	See Section 5.4.1.5.g above
Section 402	IDEM	See Section 402 of the CWA and 327 IAC 5
Construction in a Floodway	IDNR	See IC 14-28-1 and 321 IAC 10
Navigable Waterways	IDNR	See IC 14-29-1
Lake Preservation Act	IDNR	See IC 14-26-2
Lowering of Ten Acre Lakes Act	IDNR	See IC 14-26-5
County Regulated Drain	County Drainage Board	See IC 36-9-27 and applicable local ordinances and/or codes

7. Hazardous Materials

The management of hazardous waste is regulated by the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as well as applicable State laws regulations, policies, and guidance. These laws apply to wastes (such as contaminated soil and groundwater) generated by construction and maintenance activities and must be considered when developing transportation projects. Even if no wastes are expected to be generated on a project, workers must be protected from health risks presented by hazardous materials (solvents, gases for welding, metals, or similar) that they encounter as part of their work.

Identification of hazardous material concerns can be accomplished through the completion of a Red Flag Investigation (RFI) or review of publicly available GIS

data and records. The RFI and/or review of publicly available GIS data and records can help determine if wastes generated by construction may need to be handled and disposed of properly, as well as if there is a risk to workers during construction. If unknown or potential environmental risks are identified, further assessment may need to be conducted, generally in the form of a Phase I or Phase II Environmental Site Assessment (ESA).

8. Noise

Projects that require an EA or EIS must be evaluated to determine if they will result in the generation of significant levels of noise. Sufficient documentation must be completed that supports the determination that the project will or will not generate significant levels of noise.

9. Air Quality

Projects must be compliant with the Clean Air Act (CAA) as amended. Projects that are non-exempt under the CAA or otherwise deemed “regionally significant” must be consistent with the MTP and be listed in the IRTIP. See section 2.4 above for a more detailed discussion concerning compliance with the CAA.

10. Environmental Justice

The IMPO seeks to treat disenfranchised and disadvantaged populations fairly in all planning and programming efforts. Specifically, such populations deserve to receive their fair share of benefits, to shoulder not more than their fair share of burdens, and to be meaningfully and equitably involved in decision-making. Federal Fund Exchange (FFE) projects must identify disadvantaged populations that may be affected and determine if the project will have an adverse effect on those disadvantaged populations. LPAs must follow the IMPO’s process concerning identification of disadvantaged populations, which can be found in their MTP and Public Involvement Program (PIP). If feasible, projects should avoid or mitigate adverse effects on disadvantaged populations, ensure full and fair public involvement of these populations in the transportation planning process, and prevent denial, reduction, or delay in the receipt of benefits of transportation projects by these populations.

f) Critical Elements

Critical Elements for environmental compliance include but are not limited to:

- Completion of an environmental document (CE, EA, or EIS).
- Acquiring a COA from the Indiana Historic Preservation Review Board (if applicable).
- Acquiring any required permits.
- Completion of the Environmental Compliance form.

g) *Fatal Flaws*

The focus on environmental compliance fatal flaws is primarily centered on hold items that would prevent the project from moving forward or being compliant with applicable State and Federal laws, regulations, policies, and guidance. While it is impossible to list all possible fatal flaws, the following list provides a sample of possible fatal flaws related to environmental compliance.

- Not completing an environmental document for the project file.
- Not acquiring a COA from the Indiana Historic Preservation Review Board prior to the alteration, demolition, or removal of a historic site or historic structure.
- Not acquiring the required permits for environmental impacts.
- Not completing the Environmental Compliance form.

h) *References to Guidance Material*

Note: Any form documents used from INDOT must be revised to reflect the LPA rather than INDOT.

Indiana General Assembly - IC 13-12-4

Indiana General Assembly – IAC 327

INDOT SEPA Forms and Templates

IDEM, Wetlands Program

IDNR, Division of Fish and Wildlife

IDNR, Division of Historic Preservation and Archaeology

U.S. Fish and Wildlife Service, Midwest Region

U.S. Army Corps of Engineers

5.4.3 Plans Preparation and Development

This chapter establishes the plan development process for Local Public Agency (LPA) projects using Federal Fund Exchange (FFE) funds through the IMPO. Completing the plan development process in accordance with applicable State laws and regulations is required for use of Federal Fund Exchange (FFE) funds. If a project is anticipating use of Federal funds for any phase of the project, applicable Federal and State laws and regulations must be followed. Guidance for use of Federal funds is not included in this document. All consultants in all phases of the project must be INDOT prequalified.

In addition to local standards, the Indiana Design Manual (IDM), Indiana Manual of Uniform Traffic Control Devices (MUTCD), Design Memos, Geotechnical Manuals, Indiana Department of Transportation (INDOT) design standards and specifications, Low Volume guide, or the American Association of State Highway Transportation Officials (AASHTO) “Policy on Geometric Design of Highways and Streets” manual can be used in plan development.

