

LPA CONSTRUCTION CONTRACT ADMINISTRATION PRIMARY ROLES & RESPONSIBILITIES

PRIMARY TASK	ODOT	LPA
POST AWARD		
❖ Preconstruction Conference	CM/LPA Manager/DCCO	CPE/LPA/Design Project Engineer/ Contractor/ Utilities/ Railroads/ Testing Consultant
ACTIVE PROJECT ADMINISTRATION		
❖ Daily Field Engineering and Inspection		CPE
MATERIALS MANAGEMENT, TESTING AND CERTIFICATION		
❖ Asphalt, Concrete & Aggregate Producer/Supplier Monitoring		CPE
❖ Asphalt, Concrete & Aggregate Field Testing		CPE
❖ Field Inspection of Materials from ODOT Certified Sources		CPE
❖ Monitoring and Documentation of Materials Management Process	CM/DET	LPA/CPE
PROJECT DOCUMENTATION		
❖ Daily Diaries		CPE
❖ Documentation of Quantities, Completed & Accepted		CPE
❖ Monitoring of Project Documentation	CM	LPA

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PRIMARY TASK (continued)	ODOT	LPA
ACTIVE PROJECT MANAGEMENT		
❖ Progress Meetings	CM	CPE, Contractor
❖ Schedule Tracking and Updates	CM	CPE, Contractor
PAYMENT & REIMBURSEMENTS		
❖ Contractor Payment		CPE/LPA
❖ Summary of Progressive Payment		CPE
❖ Invoice and Reimbursement Preparation	ODOT (if necessary)	CPE
❖ Review and Approval of Reimbursement Request	CM	LPA
CONTRACT CHANGES		
❖ Negotiation and Preparation of Change Orders		CPE
❖ Concurrence on Significant Change Orders	CM	
CLAIMS MANAGEMENT		
❖ Claims Negotiation and Approval of Resolution		CPE/LPA
❖ Approval of Funding for Resolution	CM/LPA Manager	
❖ Monitoring and Documentation of Claims Management Process	CM	LPA
PREVAILING WAGE COMPLIANCE		
❖ Wage Interviews, Payroll Reviews		LPA
❖ Resolution of Underpaid Wages		CPE/LPA
❖ Monitoring and Documentation of Prevailing Wage Compliance Process		LPA

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PRIMARY TASK (continued)	ODOT	LPA
EEO AND DBE CONTRACT COMPLIANCE		
❖ EEO/DBE Contract Requirements		LPA/Contractor
❖ Bulletin Board Monitoring		LPA
❖ Review and Approval of Contractor DBE Submittals	DODI-GA & DCCO	
❖ Commercially Useful Function Reviews	CM	LPA
❖ Monitoring and Documentation of LPA's EEO and DBE Compliance Process		LPA
❖ Prompt Payment/ Retainage	CM	LPA/Contractor
❖ LPA Project SharePoint website	CM/ LPA Manager	
 PROJECT FINALIZATION		
❖ Final Inspection and Acceptance	DCE/ Designee	CPE/LPA
❖ Resolution of Punch list Items		CPE
❖ Agreement of Final Quantities, Payment		CPE/Contractor
❖ Final Payment to Contractor, Release of Responsibility		CPE
❖ Preparation of Project Closeout Documents		CPE
❖ Review and Approval of Finalization Documents	CM/LPA Manager	
❖ Completion of LPA Contract Administration Evaluation	CM	
❖ Project Audit		LPA

CM: Construction Monitor
 LPA: Local Public Agency/Person in Responsible Charge
 DET: District Engineer of Tests
 DCE: District Construction Engineer
 CPE: Construction Project Engineer
 DCCO: District Contractor Compliance Officer
 DODI: Division of Opportunity Diversity Inclusion
 DODI-GA: Division of Opportunity Diversity Inclusion, Goal Attainment
 DBE: Disadvantaged Business Enterprise
 EEO: Equal Employment Opportunity
 ODOT: Ohio Department of Transportation
 FHWA: Federal Highway Administration
 PRC: LPA Person in Responsible Charge

LPA CONSTRUCTION CONTRACT ADMINISTRATION

PREAMBLE

The management of a Local-let Federal Aid construction project is a significant undertaking. Monitoring and maintenance of a complete project file is a project in itself. Careful attention to detail will help result in a properly documented, successful construction project.

LPA GUIDANCE

Construction contract administration is the responsibility of the Local Public Agency (LPA) staff member “in responsible charge” and the Construction Project Engineer (CPE). As defined and described in the LPA Participation Requirements chapter of this Manual, the Person in Responsible Charge (PRC) serves as the agency contact for all issues or inquiries and ensures that all applicable state and federal regulations are followed on the project. This person should be familiar with project progress, involved in decisions that require change orders, and visit the project on a frequency that is commensurate with the magnitude and complexity of the project. This person may be the CPE provided that he/she is a full-time employee of the public agency. If the CPE is a consultant, the PRC must be a full-time employee of the LPA. The CPE is designated by the LPA to serve as the main contact for the Contractor, ODOT, FHWA, and any other agencies having an interest in the project. The CPE is someone who is tasked with managing a construction contract who is either a Professional Engineer or is working under the purview of a Professional Engineer. Once a project has been approved by ODOT as “Local-let,” any changes in the LPA team must be submitted to ODOT for acceptance.

PRECONSTRUCTION CONFERENCE

A Preconstruction Conference (“pre-con”) shall be held for the project prior to the beginning of construction. The purpose of the pre-con is to discuss, at minimum, details on the construction of the project, bid proposal, specifications, plans, submittals required for material acceptance, method of payment, Contractor’s progress schedule, prompt payment, EEO, DBE and Prevailing Wage responsibilities. A Pre-Con Checklist, itemizing all subjects to address at the meeting, follows this section (Appendix A).

