

Overview of Federal-Aid Program & Construction Contract Requirements

Fraud Prevention and the Use of Federal Funds in Transportation Projects

September 20 @ 22, 2016



U.S. Department
of Transportation

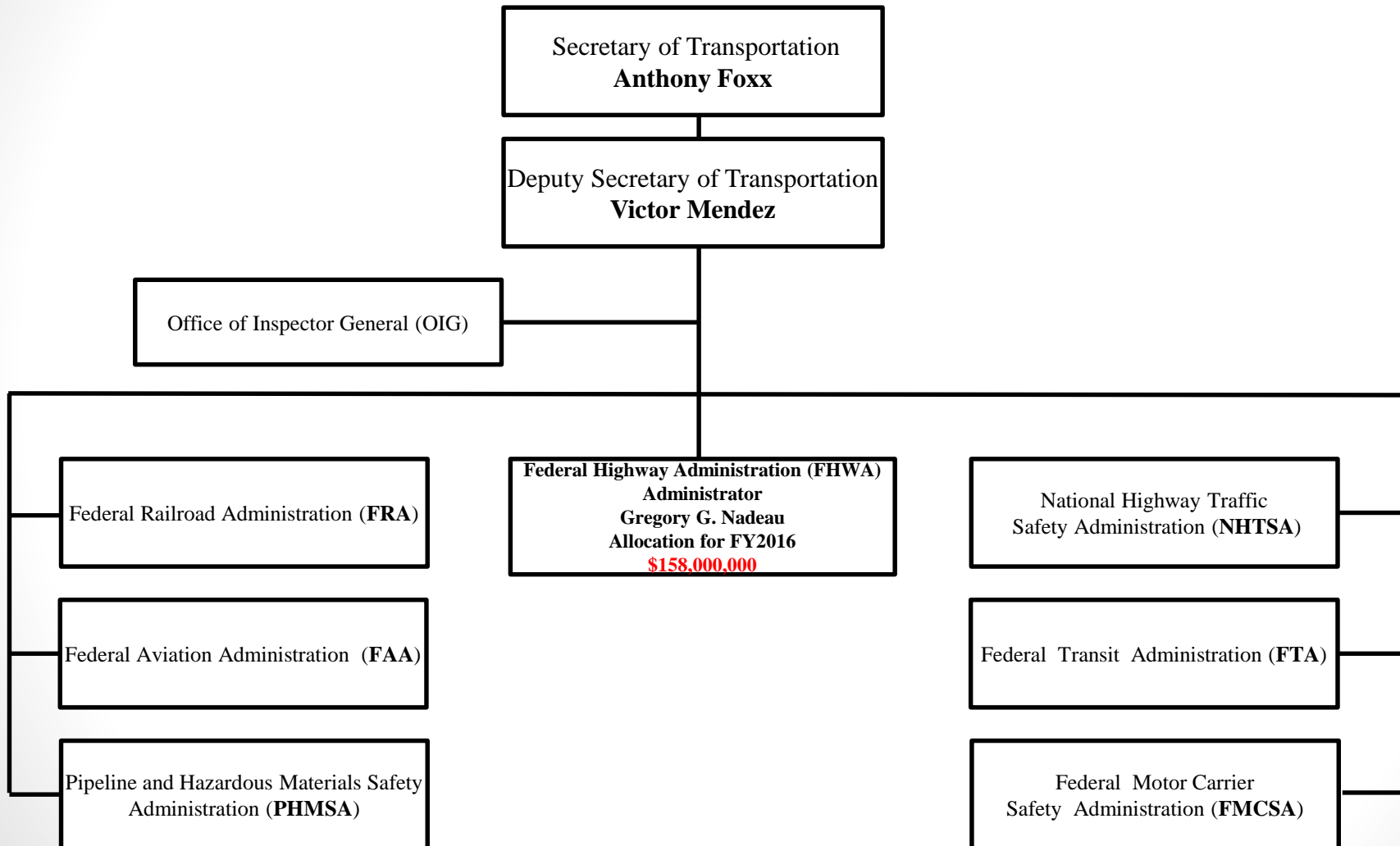
**Federal Highway
Administration**

Overview

- I. Federal-Aid Highway Program
- II. State and FHWA Responsibilities at Project Level
- III. Pre-Construction Requirements
- IV. Construction Contract Administration