Any LPA wishing to develop a public works project shall develop plans and specifications according to IC 5-16. The LPA and the project designer are responsible for the preparation of all plans sheets, design computations, quantity computations, contract documents, cost estimates, and other pertinent project documentation necessary to certify the LPA project is ready to go to construction. Plan development activities are intertwined with all of the other project development activities including preparation of the environmental document and permitting, utility and railroad coordination, and land acquisition. The plan development process is intended to be performed concurrently with the other project development activities. The LPA is responsible for reviewing all designer plans and specifications. The LPA shall ensure that all final design plans are signed, sealed and dated by an engineer licensed in Indiana (i.e., Professional Engineer).

b) Design Criteria

LPAs will be solely responsible for the design and performance of all assets on locally-owned, non-National Highway System (NHS) assets. LPAs are responsible for ensuring that projects are designed in accordance with the selected standards and criteria, and in compliance with all applicable State and Federal laws and regulations. The LPA shall ensure that all final design plans are signed, sealed and dated by a Professional Engineer. When preparing final tracings, the Professional Engineer shall also submit a *Final Design Standards Report* detailing the design criteria used to develop the project plans, as well as identifying any deviations from that criteria and the justification for doing so. The *Final Design Standards Report* shall be signed, sealed and dated by the Professional Engineer.

c) Field Survey

Most LPA projects require a Field Survey or a Field Investigation. Additional resources for the LPA and the project designer may include an initial site investigation and if the property has an existing facility, the as-built plans or the final design plans may be an important resource.

e) Hydraulic Design Approval

Hydraulic Design shall be prepared in accordance with local standards. It is the LPA's responsibility to review and approve the project hydraulic design. A hydraulic report may be required to be presented to a local drainage board or receive other approvals

f) Field Checks

Field checks provide opportunity for involved parties to review design plans, ensure all railroad, utility and right-of-way issues are addressed, and help prevent unnecessary change orders during the construction phase. A preliminary field check is recommended at or near the 40% design completion stage. Plans should be developed to a point where any potential conflicts with utilities can be identified, but prior to final design completion. The project designer is responsible for preparing and distributing plans and notifying all relevant parties of the pending field check.

g) Geotechnical Investigation

If desired by the LPA, the Designer is responsible for the preparation of a complete Geotechnical Investigation and report in accordance with applicable guidelines. The

purpose of the Geotechnical Investigation is to evaluate the subsurface conditions in order to provide recommendations to design and construct the project. This typically occurs after the preliminary field check.

h) Pavement Design

If desired by the LPA, the Project Designer is responsible for pavement design. A LPA may use their standard pavement section or the pavement can be designed specifically for the project.

i) Project Special Provisions

A LPA may use a locally developed list of project special provisions or they may refer to a comprehensive set of previously developed provisions, such as the INDOT standard specifications. Note that if using the INDOT Standard Specifications, the special provisions should include a hierarchy or the LPA's preference to include any local specifications. Any standard drawings required and their order of preference should also be included.

j) Plan Submittals

Staged plan submittals to the IMPO are not required; however, LPAs are encouraged to review the project plans at various stages of design. Plan submittals offer the LPA an opportunity to review designer plans for adherence to standards and design criteria, constructability, maintenance of traffic and other items that could result in costly change orders during construction. Staged submittals also provide an opportunity to update and refine project cost estimates. While the IMPO will not be reviewing plan submittals, updates on project cost should be provided by the LPA to the IMPO through project quarterly tracking.

k) Final Plans

Final plans shall be signed and stamped by a registered Professional Engineer in the State of Indiana per Indiana code (IC 23-31-1-19)

l) Plan Revisions

Plan Revisions are the changes made to a set of plans and contract documents after the plans have been advertised and prior to letting. The letting date (not the plan signing date) controls when and how revisions can be made to the plans and contract documents.

Any plan revisions made after the project has been advertised, and prior to letting should be clearly marked on the plans so that it is easy for prospective bidders to follow the changes. Consideration should also be given to the timeframe between the plan revision and the letting date and whether prospective bidders will have opportunity to make modifications to their bids.

5.4.4 Utility and railroad coordination

Roadway agencies, utility companies, and railroad companies are each generally responsible for constructing, maintaining, and operating their own facilities. Close coordination and cooperation between each entity is required where they interact to ensure that design,

construction, operation, and maintenance of all networks are compatible both during and after the highway improvement project is completed.

The process of utility and railroad coordination begins at the inception of the project and continues until all work by utility companies is complete and/or all work on the railroad right-of-way is complete. It is essential for utility and railroad coordination activities to be performed in the proper order and in the proper manner to ensure timely delivery of projects.

The following sections list the Critical Elements, Fatal Flaws, References to Guidance Material (with links) and Identification of Resource People (with links).

Critical Elements in this chapter include but are not limited to:

- The Railroad agreement is prepared.
- Contacting Indiana 811 for location of utilities.
- Obtaining the name, address and contact information for each utility.
- A Relocation Workplan is in place.
- A Utility agreement is prepared.

Fatal Flaws:

- Not executing The Railroad agreement
- Not executing The Utility agreement
- Not Contacting Indiana 811 for the location of the utilities.

Pertinent Guidance Material

INDOT Utility Coordination Homepage

INDOT Utility Coordination Standard Documents (Forms)

INDOT Utility Coordination – Prequalification of Utility Coordinators

INDOT Utility Accommodation Policy

INDOT Utility Facility Relocations on Construction Contracts (105 IAC 13)

INDOT - Indiana Design Manual Chapter 104 Utility Coordination

Indiana Utilities Relocation Code

Indiana Design Manual

Rail Road Coordination:

5.4.5 ROW Acquisition

Completing the land acquisition function in accordance with applicable State laws and regulations is essential when acquiring land for projects under the Federal Fund Exchange (FFE) Program.

a) Land Acquisition Activities

Acquiring property on Federal Fund Exchange (FFE) projects or programs in general is referred to as the Land Acquisition Process. An entity must have the adequate rights-of-

way to build, operate, and maintain a facility. The following is a brief description of the requirements to ensure legal and adequate ROW acquisition.