The CPE/PRC should be familiar with all project documents and terms of the contract prior to the meeting. The CPE facilitates the pre-con and prepares and distributes agenda and an attendance sign-in sheet. The attendees should include the CPE/PRC, the Contractor, the District Construction Monitor (CM), other ODOT representatives, as appropriate, and any other agencies that have involvement in the project (utilities, railroad, etc.). The CPE should obtain a contact information list from all parties involved with the project at the pre-con meeting. This list is useful for timely resolution of problems that surface during the construction.

The Contractor shall provide a progress schedule, list of material sources, list of Subcontractors, and a list of haul roads and designated local detours. The Contractor needs to request permission from the LPA for both the use of local roadways to be used for hauling materials and equipment to and from the project and designated local detours. The LPA needs to inform the general public about lane and road closures and any temporary restrictions of access during construction.

MONITORING PROGRESS

Progress Meetings

Attendance at progress meetings is required for the Contractor's Superintendent, CPE, and others as necessary, including Subcontractors, suppliers, utilities, railroads, etc. The CM is encouraged to attend all progress meetings depending on availability. The CPE must record minutes and provide them to attendees and to ODOT, if ODOT does not attend. A list of progress meeting agenda items to cover in these meetings follows this section (Appendix B).

Progress Schedule

The main tool for monitoring a project is the progress schedule. The progress schedule is the responsibility of the Contractor. However, the CPE and PRC shall review and accept the baseline and all subsequent progress schedules. If the schedule is not logical or is unreasonable, the CPE should ask for clarification. The progress schedule is the main tool that the CPE uses to monitor the Contractor's progress. It is, therefore, very important that the CPE accurately review the schedule before accepting it. The progress schedule will be used to determine the responsible party for project delays.

The progress schedule must be updated periodically, but at a minimum at the beginning of the project, once a month during the life of the project, and in the event of a delay, to ensure an accurate measure of the progress of the work and to maintain the status of the project with respect to time. The progress schedule should be used in any assessment of liquidated damages, delay impacts, incentives/disincentives, and a consideration with respect to any termination action. The progress schedule should be reviewed with the CPE and the Contractor at different intervals of the project as follows:

- At the start of the project to detect if the Contractor began as scheduled;
- Every two weeks or monthly, depending on the complexity of the project;
- Following the completion of a major item of work;
- Following the completion of a phase or sub phase of work; and,
- Before, during, and after any type of delay to determine whether or not the delay was owner caused, Contractor caused, or both.

The situations and decisions that pertain to the project should be recorded in a daily diary. The diary entry should list the reasons the Contractor cannot proceed with certain portions of the work. Accuracy and details in the daily diary concerning delays will protect the LPA against potential Contractor claims.

Time Extension and Waiver Of Liquidated Damages

The CPE shall follow the contract for the determination of changes to contract time. Contract time extensions submitted by the Contractor shall be subject to the concurrence of the CPE/PRC. Contract time extensions submitted for approval to the CPE must be fully justified and adequately documented by the Contractor. The CPE shall notify the CM of the need for a contract time extension for the CM's review and concurrence. Time extensions shall be memorialized in a change order.

PROJECT DOCUMENTATION

Record keeping, such as daily diaries, et al, is an integral part of contract administration and is especially important when considering any contract changes including, but not limited to, change orders and claims/dispute resolution. The LPA should refer to the ODOT Construction Inspection Manual of Procedures to guide inspection and documentation procedures. Adequate records must be maintained to

document the need for changes and to establish pricing for extra work. The primary goal of project records is to ensure documentation exists for the acceptance of materials and work items for both quality and quantity. The basis of acceptance for quality, the method of measurement, and the basis of payment are established by the specifications. The records shall indicate what work was accomplished, what inspections and tests were performed, and the results. The LPA must ensure each item in the contract is documented sufficiently to satisfy an audit. Documentation is also required for work performed by railroads or utilities that will be paid on a force account basis. Documentation shall also demonstrate the contract was administered in compliance with the general provisions of the contract and specs, e.g., wage rates, Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE) regulations, safety, etc. A documentation checklist follows this section (Appendix C).

Project records shall always be available for inspection by ODOT and FHWA personnel. ODOT staff will periodically review the level and completeness of project documentation and the adequacy of the LPA's compliance processes. Should the level of documentation not meet ODOT's expectations, the LPA will be informed in writing of the specific findings and required remedies. If within a specified period of time the documentation has not been improved, ODOT may withhold reimbursements to the LPA until such time as documentation improves.

CONSTRUCTION CONTRACT REQUIREMENTS FOR EEO, DBE, PREVAILING WAGE, AND PROMPT PAYMENT COMPLIANCE

LPA Project Sharepoint Site

All Federal-Aid Local-let projects will have a SharePoint website created by the respective ODOT District to house electronic forms to monitor prompt payment, subcontractor and supplier retainage release, DBE goal attainment, all subcontractors working on the project, both DBE and non-DBE via C-92 forms, and Commercially Useful Function (CUF). Specifically, the SharePoint site will retain Appendix G – CUF Site Review GoFormz, Appendix V – Prompt Payment GoFormz, and Appendix X – C92 Request to Sublet as they are generated throughout the duration of the project. The District LPA Manager or Construction Monitor will grant SharePoint access to the appropriate personnel from the LPA to view project information and documentation.