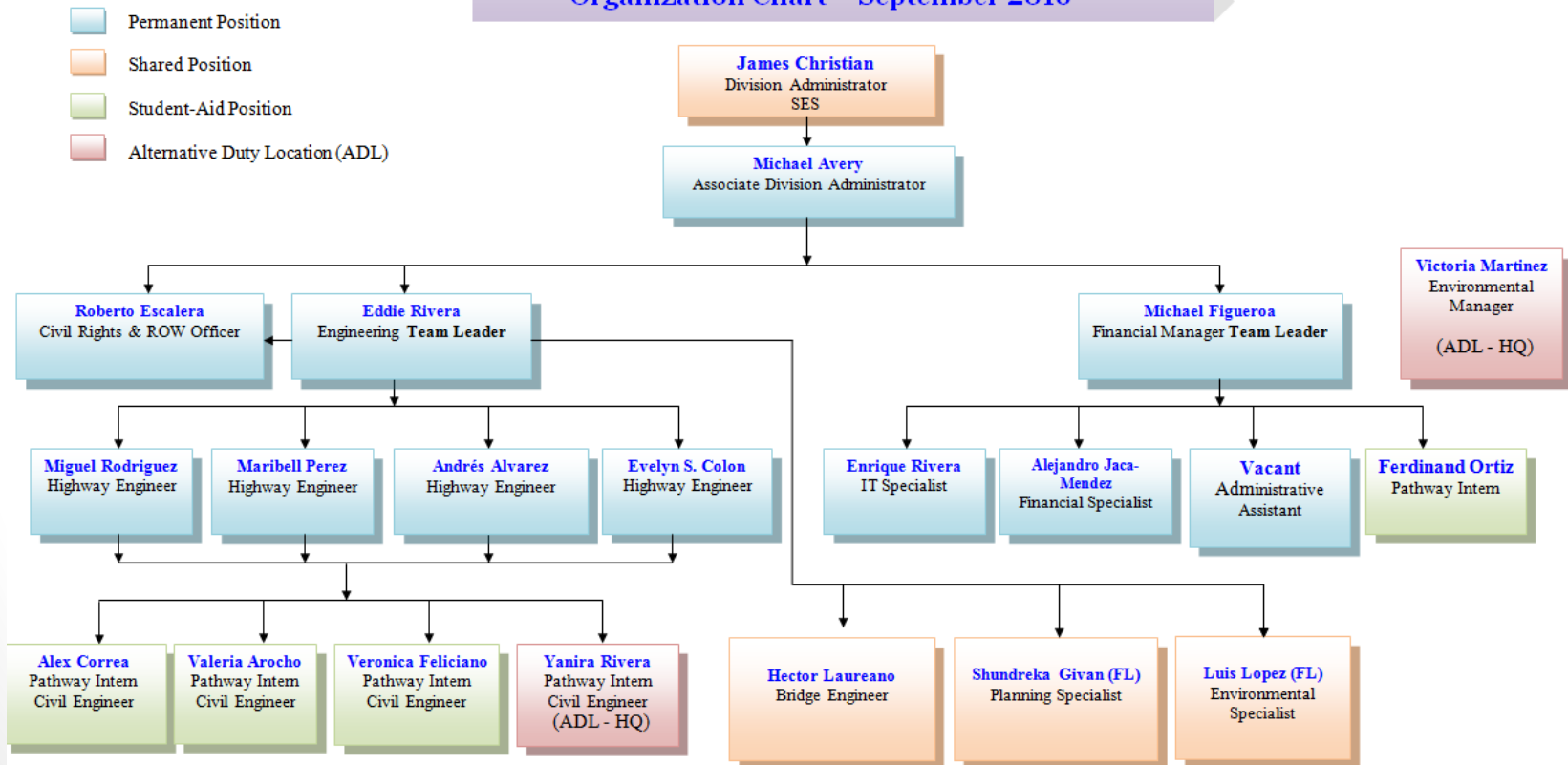
I. Federal-Aid Highway Program

U.S. Department of Transportation



PR & USVI Division

FEDERAL HIGHWAY ADMINISTRATION Puerto Rico Division Organization Chart – September 2016



What is FHWA mission?