Land acquisition consists of most, if not all, of the following activities:

- ROW Services, Management and Relocation – The coordination, technical direction, review, and reporting of ROW service activities for each parcel to be acquired. These services include abstracting, ROW Engineering, Appraising, Buying, Relocation and Condemnation.
- Title Research – Research of title records to establish ownership for property and other interests in the property impacted by a project to be acquired by the LPA. This is also often referred to as abstracting. Abstracting is defined as a search of the public records for a period of no less than 20-years or to the last recorded transfer by a warranty deed, whichever is longer. This includes judgments, bankruptcy, divorce, easements, with miscellaneous record searches for mechanics' liens, mortgages or other encumbrances. For temporary acquisitions, the research needs only to go back to the last deed of record.
- ROW Engineering – Preparation of legal descriptions (for all interests being acquired by the LPA, including but not limited to fee simple, temporary rights of way and clearance of other property interests) acquired from each property owner.
- A Route Survey and/or ROW parcel plats are to be prepared in accordance with the Indiana Administrative Code (IAC) Title 865. Staking of the proposed ROW for each individual parcel will be completed upon the request of the appraisers
- Scope of Work– The defining of the appraisal problem, appraisal scope of work, and establishing the appropriate valuation form type (waiver valuation, value finding, short form appraisal, etc.) to be completed.
- Appraising – Establishing an Opinion of Just Compensation. Determining the value of the acquisition (land, improvements, cost to cures, interests and/or damages) through appraisal or waiver valuation. *The appraisal, through an attached Statement for the Basis of Just Compensation, must be accepted/signed by the LPA.*
- Buying – Presenting a written offer to purchase land or interests therein to the property owner and executing all documents required to transfer the necessary property rights or interests from each owner for each parcel on a project.
- Relocation – Determining and paying relocation entitlement when people, businesses, and/or personal property are displaced by the acquisition of property for a project.
- Condemnation – Applying a governmental agency's right of "eminent domain" to acquire property for a project. This does not apply to voluntary acquisitions.
- Property Management – After the rights to a property are acquired, that property must be cared for by the LPA until it is utilized for the project. Even after the project is constructed, there may be a remnant containing facilities that require on-going up-keep.

b) *Land Acquisition Process*

During the project scoping process, the need to purchase right of way should be identified and the budget should be established. The budget must include the property and relocation benefits costs, as well as land acquisition services, such as ROW management, title work, ROW engineering, appraising, buying, and relocation services. All decisions regarding land acquisition are to be made by the LPA and its legal counsel. Neither INDOT nor the IMPO have any involvement in decision making nor do they have any involvement in any approval process or certification process. **The LPA has full responsibility of and liability for its decisions.**

In general, multiple parcels on a project can be processed simultaneously and the total duration of the land acquisition process from beginning of appraisal to securing and clearing the parcel can be approximately nine months. Condemnation proceedings may require additional time.

The land acquisition process consists of two major parts, ROW Engineering and ROW Services.

ROW Engineering includes:

- Title Search
- ROW Plans (only completed upon the request of the LPA)
- Parcel Development including: Legal Descriptions, parcel plans, area computation and parcel documentation
- ROW Staking, if requested by Appraisers

ROW Services include:

- Appraisals
- Buying
- ROW Management
- Relocation

Note: ROW Services may be completed at any time during project development process, although early acquisition could present significant risks to the LPA. The LPA should assess their risk of completing acquisition services prior to SEPA document completion and other environmental studies that could affect the project design and permitting requirements

Letter of Owner Contact –the appraiser will create and forward a "Letter of Owner Contact" to each parcel owner, which makes the owner aware of the LPA's intent to acquire their ROW, and requests a time to meet with owner for an on-site inspection with the appraiser.

c) *Steps for Land Acquisition:*

The following steps provide a guideline that breaks down the estimated duration for each step in the land acquisition process. The typical durations for each step of this guideline generally applies to projects of 20 parcels or less. Larger projects may require more time to complete each step.

- [Initial Property Research, Owner identification](#)
Duration: Approximately 10 days
 This consists of collecting any existing road plans along with the current deed of record and/or subdivision plats within the limits of the project. This should be performed in conjunction with, and included in the Topographic Survey for the project.

 - [Existing Right-of-Way and Property Line Determination](#)
Duration: Approximately 30 days
 The initial property research and topographic survey will be reviewed and analyzed to determine the existing alignments, right-of-way and property lines. This should be performed in conjunction with, and included in the Topographic Survey for the project.

 - [Abstracting](#)
Duration: Approximately 30 days
 After design has determined the parcels within the project that will require right-of-way acquisition, abstracting can begin.

 - [Parcel Development](#)
Duration: Approximately 45 days
 Can commence after the Preliminary Field Check (PFC) meeting and all issues addressed from the PFC and specific right-of-way lines are determined.

 - [ROW Staking](#)
Duration: Approximately 14 days
 Staking of the proposed ROW for each individual parcel will be completed upon the request of the appraisers.