Form FHWA-1273

Form FHWA-1273 must be physically incorporated into each Federal-Aid Local-let construction contract. The Prime Contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). Failure by the Prime Contractor to include Form FHWA-1273 into subcontract agreements will be sanctioned by Proposal Note 015 – Contract Provisions for Federal-Aid Construction Contracts. The LPA shall collect all contracts, subcontracts, and lower-tier contracts on the project from the Prime Contractor to verify Form FHWA-1273 has been physically incorporated. The LPA must affirm the physical incorporation of Form FHWA-1273 by completing Appendix M – Form FHWA-1273 Subcontract Agreement Check. All DBE or EDGE subcontracts must be submitted to the DCCO for review and approval 30 days after contract award or prior to the DBE start of work whichever comes first.

Labor Compliance & Monitoring Requirements

The LPA is required to monitor the Contractor and Subcontractors to ensure they are meeting the Required Contract Provisions in Federal-Aid Construction Contracts (Form FHWA 1273 – 5/1/12 or Latest Revision), 23 CFR 230, 41 CFR 60-1.7(b) (1), 41 CFR 60-4, and 41 CFR 60-4.3(a). These requirements are contained in the LPA Bid Document Template.

Projects with Disadvantaged Business Enterprise (DBE) and Encouraging Diversity, Growth and Equity (EDGE) Goals

All Federal Aid projects will be considered for DBE goals. Non Federal Aid will be considered for EDGE goals. ODOT has a longstanding process in place which is clearly outlined in the Departments Goal Attainment SOP to establish both DBE and EDGE goals. These goals are assigned by the ODOT Central Office Goal Setting Committee. The LPA and Contractor shall adhere to and follow the requirements of ODOT Proposal Note 13.

Should it become necessary to either terminate or replace a DBE firm utilized on the project to meet the established goal, the Prime Contractor must follow the process outlined in Proposal Note 13 (PN 013) of the Federal contract documents.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Awarded Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

In the event that the DBE contract goal established by ODOT is not met, either pre-award or during the life of the project, the Apparent Low Bidder / Prime Contractor must demonstrate that it made adequate Good Faith Efforts (GFE's) to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. As with termination / replacement, the process for submitting Good Faith Efforts are outlined in Proposal Note 13 (PN 013) of the Federal contract documents.

The Prime Contractor is required to use DBE firms to perform the type of work subcontracted. A listing of certified DBE firms is available on the Division of Opportunity, Diversity and Inclusion's website. The Prime Contractor shall track payments made to all subcontractors including DBEs utilizing the electronic Prompt Payment GoFormz (Appendix V). The Prompt Payment GoFormz shall be completed by the Prime Contractor before processing the next invoice. Completion of each Prompt Payment GoFormz will automatically sync with the LPA Project SharePoint website. The CPE or LPA Designee shall verify the Prime Contractor uploaded the appropriate electronic Prompt Payment GoFormz to the LPA Project SharePoint website and ensure the Prime Contractor properly completed the correct payment information for each subcontractor, DBE firm, and supplier.

In addition, the LPA shall ensure the Prime Contractor completes the applicable Affidavit of DBE Payment (Appendix R) or Affidavit of EDGE Payment (Appendix S) within 45 days of the substantial completion of the project. The most recent Affidavit forms are updated and do not require a Notary Seal. The Prime Contractor will have 45 days to send in DBE Affidavits to Goal Attainment at the email address: paymentaffidavits@dot.ohio.gov. Copies shall be kept in the LPA project files.

C-92 Reporting

The Prime Contractor shall complete Appendix X - LPA C92 Request to Sublet via the GoFormz application for each subcontractor and material supplier working on the project prior to their starting work. Completion of the LPA C92 Request to Sublet form will ensure compliance with State and Federal laws which require all contractors and subcontractors participating on state or federally funded projects be documented in writing and in conformity with all applicable laws and regulations. This requirement allows the Department to accurately and fully track DBE participation, both race-neutral

and race-conscious for semi-annual reporting to the Federal Highway Administration (FHWA).

Completion of the LPA C92 Request to Sublet via the GoFormz application by the Prime Contractor will automatically sync to the appropriate LPA project SharePoint site for data collection. The CPE or LPA Designee shall verify that a C92 GoFormz has been uploaded for each subcontractor working on the project, and this requirement will be routinely monitored by the District Construction Monitor to ensure compliance.

DBE Trucking Log

The Prime Contractor will be required to monitor trucking firms being used on the project and make appropriate selections on the Affidavit section of the Prompt Payment Spreadsheet.

Requirements to monitor DBE Trucking have been updated to a process that will be completed on the Prompt Payment Spreadsheet Document in the Trucking Affidavit Section.

The process will require all DBE trucking firms, being utilized for the project's DBE goal, to complete a DBE trucking information document (Appendix Y). This document will need to be completed by the DBE firm and given to the Prime Contractor prior to the Pre-con meeting, and the Prime Contractor will need to put the form in the Project SharePoint Folder. The Prime Contractor will then need to complete the previously mentioned Trucking Affidavit Section by selecting the appropriate box and inputting any necessary information.

Prompt Payment and Retainage

The CPE shall monitor that payments made by the Prime Contractor to each subcontractor and supplier are completed within 10 days after receipt of payment from the Department or LPA per ODOT CMS 107.21 and ORC 4113.61. The Prime Contractor must utilize the Prompt Payment GoFormz Spreadsheet to verify timely payments to subcontractors and suppliers were made before processing the next invoice. Completion of each Prompt Payment GoFormz Spreadsheet will automatically sync with the LPA Project SharePoint website. The CPE or LPA Designee shall verify the appropriate electronic Prompt Payment GoFormz Spreadsheet has been uploaded to the LPA Project SharePoint site and that the Prime Contractor has affirmed payment to subcontractors. Proposal Note 031 – Prompt Payment, provides additional information detailing the requirements for the Prime Contractor on not only how to complete the electronic Prompt Payment GoFormz Spreadsheet, but the sanctions that will be imposed for a failure to follow Prompt Payment requirements. The LPA's Person in Responsible Charge will be responsible for issuing a Prompt Payment Violation Letter (Appendix Z) only after coordination with the District CM. Proposal Note 031 can be found in the Federal Bid Doc Template at:

<https://www.transportation.ohio.gov/wps/portal/gov/odot/working/publications/local-let-manual>

In accordance with Article XVIII, Section 3 of the Ohio Constitution, and Ohio's home rule law, the Department allows LPA program recipients the full flexibility to withhold retainage from the prime in strict accordance with sections 153.12 and 153.14 of the Revised Code, and pursuant to 49 CFR 26.29(b)(3).