- “Improve Mobility on our Nation’s Highways through National Leadership, Innovation, and Program Delivery.”

DIVISION Responsibilities

- Work in collaboration with our State partners to improve the safety of our roads, bridges and tunnels.
- Provide leadership, and guidance on the Federal-aid program.
- Continue to support economic growth and environmental sustainability.
- Ensure accountability.
- Recommend innovative techniques and strategies to improve the transportation system.
- Responsible for working with State partners to ensure that the nation's strategic investments are preserved.

Federal-Aid Highway Program

- The Federal-Aid Highway Program (FAHP) is Federally Funded and State Administered.
- FAHP is a reimbursable and matching program.
- The Puerto Rico Highway and Transportation Authority (PRHTA) is the recipient Agency of Federal-Aid Funds and responsible for carrying out the duties required by law.
- PRHTA is using the federal funds for:
 - Construction Projects
 - Planning Activities
 - Consultant Services Contracts
 - PRHTA's Construction Engineering and Design Engineering Cost.

Who are our Main Partners?

- **State (Grantees):**
 - Puerto Rico Highway and Transportation Authority (PRHTA)
 - Virgin Islands Dept. of Public Works (USVI DPW)
- **Municipality:**
 - Municipality of Guaynabo (TIGER Recipient)
- **Federal:**
 - US Army Corps of Engineers (USCE)
 - US Fish & Wildlife Service (US FWL)
 - US Small Business Administration (SBA)
 - Federal Emergency Management Agency (FEMA)
 - Other USDOT Agencies
- **Other Organizations:**
 - Puerto Rico Traffic and Safety Commission (PRTSC)
 - Local Technical Assistance Program (LTAP)
 - State Historic Preservation Office (SHPO)
 - Institute of Transportation Engineers (ITE)
 - PR College of Engineers and Land Surveyors
 - Association of General Contractors (AGC)