 - [Establishing Market Value, commonly referred to as Appraising](#)
Duration: Approximately 30 to 120 days, depending upon complexity of appraisal report scope of work
 This step includes appraising, to include one appraisal or two appraisals depending on LPA attorney's interpretation of Indiana Code(s): IC 32-24 Eminent Domain and IC 36-1-10.5 Purchase of Land or Structures. This step can be completed after ROW engineering is completed for each parcel. If a second appraisal report is required, the two reports must be done autonomously, but the two appraisers should work together to determine scope of work to ensure consistency. The two appraisal reports can be completed simultaneously.
- NOTE:** If it appears that relocation assistance may be appropriate, the Relocation Agent should accompany the Appraiser(s) on the site inspection so that real vs personal property issues may be determined.
- [Buying](#)
Duration: Approximately 90 days

Offer may be made upon LPA approval of appraisal report. Rights of Entry is a tool the LPA can utilize to gain access to a property ahead of payment and recording in order to expedite the project schedule.

- **Relocation**

Duration: Approximately 180 days

Relocation is done concurrently with buying of corresponding parcel. LPA must decide if State or Federal relocation regulations are to be followed. Federal regulations grant a greater benefit to the displaced owner, which may assist in securing the parcel.

- **Condemnation**

Duration: Approximately 6 months to 1 year

If eminent domain proceedings are necessary, an additional six months to one year could be added to the ROW acquisition process. During the condemnation process, a parcel is clear for letting with the deposit of money with the Clerk's Office; however, title is not conveyed until the court passes judgment.

Encroachments: Situations may arise where the LPA may wish for an encroachment to remain in place within the LPA right of way. All encroachments must be approved by LPA and identified on project plans.

d) Critical Elements

Critical Elements include but are not limited to:

- Use of INDOT prequalified agents – LPAs are required to utilize INDOT prequalified agents to carry out the ROW processes and certification with proceeds from the Federal Fund Exchange (FFE) Program.
- Consult with LPA Attorney regarding classification of excess land and its later use, maintenance, or sale.
- Complete acquisition documentation for retention purposes.

e) Fatal Flaws

In Land Acquisition, the focus on fatal flaws is primarily centered on ensuring all activities protect the rights of property owners as set forth by the Indiana Code. However, this focus does not exclude other types of fatal flaws.

While it is impossible to list all possible fatal flaws, the following list provides a sample of possible fatal flaws related to land acquisition.

- Coercion of property owners to donate or forego required procedures/receive full payment
- Quid pro quo
- Letting with Exception without the appropriate local approvals.
- The property owners not properly informed of acquisition procedures.
- Incorrect ROW Engineering.
- Incorrect method of establishing just compensation (Appraising).
- Relocation Assistance not handled properly.
- False Information.

- Violation of nondiscrimination and Title VI protections.

f) References to Guidance Material

Note: Any form documents used from INDOT Manuals must be revised to reflect the LPA rather than INDOT.

- INDOT's Real Estate Manuals Web page – while the LPA is not required to follow INDOT procedures the Real Estate Manual contains good reference information
- INDOT Buying Forms
- INDOT Appraisal Forms
- INDOT Relocation Forms and Resources
- RAAP Forms

Legal Requirements

- Legal requirements for property acquisition are set out in State laws and regulations, as well as local government ordinances. For your convenience some of the State laws and regulations that apply to the local land acquisition process are listed below:
- US Constitution - 5th Amendment and 14th Amendment
- The State of Indiana codes - IC 32-24
- The State of Indiana codes - IC 36-1-10.5-5
- The State of Indiana codes - IC 8-23- 17 -20

g) Identification of Resource People

Consultant Right of Way Manager - If LPA has a Consultant, the Consultant Right of Way Manager is the LPA's first point of contact.

Communication regarding land acquisition should include the:

- LPA Project Manager
- LPA Engineer
- LPA Point of Contact/ Responsible Charge for the funds
- Design and Survey Engineers
- Indianapolis Metropolitan Planning Organization (IMPO)
- Consultant Right of Way Manager
- LPA Attorney

6 Construction Letting and Award

This section discusses the process for bidding projects that are developed using the IMPO Federal Fund Exchange (FFE) program. Traditionally this step is called the letting. The letting is the opening of bids from interested contractors in order to award the construction contract to a contractor.

6.1 The Letting Process

An IMPO “**18-month letting list**” provides a general view of projects that are scheduled to be let in the next 18 months. This list is updated on a monthly basis as projects are often moved for various reasons. Projects and their associated letting dates are shown in the IMPO 18 month letting list for informational purposes. LPAs will need to inform the IMPO if a letting date changes. LPA projects are identified in the project description.

Contract Information Book (CIB) Preparation: The LPA and Project Designer are responsible for preparation of the contract information book. LPAs may use their own documents for this. If the LPA does not have standard contract documents, standard templates such as those provided by EJCDC (<https://www.ejcdc.org/>) can be used.

6.2 Shop Drawings and False Work-Review Procedure

Review of all project shop drawings is the responsibility of the LPA. The LPA can make arrangements with their project designer to perform shop drawing review, but the overall responsibility is the LPA's. The submittal and review procedures should be clearly stated in the project bid documents.

6.3 Advertisement of the Contract for Bids

All bidders must have an INDOT Certificate of Qualification.

Information on qualification is located at <http://www.in.gov/indot/2740.htm>.