Should an LPA exercise its option to retain funds, it must be done so in strict accordance with the rules outlined in the code citations noted above. Additionally, LPAs who choose to do so, shall monitor the return of retainage and may withhold retainage by selecting one of three specified methods outlined in 49 CFR 26.29(b)(3):

- (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from sub-contractors.
- (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
- (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

The Prime Contractor is prohibited from holding retainage on subcontractors that can provide a bond. The CPE shall monitor the release of retainage held by the Prime Contractor is completed within 30 days after the work is satisfactorily completed for unbonded subcontractors. No subcontract provision shall permit the Prime Contractor to delay a subcontractor's retainage payment to the final payment of the project.

Any complaints or concerns regarding the Prompt Payment or holding of retainage by the prime contractor should be directed to the Office of Local Programs, Local Projects Manager at: jeff.peyton@dot.ohio.gov.

Commercially Useful Function

The LPA is required to monitor all DBE Subcontractors on a project to ensure they are performing a CUF. A DBE is performing a CUF when it executes the contract work it is retained to perform and manages and supervises the work performed by the DBE's employees. Regarding materials and supplies, the DBE must be responsible, for negotiating prices, determining quality and quantity, ordering and installing (where applicable), and paying for materials and supplies used in the execution of its responsibilities. Refer to Appendix W at the end of this chapter for a listing of DBE Red Flag Indicators.

The LPA's minimum monitoring schedule shall be one CUF review per DBE, per construction project.

The LPA shall perform the CUF review of DBE Subcontractors by completing the electronic CUF Project Site Review GoFormz (Appendix G). A user guide to complete Appendix G can be found in Appendix Q. The CUF Project Site Review GoFormz will automatically save to the LPA Project SharePoint website.

Prevailing Wage Requirements

The LPA is required to monitor the Contractor and Subcontractors to ensure prevailing wages are paid to all laborers and mechanics employed on the project. In addition to the interview schedule provided below, there shall be a 30% spot check of all certified payrolls submitted by both the Prime and all Subcontractors.

The LPA's CPE's minimum monitoring schedule is based on the dollar amount of the project as follows:

- Less than \$2 million - at least three Prevailing Wage interviews shall be conducted so that one each is performed at the beginning, middle, and end of each construction season for a multi-year project, and the beginning, middle, and end of the project duration, however no more frequently than once a month, for a single-year project;
- Greater than \$2 million – Prevailing Wage interviews shall be conducted once a month;

Negative findings shall be tracked, and resolution documented for each ODOT review.

The Prevailing Wage Interview Form (Appendix D) shall be used. ODOT will review the LPA's monitoring efforts and inform the LPA, if there is a need for corrective action. ODOT reserves the right to withhold reimbursement until such time that requirements are met and appropriately monitored.

The Prime Contractor is responsible for furnishing to Subcontractors all forms, wage rates, and any wage rate modifications for those projects that use state prevailing wages.

An Owner, Foreman, and/or Supervisor performing any kind of work on the project must be added to payrolls. If an Owner, Foreman, and/or Supervisor is working more than 20% in a given work week on the project, he/she is to be paid the prevailing wage for the classification of work performed and listed on the payroll. If the Owner, Foreman and/or Supervisor are the sole worker(s) on the job, they are to be included on the payroll. The Contractors and Subcontractors shall submit to the LPA certified payrolls weekly beginning two weeks after the start of work utilizing both the US Department of Labor Form WH-347 and the Statement of Compliance carrying the original signature (Appendix H). Each certified payroll shall show the following:

- Employee name, address, last four digits of the Social Security number or an identifying number, classification, and hours worked;
- The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made (a per hour breakdown of the fringe benefits paid should be provided, if it is not stated on the payroll); and,
- The ODOT project identification number (PID) and pay week dates

When applicable, weekly certified payrolls should also be accompanied by a copy of the Ohio State Apprenticeship Certificate obtained from the Ohio State Apprenticeship Council (<http://jfs.ohio.gov/apprenticeship/index.stm>) covering each apprentice listed on the payroll. The apprentice agreement from the union is not acceptable.

It is the LPA's responsibility to spot check 30% of the payrolls submitted to ensure those employees working in crafts covered by the prevailing wage laws are being paid the correct wage and fringe benefits for the craft they are performing. These should be the prevailing wages supplied in the bidding documents. Additionally, apprentice ratios must be monitored to ensure that the allowable number of apprentices for any given craft being used by the Contractor is not exceeded.

The LPA will be required to submit the LPA Prevailing Wage / EEO Report (Appendix I) monthly to the appropriate LPA SharePoint project site detailing prevailing wage and EEO monitoring efforts for the previous month.

For non-federal projects with non-union contractors, the LPA shall use the Prevailing Wage Notification to Employee form (Appendix E). Upon the completion of the project, each Contractor or Subcontractor shall submit an affidavit to the LPA stating compliance with the contract and sections 4115.03 – 4115.16 of the Ohio Revised Code (Appendix F).

The Bulletin Board for the project shall have the appropriate prevailing wage rates visibly posted. Prevailing wage postings apply to both Federal-aid and non-Federal-aid projects.