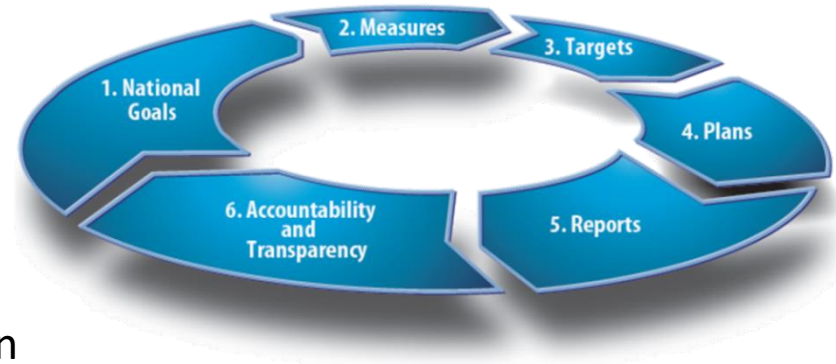


**US Army Corps
of Engineers®**

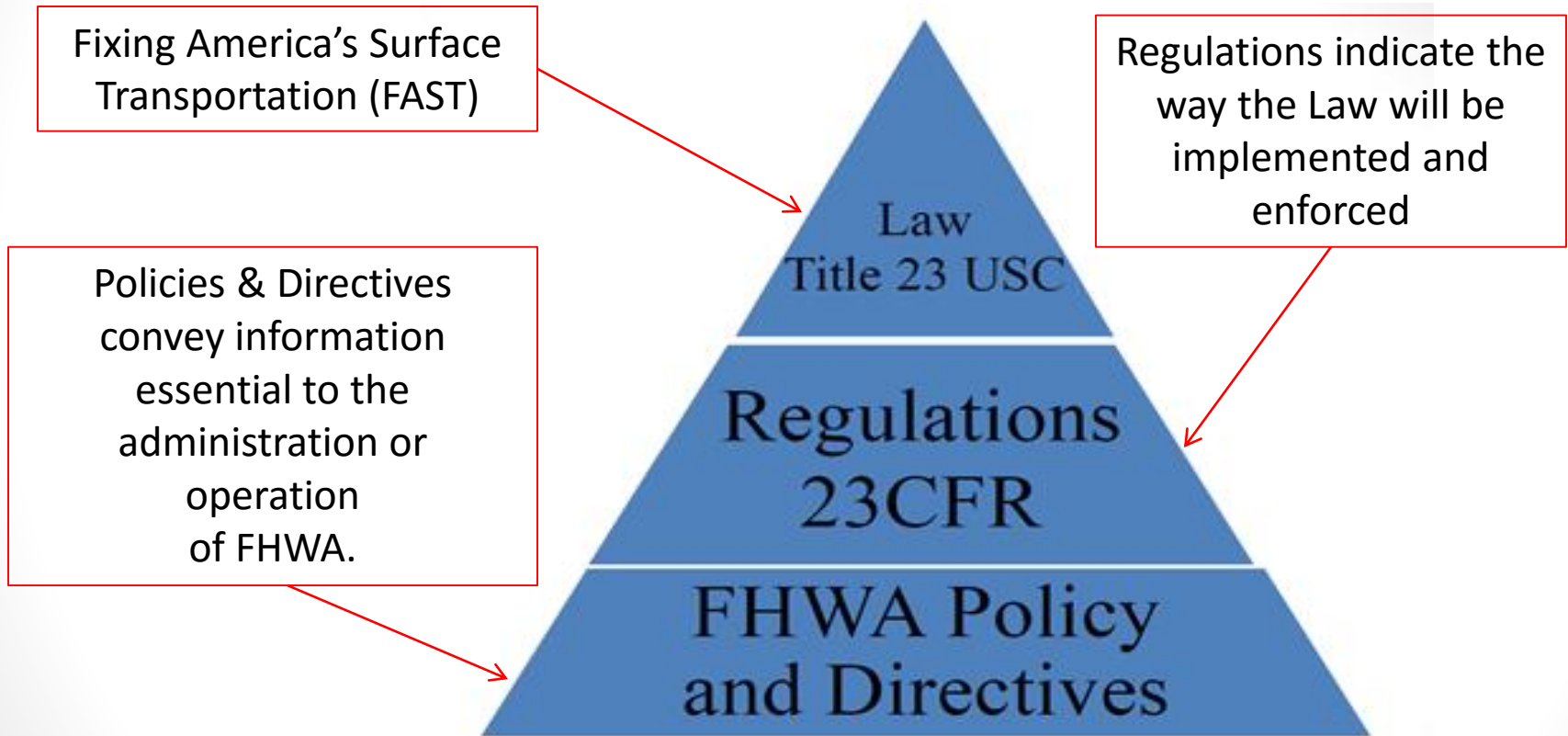


Fixing America's Surface Transportation Act (FAST Act)

- Is the most recent authorization act for the Federal Highway Program (FAHP). The authorization act covers five (5) years, starting October 1, 2015.
<https://www.fhwa.dot.gov/fastact/factsheets/>
- Focus on a Performance Management Framework:
 - Provide a means to the most efficient investment of Federal transportation funds by:
 - **Increasing the accountability and transparency of the Federal-aid highway program**
 - Refocusing on national transportation goals
 - Improving project decision making through performance-based planning and programming.

