

**HIGHWAY PLANNING, RESEARCH AND CONSTRUCTION CLUSTER:**

<b>20.205</b>	<b>HIGHWAY PLANNING AND CONSTRUCTION (FEDERAL AID HIGHWAY PROGRAM)</b>
<b>20.205</b>	<b>HIGHWAY INFRASTRUCTURE – COVID SUPPLEMENTAL 23 U.S.C. 133(B) ACTIVITIES IN ANY AREA OF THE STATE (Z970)</b>
<b>20.205</b>	<b>HIGHWAY INFRASTRUCTURE – COVID SPECIAL AUTHORITY – SPECIAL ELIGIBILITIES IN ANY AREA OF THE STATE (Z971)</b>
<b>23.003</b>	<b>APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM (ADHS)</b>
<b>20.933</b>	<b>BETTER UTILIZING INVESTMENTS TO LEVERAGE DEVELOPMENT (BUILD) TRANSPORTATION GRANTS</b>
<b>20.933</b>	<b>REBUILDING AMERICAN INFRASTRUCTURE WITH SUSTAINABILITY AND EQUITY (RAISE) TRANSPORTATION GRANTS (FORMERLY BUILD)</b>
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<b>State Project/Program</b>	<b>HIGHWAY PLANNING AND CONSTRUCTION</b>
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<b>U. S. Department of Transportation</b>	
<b>Federal Authorization:</b>	23 U.S.C. 401 et seq., as amended, 23 CFR and 49 CFR (20.205), SAFETEA-LU, Map-21, FAST Act  Appalachian Regional Development Act of 1965, Section 201, Public Law 89-4, as amended, 40 U.S.C. 14501 (23.003)  Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Public Law 116-260)
<b>State Authorization:</b>	<b>N. C. Department of Transportation (Construction and Maintenance)</b>
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<b><u>Agency Contact Persons – Program</u></b>	<b><u>Address Confirmation Letters To</u></b>
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The auditor should not consider the Supplement to be “safe harbor” for identifying audit procedures to apply in a particular engagement, but the auditor should be prepared to justify departures from the suggested procedures. The auditor can consider the supplement a “safe harbor” for identification

of compliance requirements to be tested if the auditor performs reasonable procedures to ensure that the requirements in the Supplement are current. The grantor agency may elect to review audit working papers to determine that audit tests are adequate.

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

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

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

Grants must be properly identified by program name, CFDA number (20.205-1CL) and WBS number on the Schedule of Expenditures of Federal and State Awards. The specific CFDA number and WBS Elements are available from the agreement with NCDOT. The program name is in the second/third paragraph while the WBS number is on the upper right-hand corner of the first page. Grantor and/or pass-through grantor and program title should also be included. On NCDOT's confirmation from the Grant Master List (GML), these moneys are shown by CFDA number 20.205-1. Please do not combine like projects into one-dollar amount since we would need to call you for the breakdown; please report award amount, Federal Pass-through, State share and local share.

### **I. PROGRAM OBJECTIVES**

The objectives of the Highway Planning and Construction Program are to: (1) assist States in constructing and rehabilitating the National Highway System (NHS) including Interstate highways and building or improving other Federal-aid roads and streets; (2) provide aid for repairing the system, roads, and streets following disasters; (3) foster safe highway design and replace or rehabilitate unsafe bridges; (4) support community-level transportation infrastructure; and (5) to provide for other special purposes. The objective of the CRRSAA (Covid-relief funds) is to provide funding at up to 100% federal participation and include activities that are not normally considered reimbursable under the Highway Planning and Construction Program, including maintenance and employee salaries. The objective of the ADHS program is to provide a highway system which, in conjunction with other federally aided highways, will open up areas with development potential within the Appalachian region where commerce and communication have been inhibited by lack of adequate access. The objective of the RAISE (formerly BUILD) Grant Program is to support capital investment in surface transportation infrastructure, including highway or bridge projects, public transportation projects, passenger and freight rail project and port infrastructure that will have a significant local or regional impact.

### **II. PROGRAM PROCEDURES**

#### FUNDING

Funds are available through several processes:

- Transportation Management Area (TMA) Metropolitan Planning Organizations (MPO) are sub allocated Block Grant (BGDA) and Transportation Alternatives (TADA) funding and

the MPOs in turn allocate funding to member jurisdictions through a competitive application process. Subrecipients are notified of award after MPO approval. In addition, certain MPOs and RPOs (Rural Planning Organizations) may allocate Congestion Mitigation and Air Quality (CMAQ) funds in areas where air quality is poor. The process for applying for funds is through an application; the MPOs and RPOs prioritize projects and the Department provides final approval of applications.

- The CRRSAA allowed a similar allocation of Highway Infrastructure Program (HIP) funds to the MPOs for sub-allocation to member jurisdictions.
- The Strategic Transportation Investments (STI) Law allows local jurisdictions to submit project proposals through the Prioritization process in order to rank and fund eligible surface transportation projects. Projects are approved when they are programmed in the State Transportation Improvement Program (STIP).
- Appalachian Development Highway Funds are accessed through an application process administered by the Appalachian Regional Commission
- RAISE (formerly BUILD) Grant funds are accessed through an application process administered by USDOT. Successful applicants are notified by USDOT and if the applicant chooses to be a subrecipient of the state, then funds are administered by the State Highway Agency.