In addition to the 18-month letting list, the LPA will be responsible for advertising the project through appropriate means. Schedule in relation to the letting date should be considered as to the size and complexity of the project in order to allow contractors to prepare quality bids. Three weeks between advertising and bidding should be considered a minimum, with longer timeframes applying to large or complex projects. Public notices for bids shall be in accordance with IC 5-3-1 and IC 36-1-12-4(b)3.

6.3.1 Prebid Meeting

The LPA should consider a prebid meeting after the project has been advertised and prior to letting, especially for large or complex projects. The schedule (see 6.3.3, below, for a typical timeframe) should allow appropriate time for contractors to review the documents prior to the meeting, as well as time for issuing an addendum with the prebid minutes prior to the letting with sufficient time for contractors to review the addendum and adjust their bids if necessary.

6.3.2 Project Letting Date

Project lettings can be scheduled according to each LPA's local requirements. After the bids are opened, the LPA or Project Designer should review them for completeness and accuracy before an official award is made.

6.3.3 Typical Local Project Letting Schedule

Below is a typical project letting schedule. The timeframes represented should be reviewed and can be adjusted based on project size and complexity; and longer timeframes typically result in more competitive bids. It is the LPA's responsibility to set an appropriate letting schedule for the project:

- First advertisement for Letting – minimum 3 weeks prior to letting date
- Second advertisement for Letting – minimum 2 weeks prior to letting date
- Prebid Meeting – minimum 1 week prior to letting date; however complex projects should allow for a longer timeframe
- Last day for bidder questions – prior to issuing final addendum
- Issue final addendum with prebid meeting minutes – minimum 3 working days prior to letting

LPAs should refer to Section 105 IAC 11 of the Indiana Administrative Code (IAC) for any additional State requirements for prequalification and bidding.

6.4 Contract Questions and Answers

All questions from Contractors should go through proper channels and should not be answered directly by either the LPA or the LPA's Project Designer.

While the LPA or the Project Designer may need to answer some specific project questions, State policies require all questions and answers be made available to all bidders. The IMPO strongly encourages LPAs to follow State policy to ensure fair and competitive bidding.

6.5 Contract Revisions

Occasionally it is necessary to issue addendums to contracts that are advertised for bid. Requests for revisions can come from many sources including the LPA, the Contractor, or the Project Designer. It is important to note late revisions and/or large revisions may place the letting date at risk for rescheduling for a later letting. Should a delay occur, the IMPO should be notified immediately.

6.6 Evaluation of Bids and Contract Award

After the cut-off time for bid submittal, bids are opened in accordance with the LPA's standard procedures. The LPA shall ensure that all contracts or procurements for work on all projects funded under the program comply with all the applicable State and local public purchasing laws, and competitive bidding requirements in accordance with IC 36-1-12, IC 5-16-13, and IC 4-13-18.

6.7 Letting with Exceptions

Letting a project prior to completing all project development activities is known as “Letting with Exceptions”. Letting with exceptions is allowable in order to keep a project moving on schedule; however, it may pose significant risk to the LPA in increased cost or project delays. It is recommended that the following activities be complete prior to project letting:

- Land Acquisition
- Approved Utility Work Plans and executed reimbursable agreements
- Executed railroad agreement
- Permits obtained
- SEPA Process Complete
- Construction Inspection consultant selected

6.8 IMPO Federal Fund Exchange Funds for Construction

An IMPO-LPA grant agreement must be fully executed prior to the IMPO issuing a purchase order to the LPA. If additional funds are needed above the final awarded amount, the LPA has the option of rebidding the project, including rebidding with a change in scope, and/or paying the additional funds from local (non-FFE) sources. If these options are not available, the contract will be cancelled. If IMPO funds are paid and the project does not go to construction within 12 months, the funds must be returned to the IMPO within 60 days.

6.8.1 Submission of the IMPO Federal Fund Exchange Funds

It is vital to the continuation of the project and the issuance of the NTP that the IMPO-LPA Grant agreement be executed in a timely manner. If the delay in NTP is not caused by the Contractor, it could result in added expense and delay, or withdrawal of the Contractor bid. Any cost incurred as a result of the delay will be paid 100% by the LPA.

- The LPA should budget for their local match according to their final award. In accordance with local procedures, the LPA should approach their Board or Council with the amount of the funds needed for the match at the time of project application. After advertisement, the estimated funds for the match should be approved by the appropriate governing body prior to the letting date.
- The IMPO-LPA Grant Agreement shall be reviewed by the LPA’s legal counsel, approved, and executed no less than 6 months prior to the letting date.

6.8.2 Contractor Financial Liability

The contract documents are required to include minimum insurance coverage that contractors are required to carry when awarded a project as per IC 5-16-13-10 (b). *INDOT Standard Specification Section 103.04* provides an example of minimum insurance coverage for contractors.

6.8.3 Critical Elements

Critical Elements are listed below, but are not limited to, the following:

- Executed IMPO LPA-Grant Agreement
- Executed LPA Consulting Contract for CI (if applicable)
- Timely response to revisions.
- LPA Award Concurrence.
- LPA Match appropriately budgeted.
- NTP for Construction Inspection issued.

6.8.4 Fatal Flaws

There are many fatal flaws that can be associated with the bidding process itself. The following list provides a sample of possible fatal flaws related to letting that could cause a project not to receive a NTP to construction:

- No executed IMPO-LPA Grant Agreement.
- No Financial Commitment letter.
- XBE requirements not met, if required by local agency
- Untimely or no response to requested revisions.
- The LPA does not agree in the bid award amount.
- No NTP for CI issued.