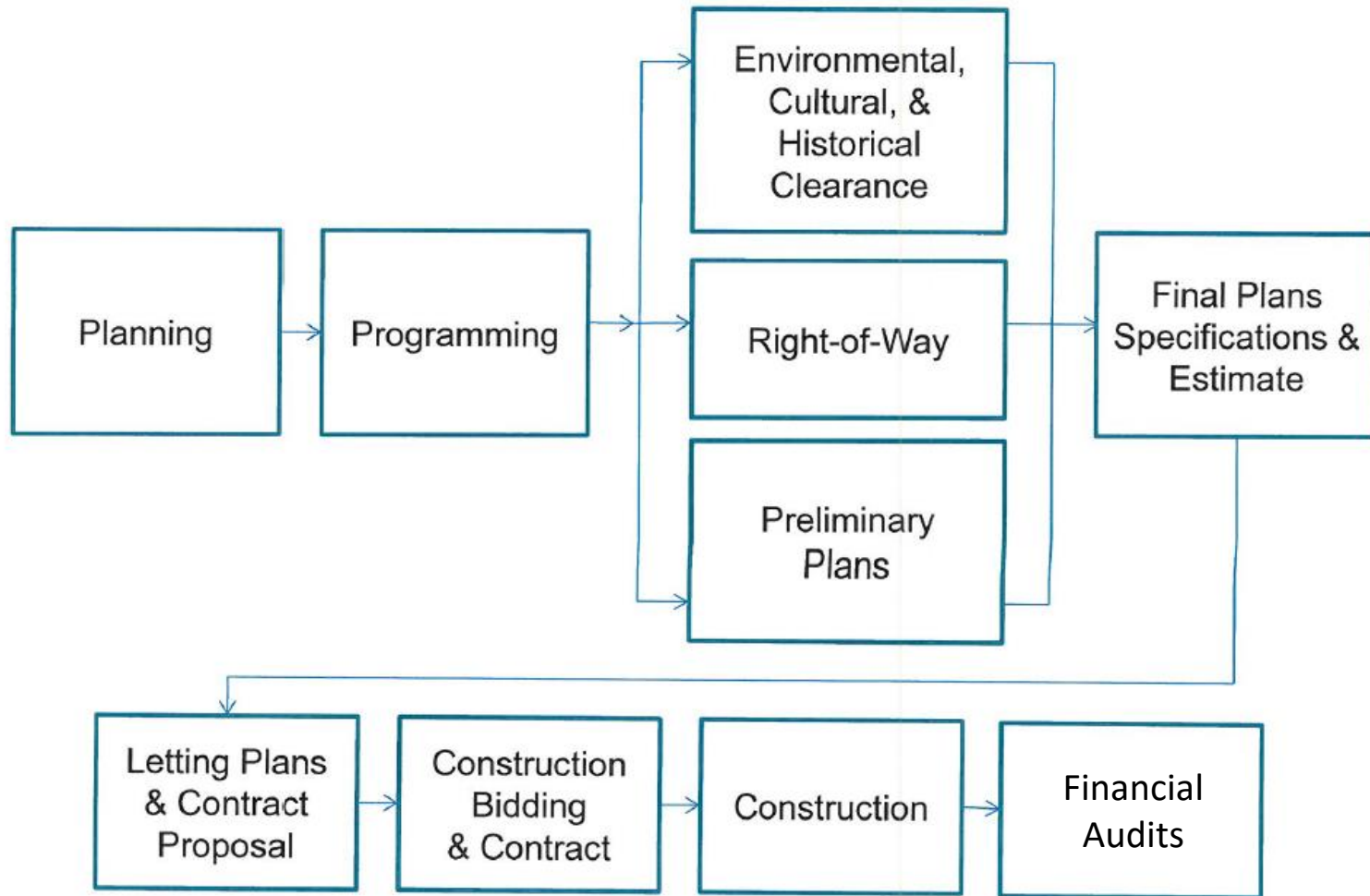


Hierarchy





Federal-Aid Project Flowchart



II. State and FHWA Responsibilities at Project Level

State and FHWA Responsibilities

- State conducts the preconstruction and construction activities following specific procedures, developed in accordance with the Title 23 - Highways.
- FHWA has the responsibility to protect the public investment, assure effective quality controls, and to verify that the project is completed in accordance with the plans and specifications.