Bulletin Board Requirements

FHWA Form 1273, Required Contract Provisions for Federal –aid Construction Contracts, states that “Notices and posters setting forth the Contractor’s EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.” It is the LPA’s responsibility to ensure the Contractor has a bulletin board placed in a location easily accessible to both the employee and the public.

The LPA will provide bulletin board information at the time of the preconstruction meeting. The LPA will be responsible for enforcing the Federal Bulletin Board Requirements. The LPA shall document the checking of the Bulletin Board for all appropriate posters, wages and EEO Policy & Contact information. Utilize either Appendix N – Federal Poster Checklist or Appendix O – Non-Federal Poster Checklist.

MATERIALS QUALITY CONTROL

The LPA, through its CPE, must provide for and ensure that all materials and Job Mix Formulas (JMF’s) incorporated into the project are tested, sampled, inspected, and/or certified according to plan specifications and ODOT’s Materials Management Process. This is an important process that is critical to both the quality of the finished project and the ability of the LPA to receive payment. Only laboratories certified by AASHTO re:source (formally AMRL) and ASTM’s Cement and Concrete Reference Laboratory (CCRL) for the materials to be tested are permitted. At the Pre-Construction Meeting, the LPA must provide to ODOT an Implementation Plan listing the individuals responsible for testing and inspection, their certifications, and those of an independent testing laboratory to be utilized. The LPA shall adhere to the requirements of Appendix J which outlines the processes for materials management. Appendix J will assist LPAs in setting up controls to ensure materials meet ODOT specifications during construction management. The Project Bill of Materials (PBOM) shall be created to track material and quantities for each construction bid item. The expectations for material submittals shall be discussed at the preconstruction meeting.

CHANGE ORDERS

As part of the process described in the LPA Participation Requirements Chapter, the LPA must submit its Change Order Review Process for ODOT’s concurrence. This process should abide by the change order guidance contained at the end of this chapter (Appendix K). The described LPA process must be followed for the project. Change orders amend the contract by adding or deleting work, establishing reimbursement for additional costs incurred, making material substitutions, changing specifications, and revising completion dates. Only work necessary to complete the project as originally scoped, cleared environmentally, and provided for in the contract documents may be added by change order, even if the LPA wants to use local funds for the additional work.

All change orders must be submitted to the CM. Significant change orders require CM concurrence prior to the Contractor performing the work. If the project is designated a FHWA Project of Division Interest (PODI), then FHWA must review and provide concurrence as well. Significant change orders are as follows: \$25,000 for projects between \$0 and \$500,000; the lesser of 5% of the total bid contract or \$100,000 for projects greater than \$500,000; and any change orders that affect the work limits or result in new environmental impacts. The Change Order Notification Form follows this section (Appendix L). This form must be submitted whether the change is for an extension of bid prices, the establishment of new bid prices, or force account work. Should the LPA direct the Contractor to perform added work prior to ODOT’s concurrence, reimbursement may be denied. The CM will confer with the LPA Manager, if necessary, to assure the applicability of FHWA and/or State funding to the change order.

Contractor force account procedures should only be used as a last resort when agreement cannot be reached on the price of a new work item or when the extent of the work is unknown or of such character that a price cannot be determined to a reasonable degree of accuracy. The records required for force account pricing of extra work must accurately depict all labor, equipment, and materials used by the Contractor to perform the work. The Blue Book for Heavy Highway Equipment costs with the ODOT procedure for establishing appropriate equipment costs must be utilized as per the most current ODOT Construction, Materials & Specifications manual (109.05 C).

Extension of Project Limits

There are only two circumstances in which the work limits for a project may be extended beyond the original limits. The extension can be justified if it is needed to complete the original project as scoped and provided for in the contract documents or to eliminate a life, safety, or health-threatening situation arising from the project. If either such circumstance arises, the LPA/CPE should complete the Extension of Project Limits section of Appendix L and provide necessary copies to ODOT District staff. Do not proceed with any project work that encroaches on environmental footprints (NEPA) or Right-Of-Way without proper concurrence.

Quantity Measurements

The CPE shall record the measurements of the quantities of work in the units prescribed by the plan that are actually performed by the Contractor. Documentation must be prepared to make adjustments for any differences between contract quantities and the quantities actually performed.

DISPUTE RESOLUTION AND ADMINISTRATIVE CLAIMS

The LPA is subject to claims from the Prime Contractor. It is required that the LPA formalize a dispute resolution process that includes progressive administrative reviews prior to formal legal action by the Contractor or the LPA. The dispute resolution process shall be submitted to ODOT as part of the LPA Participation Requirements Chapter process review and is required to be included in the LPA's bid documents. The terms of the dispute resolution process shall exist in the contract, the specifications, and the plans (PS&E). The LPA shall submit a written copy of the Contractor's intent to make a claim to ODOT. Resolution of all claims must be in accordance with the contract and with CM concurrence, if the resolution affects the contract completion date and/or increases project costs.

TERMINATION

Contract termination is a serious matter and requires the concurrence of both ODOT and FHWA. The contract must include provisions for termination. Refer to ODOT CMS 108.08 and 108.09 for guidance.