6.8.5 NTP for Construction

In order for the LPA to issue NTP for construction, the following tasks should be completed:

- Contract forms must be properly signed and notarized by all parties to the construction contract
- IMPO FFE funds should be received by the LPA
- Required payment bond for contracts over \$200,000 and proof of insurance
- All administrative checks (tax clearance, prequalification, unbalanced Bid Analysis, etc.) should be completed by the LPA
- Any Purchase Orders (POs) required should be dispatched

Adjustment to the scheduled completion dates is sometimes necessary if the NTP is not issued within 30 days from letting. A delay caused by the Contractor does not warrant the adjustment to the completion dates.

6.8.6 References to Guidance Material

IMPO 18 month letting list
 Equal Opportunity Division (EOD) Web site
 The State of Indiana Codes for Public Works Projects - IC 36-1-12, IC 5-16-13, IC 4-13-18

6.8.7 Identification of Resource People

INDOT Office of Prequalification
 IMPO Executive Director for Contract Execution

6.8.8 Schedule

A tentative schedule is outlined in the project proposal, but should be updated with each disbursement of project funds by the IMPO.

6.8.9 Missed Lettings

As noted elsewhere, in the event of a missed letting, LPA's should contact the IMPO at the earliest opportunity.

7 Construction Process

The Local Public Agency (LPA) is charged with oversight responsibility for all IMPO Federal Fund Exchange projects.

The construction phase begins after the construction contract has been awarded and the Contractor is issued the Notice to Proceed (NTP) for the construction contract.

The Construction Inspection (CI) Consultant will provide a qualified Project Engineer/Supervisor (PE/S) who will act as the LPA's representative and who will administer the project on a day-to-day basis. The PE/S will supervise the project and the construction inspectors during the construction phase.

The CI Consultant will also provide qualified Construction Inspectors.

Once the construction phase begins, the Contractor will schedule the Preconstruction Conference.

7.1 Construction Inspection

All FFE projects must have CI services that utilize INDOT prequalified consultants or LPA in-house staff that have been approved by INDOT as having the same technical qualifications specified for consultants.

PE/S and Construction Inspectors oversee all phases of the construction process including maintaining a daily account of time worked, documentation of the type of work performed, and jobsite testing as required.

All PE/S's and Construction Inspectors must be trained and certified through the INDOT Certified Construction Technician Training or exempt based on education.

All testing must be performed in accordance with the LPA's procedures.

CI can be provided by contracting with a prequalified consultant firm or the LPA may use its own full-time forces provided those forces meet all certification and qualification requirements as put forth by the INDOT prequalification division for construction inspection.

Additional information regarding procedural instructions for construction administration can be found through the LPA. Additional resources can be found in INDOT's General Instructions to Field Employees (GIFE).

The GIFE provides guidance to the PE/S and Construction Inspectors but are not contractual documents or intended to be used as specifications.

7.2 Project Engineer/Supervisor (PE/S)

It is the responsibility of the PE/S to oversee the construction inspection, testing (as required by LPA policy), and documentation of all construction activity. The PE/S is also responsible for ensuring that the project is constructed in accordance with the contract documents, standard specifications, permit

requirements and other contract specific requirements. The PE/S is also responsible for ensuring the Construction Inspectors who perform tests are qualified per Section 7.1 of this Document.

Daily work reports, testing reports, progress estimates, change orders and all other documentation will be recorded by the PE/S. It is the responsibility of the PE/S to ensure all reports are accurate and kept current as construction progresses.

The PE/S must be trained and certified through INDOT Certified Technician Training or be exempt via education.

7.3 Preconstruction Conference

It is the responsibility of the PE/S to hold a preconstruction conference, and send invitations to the persons as required by the LPA or as listed in Section 2.3 of Section 2 of the General Instructions to Field Employee (GIFE) manual.

The PE/S is responsible for covering the items during the Preconstruction Conference as required by the LPA or as listed in [Section 2.4.1 of the GIFE](#).

7.4 Construction Administration

7.4.1 Construction Change

A Construction Change is made to a set of plans or contract documents following the project letting and subsequent awarding to a Contractor.

Construction changes shall be prepared and distributed by the project designer. Any changes to construction documents should be clearly delineated by the project designer in the issued revisions.

7.4.2 Change Orders

During the life of a project issues arise that require the processing of change orders, time extensions and/or claims. It is the responsibility of the PE/S to document all communications and construction activities that will affect any of these items.

For change orders and claims approvals, the PE/S must maintain communication with and obtain the approval of the LPA.

7.4.3 Shop Drawings and Falsework-Review Procedure

Review of all project shop drawings will be the responsibility of the LPA and their project designer.

7.4.4 Funding

It is the responsibility of the PE/S and the LPA to know the current status of their funding. The PE/S must maintain a running total of all contract costs showing the remaining balance of funds. The running total should include all pending and executed change orders.

Because the allocation of FFE funds for each project is limited, change orders and claim costs may not exceed the IMPO final award amount. In instances where the final award amount is exceeded, the LPA will be responsible for providing 100% of any additional funding required.

7.4.4.1 Leftover Funds Policy

Changes to the project scope after bidding that are by the choice of the LPA and are not required to complete the project will not be eligible for FFE funds and must be funded 100% locally. FFE funds remaining after the completion of the scoped items may not be used to expand the scope of the project.