III. Pre-Construction Requirements

Pre-Construction Requirements

- Contract Package (PS&E) prepared according to regulations, including:
 - Engineer's Estimate
 - Contract Time
 - Disadvantaged Business Enterprises (DBE)
- Procurement Process
 - Competitive process
 - Board of Award evaluate bids
 - Bid Analysis

Pre-Construction Requirements

- Qualification of Contractors
 - Eligibility Affidavit
 - Lobbying Certification
 - Non-Collusion Affidavit
 - Verification of suspension or debarment
 - *Suspension or debarment is a discretionary action taken by the Government to protect Federal procurement and programs from unethical contractors or subcontractors that have an unsatisfactory business records. The suspension/debarment process is meant to be a separate process from the civil or criminal justice system which has the objective of punishing the guilty parties.*
- Submit recommendation for FHWA concurrence in Award
- Contract Execution

IV. Construction Contract Administration

13 Critical Items in the Construction Contract Administration

1. Project Staffing
2. Payments & Project control
3. Materials and quality control
4. Buy America compliance
5. Progress and quality of work
6. Safety
7. Labor compliance
8. Subcontracting
9. Disadvantaged Business Enterprise (DBE)
10. CHO, EWO and & Time Extensions
11. Compliance with environmental commitments and permits
12. Claims
13. Project Closeout

1. Project Staffing

(23 CFR 635.105/23 USC 302)

- Qualified Personnel
- Full time Engineer responsible of the construction work
- Staffing is adequate to ensure that the actual construction is inspected and conforms to approved plans and specifications.
- Field staff has all equipment required to perform necessary inspections and materials tests
- Certified material samplers and testers for project produced materials (Asphalt, Concrete, Soils, and Aggregates)

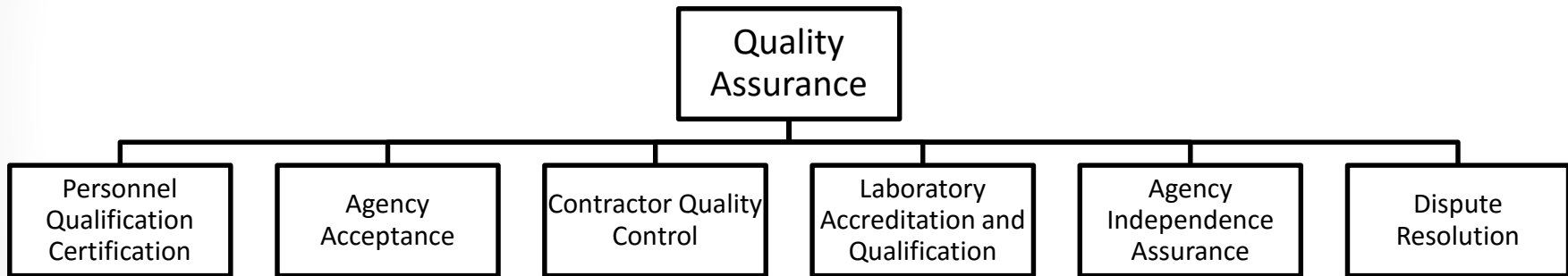
2. Payments and Project Control

(23 CFR 635.123)

- Project field records adequately maintained to support Monthly Progress Payments(Certification)
- Inspector Daily Reports and Project Diary adequately support work progress, time charges etc.
- Contract change documentation adequately filed
- Materials sampling and testing conducted as required
- Acceptance sampling and testing reports are on file
- Failed tests are documented with cross-references to re-tests
- Materials Certifications and mix designs (approved, on file, and traceable to the materials installed/placed/poured)
- Trial batch results are properly identified as acceptable and filed

3. Materials and quality control

(23 CFR 637)



4. Buy America Requirements (23 CFR 635.410)

- Ensure that transportation infrastructure projects are built with American-made iron and steel products
 - It does not apply to any raw material (iron ore and alloys)
 - All manufacturing processes must take place domestically.
- Provision applies to products and their coatings that are to be permanently incorporated into the project
 - Verify Buy America compliance on invoices and certifications for all iron and steel products.
 - Irrespective of funding source all materials must comply with this requirement (utility features and elements, etc.)