BILLING

Invoices shall not be processed without an approved baseline schedule nor without the proper Appendix V – Prompt Payment GoFormz documentation. After an item of work is completed, but before payment is made, a detailed inspection is necessary to determine the quantities of the various items of work performed. The basis of payment for any item of work details that the unit bid price is full compensation for certain work and/or materials essential to that item. As such, this work and/or material will not be measured or paid for under any other item of work. The CPE shall approve all invoices prior to payment

and before requesting reimbursement or direct payment to the contractor by ODOT. The CPE has the obligation to ensure the Contractor receives prompt payment for all completed and accepted items of work. The payment shall be made to the Contractor within thirty (30) days of receiving the Contractor's invoice after the completion of the work per the Ohio Administrative Code Section 126.30. To assure prompt payment, the measurement of quantities and the documentation for payment should be performed on a daily basis as the items of work are completed and accepted. Guidance for invoicing can be found in the Finance MOP Chapter. The LPA is responsible for ensuring sufficient balances are present in the established encumbrances when an invoice is submitted. If insufficient monies exist to pay the invoice, the LPA must contact the District and justify the reason for the encumbrance modification and obtain concurrence from the CM before the modification is processed.

The CPE is responsible for preparing documentation to support payment for work performed by the Contractor by measurement of completed and accepted quantities of work. The documentation shall provide validation that the quantity for payment has been determined in accordance with contract requirements with necessary measurements, calculations, material certifications, etc., and that the work was done in close conformity to the plans and specifications.

The LPA can access project specific payment information processed by ODOT by accessing ODOT's website at <http://www.odotonline.org/cmsportal/>.

The CPE is responsible for ensuring that costs submitted for work performed are allowable, allocable and reasonable. At a minimum, costs must be:

- Incurred subsequent to FHWA authorization of the project
- Supported through adequate and sufficient source documentation
- Eligible for reimbursement
- Necessary for the project
- In accordance with all laws, regulations and sponsored agreements
- Net of applicable credits

Entities are encouraged to refer to 2CFR225 - *Cost Principles for State, Local and Indian Tribal Governments*, OMB Circular A-87 and 49CFR18 - *Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Government*, regarding grant requirements, discussion of costs, and appropriate accounting treatment.

PROJECT CLOSEOUT

Final Inspection

When work on a project has been completed to the satisfaction of the CPE / PRC, a final inspection is conducted. The CPE / PRC will coordinate with the ODOT CM to establish a time and date for the Final Inspection once the project is finished and corrective work items identified by the LPA are complete. If necessary, the CM will coordinate with the DCE/Designee or other ODOT/FHWA representatives, as appropriate, for attendance at the Final Inspection with the LPA. The respective ODOT District will be responsible for performing Final Inspection duties. The ODOT DCE/Designee will develop a punch list for items of work remaining at the time of the Final Inspection that are necessary to be completed by the Contractor prior to acceptance by the LPA. If there is a punch list, the CPE shall provide it to the Contractor in writing, along with a specified time frame or specified date for completion of the prescribed work. It is the responsibility of the CPE to do any necessary follow up to assure that the Contractor

completes the punch list work in a timely manner. The DCE/Designee will then complete the District Construction Inspection Report (Appendix U) marked "Final Inspection" and provide a copy to the LPA.

Prepare and Audit Contract Quantities

The CPE is responsible for determining and preparing support documentation for the final quantity to be paid for every item of work contained in the construction contract. Ideally, this is accomplished progressively as the items are completed during the course of construction of the project. Once the physical work has been completed for the project, the CPE shall ensure that an audit of all project records is conducted. The Department encourages that this audit is performed by someone who has not had a specific/direct role in the project management. Upon completion of the audit, a list of approved final quantities is prepared and forwarded to the Contractor for concurrence. Once agreement with final quantities has been obtained, a final change order and/or other document is prepared to make any necessary adjustments between the final and original contract quantities and signify agreement by all parties to the final quantities and value.

Final Material Acceptance

All materials incorporated into construction projects must be approved by the CPE for use. Once the work is completed, an audit should be performed to ensure that sufficient quantities of materials have been approved for each reported final quantity. As the final quantity audit is being performed and final quantities are approved, the quantities are reported for testing purposes. The CPE shall review the project testing and acceptance records to ensure that sufficient materials are approved for the final quantity for every contract item. Resolution of material deficiencies is the responsibility of the CPE. Once the CPE has resolved all material deficiency issues, final project certification may proceed.

Final Payment and Release

The LPA Program Final Report (Appendix P) shall be certified by the CPE, with his/her Professional Engineer's seal and signature, stating that the project was developed and delivered in compliance with the terms, conditions and requirements of the project agreement. The LPA shall then issue final payment and release the Contractor from further responsibility. A final closeout package must be submitted to the CM within six (6) months of the physical completion date of the work and must include the following:

- Final invoice which reconciles each individual pay item to final quantities;
- Proof of LPA payment to contractor and/or consultant;
- LPA Program Final Report (Appendix P);
- District Construction Final Inspection Report (Appendix U);

The LPA shall provide the Appendix P to the ODOT District within 6 months of the physical completion date of the project so that the report may be audited and approved for payment. If the deadline cannot be met, a written explanation must be provided to the District prior to the end of the 6 months documenting the reason and the new anticipated date of completion. Failure to submit final invoices along with the necessary closeout documentation within the 6 month period or agreed upon extension may result in closeout of the project and loss of eligibility of any remaining Federal and or State funds.

MAINTENANCE

In accordance with ODOT's LPA Federal Local-let Project Agreement, Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, upon completion of a Federal-aid construction project, the LPA shall maintain the improved facility to design standards and provide adequate maintenance activities, unless otherwise agreed to by ODOT. The Project must remain under the ownership and authority of the LPA for 20 years, unless otherwise agreed to by ODOT. If the Project is not being adequately maintained, ODOT shall notify the LPA of any deficiencies. If the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

The FHWA expects ODOT to effectively exercise its maintenance oversight responsibilities. ODOT's [*LPA Maintenance Monitoring and Oversight Program*](#) procedure document provides the framework for ODOT to effectively and efficiently manage its Federal aid program maintenance oversight to ensure federal compliance.