Leftover funds shall be returned to the IMPO within 60 days of project closeout.

7.4.5 Final Construction Record

All IMPO Federal Fund Exchange projects require a Final Construction Record (FCR). Preparing the FCR is the responsibility of the PE/S. The FCR must be completed within 60 days of acceptance of the contract's completion. FCR will be prepared based on the LPA's requirements.

By the time the FCR is complete, all monies due the Contractor must be paid with the exception of any disputed quantities. The PE/S is responsible for follow-up of all unresolved issues until completed.

The FCR will be reviewed by the IMPO.

After the FCR has been approved by the LPA and the IMPO, the project will proceed to Project Closeout and final completion affidavit.

7.5 Critical Elements

Critical elements include but are not limited to the following:

- PE/S is prequalified by INDOT.
- Construction Inspectors need to be certified and qualified.
- PE/S maintains documentation of work performed in daily work records and material reports as the work is performed.
- PE/S maintains accurate records of quantities of work completed and completes prompt progressive estimates.
- PE/S provides inspection of all work activities that affect quality, safety and pay quantity items.
- PE/S notifies the LPA when contract changes will result in a need for increased funds.
- PE/S holds the Preconstruction Conference and distribute minutes.
- PE/S prepares change orders in a timely manner.
- PE/S maintains documentation of Contractor claims.

- There is continuity in the individual who serves as the PE/S to ensure accurate and up-to-date record keeping.
- PE/S holds Pre-final and Final Inspections.
- PE/S completes Final Construction Record.
- PE/S completes the IMPO Federal Fund Exchange Program Project Closeout Form
- Shop Drawings distributed and reviewed in a timely manner
- LPA proactively partners with prime contractor and other stakeholders to identify potential conflicts and mitigating solutions
- PE/S holds regularly scheduled progress meetings including LPA, contractors, and other stakeholders to discuss safety, potential conflicts, design challenges, change order requests, schedule, outstanding and upcoming submittal requirements and performance and quality

7.6 FATAL FLAWS

In construction, the focus on fatal flaws is primarily centered on contract specifications, payments, accurate documentation, and safety. However this focus does not exclude other types of fatal flaws.

While it is impossible to list all possible fatal flaws, the following list provides a sample related to construction.

- No inspector present when materials to be paid for by direct measurement are delivered to the site and incorporated in the work.
- Authorizing materials that do not meet specifications.
- Authorizing work to be constructed that does not comply with the specifications, standard drawings or contract plans.
- Authorizing extra work to be performed without proper approvals.
- Failing to maintain Daily Work Records and processing progressive estimates.
- Failing to complete the FCR.
- Failing to maintain a project file.
- Not having funds available for added work.
- Subcontractors start work before NTP for construction has been issued.
- Accessing a parcel prior to Right-of-Way (ROW) being clear or Right of Entry obtained.

8 Payment Process

8.1 Construction Purchase Order

The IMPO will issue the construction purchase order to the LPA upon approval of the LPA's selected contractor. The LPA shall submit the following documents to the IMPO for approval prior to issuance of a purchase order. The purchase order will be issued for the IMPO's portion of the grant agreement, based on the awarded bid amount; and the construction inspection amount (10% of the awarded bid). The IMPO may accept requests for an advanced purchase order for reimbursable utility relocations and construction inspection.

Documents to be submitted to the IMPO to obtain purchase order:

- W9
- ACH Information
- IMPO Notification of Contractor Award & Request for Funds form
- Executed Reimbursable Utility Agreements (if required by IMPO)

8.2 Advice-of-change

In the event of an advice-of-change, the IMPO may issue an additional purchase order up to the final awarded amount in the IMPO-LPA Grant Agreement.

8.3 Final payout

After project closeout and submission of the project close-out form and letter to the IMPO, the LPA will have 60 days to reimburse the IMPO for any unused funds.

9 Q&A

Who is eligible to apply?

Local Public Agencies (LPAs) that are members in good standing with the IMPO are eligible to apply.

When are applications due?

An annual call for projects (CFP) for a specific State Fiscal Year(s) will be issued each year, usually on October 1st. Variation from this schedule will be communicated to the membership of and when changes are made. Once the CFP is issued, LPAs will have approximately eight weeks (with the tentative deadline usually being the Wednesday before Thanksgiving) to submit a complete application.

How do I make an application?

Agencies interested in funding for new projects will submit an application via the IMPO's on-line interactive IRTIP database known as MiTIP.

Can a Local Public Agency submit multiple projects?

Yes.

What is required to submit an application?

An application packet will be developed by the IMPO staff for each CFP that will contain general application information as well as detailed information specific to each CFP. Below is a (non-exhaustive) list of the major items:

- A "Scoping and Cost Estimating Form" (using the IMPO-approved format) contains project details sufficient to make a funding decision, including all major components of a project's total cost estimates at the time of application. Cost estimates must be signed by a licensed engineer.
- A letter of local match commitment signed by the LPAs designated Transportation TPC representative or highest elected official must be submitted with each application.
- While not formally required, the IMPO encourages LPAs to provide a Red Flag Investigation (RFI) or Abbreviated Engineering Assessment (AEA) with their application.

What types of projects are eligible?