5. Progress and Quality of Work

(23 CFR 635.121, 635.207, 635.209)

- Project Schedule shall be:
 - Approved and updated accordingly
 - On file
 - Available for FHWA's revision
- Quality of work:
 - Project Administrator shall ensure that the work is performed according to specifications.
 - Contractor must prepared and execute Quality Control Plan (QC).
 - State conducts sampling and testing to verify the quality of materials as defined in the State Quality Assurance Program.

6. Safety-Work Zone Safety and Mobility (23 CFR 630 Subpart J, K)

- Compliance with the Manual of Uniform Traffic Control Devices (MUTCD).
- Traffic control devices installed in accordance with Traffic Control Plan
- Traffic control devices are clean and well maintained
- Travel way is well delineated
- Work zone inspections are completed in accordance with contract requirements
- Transportation Management Plan (TMP) implementation when is applicable

7. Labor Compliance

(23 CFR 635.118, FHWA form 1273)

- Assurance of compliance with:
 - Equal Employment Opportunity
 - On-the-job training Labor
 - Davis-Bacon Act
 - Payroll & weekly statements
 - Fringe Benefits

8. Subcontracting

(23 CFR 635.116)

- All subcontracts shall be approved by PRHTA.
- Subcontracted percentage shall be no more than 50% of the total contract cost.
- FHWA form 1273 shall be included in all the contracts.
 - Labor compliance
 - Davis Bacon Act
 - Eligibility Affidavit
 - Payroll
- Prompt payment

9. Disadvantaged Business Enterprise (DBE)

(23 CFR 200, 49 CFR Part 26)

- Compliance with the established DBE goal
- Ensure that the contractor use the subcontractors listed on the Certification of DBE Utilization

10. CHO, EWO and Time Extensions

(23 CFR 635.120, 635.121)

- CHO & EWO and Time Extension provide a formal mechanism to modify the contract document, and are defined as supplemental agreements to the original contract between the State and the contractor.
- FHWA Division has to approve all CHO, EWO and Time Extensions .
- Basic components that FHWA will consider during its review of CHO, EWO and Time Extensions :
 - Federal aid eligibility
 - Impact on the original "scope of the work"
 - Basis of payment
 - Time adjustments or time extensions shall be justified
 - Supporting documentation

11. Environmental commitments & permits

(23 CFR 635 Subpart C, 23 CFR 771)

- Ensure compliance with the Environmental commitments established in the NEPA Document, including but not limited to:
 - Erosion/pollution control-EPA-NPDES
 - SHPO
 - USACE Permits
 - Fish and Wildlife Services
 - DNR
 - *Instituto de Cultura*
 - Environmental Quality Board

12. Claims

(23 CFR 635.124)

- Federal-Aid participation in claims is not automatic.
- FHWA shall determine case by case basis the eligibility of the contract claim.
- The State should involve the Division as early as practicable.
- The State is responsible for demonstrating that the Federal-Aid participation in a claim is reasonable.
- FHWA will not participate in claim that arise from negligence, intentional acts or omissions, fraud, or other actions by the State.

13. Project Closeout

(23 CFR 635, 23 CFR 637)

- All the projects shall contain the following documents to be final accepted and closed:
 - Letter of acceptance
 - Final Estimate
 - Final Inspection
 - Review of Final Estimate and Records
 - Materials Certification (comply with 23CFR 637)
 - All Change Orders (approved with copies in the project file).
 - Summary of time
 - Documentation of all claims, arbitration and mediation
 - Verify completion and/or status of environmental commitments
 - Payroll certification
 - DBE Certification
- The closeout process shall be completed 90 days after the substantial completion.