### ELIGIBLE RECIPIENTS (also see below)

Funds may be provided to cities, counties, tribal governments, and other political subdivisions to pay for a defined portion of the planning, development, engineering, right of way acquisition, construction, and mitigation costs of approved projects. These sub-recipients are known as Local Government Agencies (LGAs); projects are referred to “Locally-Administered Projects.” When the LGA delivers the project, an agreement is entered into between NCDOT, the LGA, and/or other political subdivisions. The legal agreement specifies the terms and conditions of the projects. The LGA is not allowed to sub-allocate funds to subrecipient without prior approval from the Department.

### PROGRAM and PROJECT ADMINISTRATION

The Local Programs Management Office is responsible for the administration of Locally-Administered Projects Program and the Division of Highways, which includes all 14 Highway Divisions are responsible for the day to day oversight of each Locally-Administered Project. Other units or offices may also be involved with oversight depending on the nature and scope of the project.

## III. COMPLIANCE REQUIREMENTS

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

## HIGHWAY PLANNING AND CONSTRUCTION

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

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

### A. ACTIVITIES ALLOWED OR UNALLOWED

**Compliance Requirement** - Highway Planning and Construction includes the following uses:

- Federal-aid highway funds may be used for environmental studies, engineering and design services, right-of-way acquisition and relocation assistance, and construction for capital improvement projects classified as new construction, reconstruction, restoration, rehabilitation, resurfacing and preservation, or for functional, geometric, or safety reasons.
- Funds may also be used for planning; research, development, and technology transfer; intelligent transportation systems projects; roadside beautification; wetland and natural habitat mitigation; traffic management and control improvements; improvements necessary to accommodate other transportation modes; development and implementation of performance and asset management systems; billboard removal; construction of bicycle facilities and pedestrian walkways; fringe and corridor parking; car pool and van pool projects; transportation alternatives and enhancements such as scenic and historic highway improvements; and recreational trails.
- CRRSAA funds may be used for any activity eligible under the Highway Planning & Construction program. In addition, funds may be used for maintenance (preventative and routine), operations, personnel, debt service, availability payments, and loss of revenue.
- CMAQ funds are limited to projects and programs that reduce transportation related emissions air quality non-attainment and maintenance areas for ozone, carbon monoxide, and particulate matter.

- Appalachian Development Highway Program funds may be used for the construction, reconstruction, or improvement of highways on the latest approved Cost to Complete Estimate of the ADHS.
- Funds cannot be used for routine highway operations activities, such as police patrols, mowing, snow plowing, litter control or maintenance (except for CRRSAA funds).

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

### **Suggested Audit Procedure**

No testing required at the local level.

## **B. ALLOWABLE COSTS/COST PRINCIPLES**

### **Allowability of Specific Transactions and Activities**

1. **Compliance Requirement** - Funds can only be used to reimburse costs that are: (1) incurred subsequent to the date of authorization to proceed; (2) in accordance with the conditions contained in the project agreement and the (approved) plans, specifications and (contractor's) estimates; (3) allocable to a specific project; and, (4) claimed for reimbursement subsequent to the date of the project agreement. (23 Code of Federal Regulations (CFR) 1.9; 23 CFR 630.106, 630.205).
2. **Compliance Requirement** – Cost of contracts, in-house staff (staff at the municipal level that provide project specific services such as engineering and design activities, right of way acquisitions, and construction administration) are allowable costs associated with local projects, with prior approval by the Department.
3. **Compliance Requirement** - Administrative and overhead costs that are considered necessary for management, supervision, and administrative control are unallowable.
4. **Compliance Requirement** - Expenditures for (routine) highway maintenance are not eligible (23 USC 116) (23 CFR section 1.27), unless using CRRSAA funding.
5. **Compliance Requirement** - Preliminary engineering, right of way and construction costs must be incurred after authorization by Federal Highway Administration in order to receive Federal reimbursement administered by NCDOT.
6. **Compliance Requirement** - Changes that increase the Federal cost or alter the physical limits, character, or scope of the work must be authorized by NCDOT/FHWA. Major changes must be approved in advance. Minor changes may be approved retroactively.
7. **Compliance Requirement** - Any charges for materials provided by the municipality or a contractor must be net of sales taxes. Local units of government including cities, counties, and others chartered by the General Assembly are eligible for grants. These local units of government should be eligible for sales tax refunds under GS 105-164.14 (b) or (c). If they cannot qualify, then these local units of government should take the steps necessary to become eligible. Sales tax paid, which may be requested from the NC Department of Revenue as a refund, is an ineligible charge.