- Location: the project must be within the currently designated Metropolitan Planning Area. Roadway projects must be on facilities that are functionally classified as a "major collector" or above.
- Type: to be specified in the CFP, but generally following similar categories to Federal surface transportation funding categories available to IMPOs.
- Activity: to be specified in the CFP, but generally including construction, construction inspection, and utility relocation.
- "Regionally significant" projects, as determined by the IMPO, must be consistent with the project listings in the IMPO's Metropolitan Transportation Plan in order to be funded.

How are project applications prioritized and approved?

The IMPO uses an approved scoring selection process to evaluate and approve projects in consultation with the Indianapolis Transportation TPC.

When are grant awards announced?

Estimated announcement dates for project awards will be provided in the CFP packet.

What are the program requirements?

- If applying for preservation projects, LPAs must have an up-to-date Asset Management Plan (AMP) consistent with the Local Technical Assistance Program (LTAP) and Community Crossings Matching Grant (CCMG) program requirements to demonstrate awareness of infrastructure needs and organization assets.
- The LPA must also have a current ADA Transition Plan in order to ensure the organization is making efforts to improve accessibility within their community.

As a practical requirement, the LPA must have designated a qualified local contact that has been approved to enter project application and status information into MiTIP.

Can a Local Public Agency do their own work in-house (force accounts)?

Construction services must be competitively bid. LPAs may provide their own construction inspection provided that those staff have been approved by INDOT as having the same technical qualifications specified for consultants.

Can a Local Public Agency use any funding source to provide their local match?

Yes.

Can PE and ROW funds be counted towards the LPAs matching funds?

No.

What happens if all the awarded funding is not used for the project that was applied for?

Projects that are completed under the project award amount must have excess funds returned to the IMPO by the LPA within 30 days project close out.

If a project is delayed, is the LPA required to repay the funds? How long before funds need to be repaid?

A project may not be delayed more than one calendar year from the original letting date. Furthermore, if the project does not go to construction within twelve (12) months of IMPO payment, the funds must be repaid.

Who manages the funded project?

The LPA, either through qualified in-house staff or consultants prequalified through INDOT, manages the project. Professional services must be performed by an entity that is prequalified by INDOT, and award of all contracts for professional services must be made on the basis of competence and qualifications.

Does the project have to follow Federal National Environmental Policy Act (NEPA) requirements?

The use of the Federal Fund Exchange funding through the IMPO does not directly trigger NEPA requirements. Instead, the LPA should be prepared to evaluate environmental impacts as specified by the State Environmental Policy Act (SEPA, I.C. 13-12-4), which is structured similar to NEPA, but is generally less intensive.

LPAs should be aware that there are actions that could exclude the project from receiving/using any Federal funds in the future [e.g., Section 4(f)]. Also, if the project intersects an area of Federal regulatory authority (e.g., Army Corps of Engineers), NEPA review may still be required.

Who conducts the environmental review for the project?

The LPA is responsible to be compliant with SEPA (IC 13-12-4) and all other applicable State and Federal laws, regulations, policies, and guidance. LPAs will be required to complete an Environmental Compliance form prior to project letting certifying compliance with all applicable State and Federal laws, regulations, policies, and guidance.

What responsibilities does the LPA have in implementing the project?

The LPA must provide quarterly reports on the funded project in accordance with the IMPO's Quarterly Tracking Policy. General project management responsibilities that fall under the LPAs purview (in consultation with the IMPO and pertinent State agencies) includes the following:

- Consultant Selection;
- Consultant and contractor oversight and payment;
- Schedule and cost documentation;
- Project maintenance and control;
- Environmental Review;
- Survey and Design;
- ROW Engineering and Utility Coordination;
- Land Acquisition;
- Construction bidding;
- Construction oversight and inspection;
- IMPO Reporting; and
- Project closeout.

When does the IMPO issue the funds?

The initial purchase order will be made upon approval of the LPAs selected contractor and submission of the IMPO Notification of Contractor Award & Request for Funds to the IMPO. The IMPO may provide an early PO for construction inspection or utility relocations upon request by the LPA.

Are utility relocations eligible for funding?

Yes, if reimbursable by State law.

Will LPAs be required to utilize full time CI services?

Yes, through consultants or qualified in-house staff.

Will “letting with exceptions” be allowed?

Yes, but it is not recommended, as such practices may pose significant risk to the LPA in increased project cost or delays.

Will LPAs need to require consultant prequalification for INDOT work categories?

Yes.

Does the IMPO have a tracking process for FFE funds?

The IMPO uses a Quarterly Tracking Policy that applies to all projects utilizing IMPO-administered funds. An LPA that fails to adhere to the Quarterly Tracking Policy will be ineligible to receive additional FFE funds for any project currently funded by the IMPO and will not be eligible to submit new project applications through the IMPO’s Annual CFP until the LPA adheres to the IMPO’s adopted policy.

Does the IMPO have an audit process?

All FFE funds are subject to audit by the State Board of Accounts per IC 5-11-1. The IMPO will not be conducting any independent audit of FFE funded projects.

Can a LPA use proprietary material in a project?

Use of proprietary materials is allowable.

10 Appendices/Forms

(Available for Download on the IMPO Website)

Project Cost Estimation Spreadsheet Tool

Sample IMPO-LPA Agreement

Red Flag Investigation

Project Scoping and Cost Estimating form

Certificate of substantial completion

Sample Change Order Cover Letter

Notification of Contractor Award and Request for Funds

IMPO Federal Fund Exchange Program Project Closeout

Typical Project Delivery Schedule