APPENDICES

- A – LPA Pre-Construction Meeting Checklist
- B – LPA Progress Meeting Agenda
- C – LPA Project Documentation Checklist
- D - Prevailing Wage Employee Interview Form
- E - Prevailing Wage Notification to Employee
- F - Final Wage Affidavit
- G - DBE Commercially Useful Function Site Review GoFormz
- H - Certified Payroll
- I - LPA Prevailing Wage / EEO Monthly Report
- J - LPA Materials Management Guidance
- K - LPA Change Order Process Guidance
- L - LPA Change Order Notification Form
- M – LPA Form FHWA-1273 Subcontract Affirmation
- N - Federal Poster Checklist
- O - Non-Federal Poster Checklist
- P - LPA Final Report
- Q – LPA SharePoint Site Creation Users Guide
- R - Affidavit of DBE Subcontractor Payment
- S - Affidavit of EDGE Subcontractor Payment
- T - LPA CUF GoFormz User Guide
- U – District LPA Construction Inspection Report
- V - Prompt Payment GoFormz
- W – DBE Red Flag Indicators
- X – C92 Request to Sublet
- Y – LPA Project DBE Trucking Information
- Z - Prompt Payment Violation Letter Template
- AA - District LPA Construction Monitor Responsibilities

ODOT GUIDANCE

CONSTRUCTION MONITOR RESPONSIBILITIES

The Construction Monitor (CM) serves as a member of the district multi-disciplinary team, which is the team responsible for oversight of a specific LPA Local-let project from inception through completion. The two key members of this team are the LPA Manager and the CM. Whereas the LPA Manager has lead responsibility from project inception through award, the CM is the lead from post-award through Final Inspection. The CM, however, also has responsibilities prior to post award.

The CM is there to serve as a resource to the LPA on technical and administrative issues and to monitor the LPA's performance, but does not direct the Contractor. Contract administration is not the CM's responsibility. The CM visits the projects, reviews the LPA's performance, reviews change orders, reviews and authorizes invoices, monitors compliance with contract documents, and other project-related issues. The CM will document and maintain records of observation to validate proper oversight. All information specific to the project should be filed including, but not limited to, invoices, change orders, correspondence, plans, contracts, and records from site visits.

The amount and level of involvement should be driven by the size, complexity, and experience of the LPA and its staff and/or consultant. The CM should understand the LPA Local-let process and be intimately familiar with the LPA's construction administration processes. The CM should also obtain a copy of the contract documents and know what is in them. Procedures reviewed and accepted in the LPA Participation Requirements review should also be included in the contract documents. Also be aware of the environmental issues. Protection of these issues is the responsibility of the LPA and the Contractor, but the CM is responsible for knowing what the Contractor is doing and whether a violation exists. Questionable practices should be brought to the LPA's attention immediately.

LPA Monitoring Survey

The CM shall complete the LPA monitoring survey for each type of site visit (pre-con, progress meetings, documentation review, and final inspection). Follow the survey link below for access.
<http://www.dot.state.oh.us/Divisions/ConstructionMgt/Admin/Pages/LPASurvey.aspx>

LPA Participation Requirements

As a member of the Local-let multidisciplinary team, the Office of Construction is responsible for reviewing qualifications and experience of engineers and inspectors when the LPA initially indicates its desire to sell and administer a project. Construction must provide input on the LPA's team members' qualifications and on the LPA's construction administration procedures. Refer to the LPA Participation Requirements chapter for more information. Construction is also responsible for reviewing and approving any substitutions to the LPA team.

Scope & Field Review

The multi-disciplinary team is responsible for meeting with the LPA to scope and field review the project. The CM, as a member, must attend the meeting to help define the appropriate scope and identify issues or concerns.

Pre-Award Meeting

If a pre-award meeting is required, either the ODOT District LPA Manager or Construction Monitor will schedule, set the agenda, and conduct the meeting. This meeting should be held after PS&E submission, but before the LPA awards the project. The purpose of this meeting is to reach final agreement on all

construction contract administration responsibilities and procedures. Attendees should include the LPA Manager, CM, LPA, CPE and others as appropriate, such as the DCCO and other LPA project personnel. The CM's role is to provide the rules and discuss LPA and CM responsibilities, including construction administration processes that were previously established in the LPA Participation Requirements review process (change orders and contract dispute). Review and discuss specifications and plans. Finally, schedule any meetings needed for follow-up.

LPA PROJECT SHAREPOINT SITE

The District shall create an individual SharePoint website for each Federal-Aid Local-let project. The SharePoint website will be used to house electronic forms to monitor prompt payment, subcontractor and supplier retainage release, DBE goal attainment, and CUF. Specifically, the SharePoint site will retain the Appendix G – CUF Site Review GoFormz, the Appendix V - Prompt Payment GoFormz, and Appendix X - C92 Request to Sublet as they are generated by the LPA and Prime Contractor respectively throughout the duration of the project. Each of the forms will be automatically routed to the proper SharePoint website upon completion. The District LPA Manager or Construction Monitor will grant SharePoint access to the appropriate personnel from the LPA to view project information and documentation. The SharePoint user guide can be found in Appendix Q.

Form FHWA-1273

Form FHWA-1273 must be physically incorporated into each Federal-Aid Local-let construction contract. The LPA shall document the verification of Form FHWA-1273 into each subcontract agreement to be maintained in the project files. The CM shall ensure Appendix M is completed by the LPA.

Pre-Construction Meeting

The pre-construction meeting will be held before the Contractor starts work. This meeting is scheduled and conducted by the LPA, and the CM attends and observes the LPA's performance. The LPA may ask the CM to comment or provide clarification. Be prepared to answer any questions about specifications, funding, contractual documents, etc. The CM will need copies of documents that the Contractor is required to present to the LPA at the pre-con. These include emergency phone numbers, the list of material suppliers, the list of Subcontractors, and the schedule with start and completion dates. Refer to the pre-con checklist (Appendix A).