**Audit Objective** – Determine whether charges to awards were for allowable costs.

**Suggested Audit Procedure** – Test a sample of the transactions for conformance with the following:

- Costs did not consist of improper payments, including (1) payments that should not have been made or that were made in incorrect amounts (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; (2) duplicate payments; (3) payments that were made to an ineligible party or for an ineligible good or service; and (4) payments for goods or services not received (except for such payments where authorized by law).
- Costs were necessary and reasonable for the performance of the Federal award and allocable under the principles of 2 CFR part 200, subpart E.
- Costs conformed to any limitations or exclusions identified in 2 CFR 200, subpart E, or in the agreement to types or amount of cost items.
- Costs were consistent with policies and procedures that apply uniformly to both federally financed and other activities of the State/local government/Indian tribe department or agency.
- Costs were adequately documented and supported.

### C. CASH MANAGEMENT

NC Department of Transportation pays on a reimbursement basis. No testing is required.

### E. ELIGIBILITY

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

### F. EQUIPMENT AND REAL PROPERTY MANAGEMENT

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

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

**Suggested Audit Procedure** – Identify real property dispositions for the audit period and determine whether the real property was acquired or improved with Federal funds

passed through NCDOT. Perform procedures to determine if the income from the sale of real property was used to fund other eligible projects under 23 USC.

### G. MATCHING, LEVEL OF EFFORT, EARMARKING

#### 1. Matching

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

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

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

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

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

### H. PERIOD OF PERFORMANCE

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

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

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

### I. PROCUREMENT AND SUSPENSION AND DEBARMENT

Construction projects cannot be advertised nor force account work commenced until FHWA/NCDOT (1) approves the plans, specifications, and estimates, (2) receives right-of-way (ROW) certification, utility/railroad certification and (3) authorizes the SHA/municipality to advertise for bids or approves the force account work. The

construction contract cannot be awarded until after FHWA/NCDOT reviews and recommends contract award subject to Board of Transportation approval. (23 CFR 630.205; 23 CFR 635.112). The local government will receive an authorization to proceed with the phase of work. All construction contracts should be solicited in accordance with NC General Statutes §143, Article 8: Public Contracts. In addition, the federal-aid highway funding requires that the bid procedures are in accordance with the NCDOT Standard Specifications, which are in accordance with 23 CFR 635, concerning bidding and letting a contract. The following procedures must be adhered to:

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

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

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

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

Construction projects administered under certification authorization (CA) procedures and projects exempt under 23 USC 106(b)(1) and 23 USC 106(b)(2) require only FHWA authorization to proceed.

### J. PROGRAM INCOME

NCDOT does not pass this requirement down to the local level. No testing is required.

### L. REPORTING

1. **Compliance Requirement** – Federal Funding Accountability and Transparency Act (FFATA) – Subrecipient information.

**Subrecipient General Information:** NCDOT requires the following subrecipient data be provided by each Local Agency Subrecipient working on federally funded project of \$25,000 or greater. This form is only required for Subrecipients that use Federal funds for locally administered Transportation and Infrastructure projects. The form is required to be completed annually each State fiscal year and each time contact or officer information changes thereafter. If subrecipient meets statutory reporting thresholds, then they must report executive compensation of the five most highly compensated officers.

**Audit Objective** – Ensure local government has completed and filed the Sub-recipient Monitoring form with NCDOT.

**Suggested Audit Procedure** – Obtain and review the FFATA report(s) including report instructions, submitted during the audit period to see if local entity has provided the sub-recipient monitoring form and if form correctly reflects reporting status. Perform procedures to determine whether the information reported is correct. Review financial data to determine if the entity meets the statutory thresholds for



reporting executive compensation. If so, determine if the entity disclosed the names and total compensation of the five most highly compensated officers at the entity-wide level, not the agency, department, or office level.

### M. SUBRECIPIENT MONITORING

NCDOT does not allow further sub-allocation of funds by sub-recipients in this Program. No testing is required.

### N. SPECIAL TESTS AND PROVISIONS

#### 1. Wage Rate Requirements

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

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

#### **Suggested Audit Procedure**

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

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

#### 2. Use of Other State or Local Government Agencies – N/A

#### 3. Replacement of Publicly Owned Real property – N/A

#### 4. Quality Assurance Program – N/A; LGAs follow NCDOT's Quality Assurance Program

#### 5. Contractor Recoveries – N/A; not applicable, NCDOT will reduce LGA reimbursement to account for any funds recovered from the contractor.

#### 6. Project Approvals –

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

- PE Authorization – a municipal agreement must be executed between the LGA and the Department
- ROW Authorization – a municipal agreement, Categorical Exclusion, and ROW plans must be approved, prior to the ROW phase being authorized

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

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

**Suggested Audit Procedure**

- Review a sample of projects and identify dates of the necessary approvals, authorizations, and concurrences.
- Identify dates that projects were advertised and compare to the date of the authorization/NTP from the Department.

7. Value Engineering – N/A; LGAs do not have projects that meet VE thresholds

8. Utilities

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

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

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

9. Administration of Engineering and Design-Related Service Contracts

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

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

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