Project Monitoring

The CM should make a reasonable attempt to visit each project and review the LPA's performance (PRC, CPE, or consultant, as applicable). Ideally, this is a biweekly task. A report must be completed to document progress throughout the life of the project. The review focuses on project documentation, inspection, level of staffing, safety, maintenance of traffic, erosion control, and overall operations of the project. Findings include any problems or issues identified in the execution of the contract. Items to review and note include daily diaries, measurement of all pay items, calculations performed to determine pay items, pay quantities, materials, tickets, change orders, testing, and traffic-related notes. Monitor the progress of work for adherence to the schedule and completion date. Note the completion date (make sure this is entered into Ellis) and whether the Contractor is on schedule. Project site visits are documented on the District Construction Inspection Report Form (Appendix U), marking "Project On Site" under the Inspection Type section.

Progress meetings take place during the duration of the project. The CM should attempt to attend all progress meetings. Progress Meetings are documented on the District Construction Inspection Report Form (Appendix U), marking "Progress Meeting" under the Inspection Type section.

The CM should attend pre-pour meetings for bridges, claims/dispute resolution meetings, DBE issue

meetings, on-site meetings to resolve construction issues, utility meetings, or others to be a resource to the LPA.

Materials Management

The CM is responsible for ensuring that the LPA is in compliance with ODOT's prescribed Materials Management process and serves as a resource to the LPA for testing and certification. Ensure the LPA has a materials management process for tracking materials. Guidance can be found in Appendix J and on the following website link.

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/LPAConstructionContractAdministration/Pages/LPAConstructionContractAdministration.aspx>

Change Orders

The LPA must follow the Change Order process stated in the contract. The CM should be made aware of all change orders and provide concurrence on significant change orders.. In order to be eligible for a change order, the work must be necessary to fulfill the intent of the project scope and be within the environmental clearance footprint. Ensure the additional work proposal does not violate any environmental commitments. It is the LPA's responsibility to determine if a change order is necessary and justified. The LPA is also responsible for price negotiations. The CM shall determine if the documentation supports the justification for the costs of such changes and if the changes are eligible for Federal and/or State funding. Guidance to aid the CM with change order review can be found at the end of this section (Appendix K).

If documentation is not complete, the CM must inform the LPA of revisions that are needed. When the documentation is acceptable, provide the information to the LPA Manager for any adjustment of the Agreement files and funding encumbrances.

Dispute Resolution

The CM serves as a resource to the LPA in the resolution of Contractor complaints, disputes, and claims. The CM shall ensure the LPA is following the Dispute Resolution Procedure outlined in the contract. The CM shall determine Federal eligibility, if the decision results in additional project costs. The CM must receive a copy of the Contractor's intent to file a claim.

Invoices

Either the LPA Manager or CM will set up the invoice template. The CM is responsible for reviewing and approving the invoices. The District should hold the invoice no more than 14 days, since the Department is responsible for paying invoices within 30 days. Refer to the Invoicing Procedures found in the Finance MOP Chapter.

Finalization

The LPA will coordinate with the CM to establish the time and date for the Final Inspection, once the project is finished and corrective work items identified by the LPA are completed. If necessary, the CM will coordinate with the DCE/Designee or other ODOT / FHWA representatives as appropriate, for attendance at the Final Inspection with the LPA and complete a District Construction Inspection Report (Appendix U) marked "Final Inspection." Final Inspection Punch List items identified shall be noted in the "Remarks/Exceptions" section of the District Construction Inspection Report. The LPA is responsible for ensuring punch list items are completed. The LPA will supply the remaining close-out documentation to the District, who will close out the encumbrance. This completes the project.

Project Close-out

Either the LPA Manager, CM or District Designee will be responsible for review and completion of the ODOT Capital Program Project Closeout Form (Prevailing Wage Questions) for all district LPA projects.

After completing this section, the LPA Manager, CM or District Designee will then reassign the close out form to ODI - Goal Attainment. The Project Close-Out form can be found by navigating to the ITNow portal and selecting the **Capital Project Closeouts menu**.

**EEO CONTRACT COMPLIANCE, DBE, PREVAILING WAGE
COORDINATOR/CONTRACTOR COMPLIANCE OFFICER RESPONSIBILITIES**

ODOT District Construction Monitors/ LPA Managers are responsible for monitoring the LPA and providing guidance on Federal and State contract provisions for Equal Employment Opportunity (EEO), Prevailing Wage (PW), Prompt Payment, Disadvantaged Business Enterprise (DBE), and Encouraging Diversity, Growth and Equity (EDGE). The respective ODOT District Construction Monitor/ LPA Manager should be notified if any activity by either the LPA or the contractor is believed to be out of compliance.

**CONSTRUCTION CONTRACT REQUIREMENTS FOR EEO, DBE, PREVAILING WAGE,
AND PROMPT PAYMENT COMPLIANCE**

APPENDICES

- U - District LPA Construction Inspection Report
- Q - LPA SharePoint Site Creation Users Guide

REFERENCES

23, 41 and 49 Code of Federal Regulations

Title VI of the 1964 Civil Rights Act

Governor's Executive Order 11-30-84

ODOT Consultant Contract Administration Manual

ODOT Construction and Material Specifications (C&MS)

ODOT Construction Inspection Manual of Procedures

ODOT Final Inspection of Construction Projects Policy and Standard Procedure

ODOT Sampling and Testing Program Manual

Related ODOT Policies, Standard Procedures, Manuals of Procedures and Proposal Notes

ODOT LPA Bid Document Template

ODOT LPA Maintenance Monitoring and Oversight Program