

LPA CONSTRUCTION CONTRACT ADMINISTRATION
PRIMARY ROLES & RESPONSIBILITIES

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

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

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PRIMARY TASK (continued)	ODOT	LPA
EEO AND DBE CONTRACT COMPLIANCE		
X EEO/DBE Contract Requirements		LPA
X Bulletin Board Monitoring		LPA
X Review and Approval of Contractor DBE Waivers	Office of Contracts	
X Commercially Useful Function Reviews		LPA
X Monitoring and Documentation of LPA's EEO and DBE Compliance Process	EEO Contract Compliance Coord./Officer	LPA
 PROJECT FINALIZATION		
X Final Inspection and Acceptance	DCA/ Designee	CPE/LPA
X Resolution of Punch list Items		CPE
X Agreement of Final Quantities, Payment		CPE/Contractor
X Final Payment to Contractor, Release of Responsibility		CPE
X Preparation of Project Closeout Documents		CPE
X Review and Approval of Finalization Documents	CM/LPA Coord.	
X Completion of LPA Contract Administration Evaluation	CM	

CM: Construction Monitor
 DET: District Engineer of Tests
 LPA Manager
 CPE: Construction Project Engineer

LPA: Local Public Agency/Person in Responsible Charge
 DCA: District Construction Administration

LPA CONSTRUCTION CONTRACT ADMINISTRATION

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” serves as the agency contact for all issues or inquiries, and is held accountable for ensuring 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. In situations where the CPE is a consultant the person in “responsible charge” 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. 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 details on the constructing of the project, bid proposal, specifications, plans, method of payment, Contractor’s progress schedule, 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/person in “responsible charge” should be familiar with all project documents and terms of the contract prior to the meeting. The CPE facilitates the pre-con as well as prepares and distributes minutes and an attendance sign-in sheet. The attendees should include the CPE/person in “responsible charge”, the Contractor, the District Construction Monitor (CM) and other ODOT representatives, as appropriate, and any other agencies that have involvement in the project (utilities, railroad, etc.). The CPE should obtain a list of contacts for all parties involved with the project at the pre-con meeting. This list is useful in the future for timely resolution of problems which surface during the project 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 to provide project information regarding lane and road closures, and any temporary restrictions to access that will be experienced during construction.

MONITORING PROGRESS

Progress Meetings

Attendance at progress meetings is required for the Contractor’s Superintendent, CPE and others as dictated by the point in progress including representatives of 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 should the department not be in attendance. 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 person in “responsible charge” should review and accept the progress schedule. If the schedule is not logical or is unreasonable, the CPE should ask for clarification. The progress schedule is the main tool with which the CPE monitors the contractor’s progress. It is, therefore, very important that the CPE accurately review the schedule before accepting it. Monitoring the progress schedule can determine the responsible party for project delays.

The progress schedule must be updated periodically, including 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 have adequate written procedures for the determination of changes to contract time. Contract time extensions submitted by the Contractor shall be subject to the concurrence of the CPE/person in “responsible charge”. 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.

PROJECT DOCUMENTATION

Record keeping, such as daily diaries, records, etc., 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. 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 that 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 that work was accomplished, what inspections and tests were made and the results. The LPA must ensure that each item in the contract is documented sufficiently to satisfy an audit. Documentation is also required for work performed by railroads or utilities

that is to be paid on a force account basis. Documentation shall also demonstrate that the contract was administered in compliance with the general provisions of the contract and specs, e.g., wage rates, Equal Employment Opportunity, Disadvantaged Business Enterprise 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 exist to ODOT's satisfaction, 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. Additionally, this will be reflected in the district's documentation of the LPA's performance which may affect the LPA's ability to administer construction contracts in the future.

CONSTRUCTION CONTRACT REQUIREMENTS FOR EEO, DBE & PREVAILING WAGE COMPLIANCE

EEO Contract 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 - Rev. 4-93), 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.

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

- Less than \$2 million - at least three EEO interviews shall be conducted so that one each is performed in the beginning, middle and end of the construction seasons 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 - EEO interviews shall be conducted once a month;
- Negative findings shall be tracked and resolution documented for each ODOT review.

Following this section are three forms used to carry out these responsibilities: EEO/Prevailing Wage Employee Interview Form (Appendix D), Superintendent/Supervisor/Foreman Interview Form (Appendix E), and Project On-Site Visit Report (Appendix F). ODOT will review the LPA's monitoring efforts and inform the LPA should there be a need for corrective action. ODOT reserves the right to withhold reimbursement until such time that requirements are met and appropriately monitored.

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

A DBE goal is applicable to any project with Federal funds having an estimated total dollar value greater than \$500,000. An EDGE goal is applicable to any project with State funds having an estimated total dollar value greater than \$200,000. The goals are assigned by the ODOT Central Office Goal Setting Committee. The Committee reviews each project taking into consideration the size of the project, work types, location and available DBEs who are located within a reasonable proximity. Once the goal is set, the LPA will be notified by the ODOT District. The LPA must then include the required goal in their bidding documents by placing it on the cover and describing it within the documents, using the applicable proposal notes provided by ODOT in the LPA Bid Document Template.

The Contractor is required to use DBE firms certified by ODOT to perform the type of work subcontracted. A listing of certified DBE firms is available on the Office of Contracts' website. The Contractor shall identify how they will meet the DBE / EDGE goal and in the event the Contractor is unable to meet the goal, the ODOT waiver process must be followed. The Contractor makes the waiver request first to the LPA. The LPA forwards the request with recommended action to the ODOT District. The ODOT District then makes recommendation and forwards the request to ODOT's Office of Contracts. Only ODOT has the authority to grant a waiver. The Prime Contractor must contract with DBE Subcontractors prior to the signing of the contract with the LPA. Each DBE subcontract or material supply agreement must be submitted to and approved by the ODOT District EEO/DBE Compliance Officer prior to the DBE beginning work on the project.

Commercially Useful Function

The LPA is required to monitor DBE Subcontractors to ensure they are performing a commercially useful function. A DBE is performing a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved with the DBE's employees. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials and installing (where applicable), and paying for the material itself.

The LPA's EEO/DBE Compliance Office's minimum monitoring schedule is based on the dollar amount of the project as follows:

- From \$500,000 up to \$1 million, a CUF review shall be performed once per season per DBE goal Subcontractor per project;
- From \$1 million up to \$2 million, a CUF review shall be performed at least twice per season per DBE goal Subcontractor per project; and
- Greater than \$2 million, a CUF review shall be performed at least monthly.

Following this section is a CUF Project Site Review form (Appendix G) for the LPA to use in performance of this monitoring function. In addition to following the monitoring schedule, the Compliance Officer must track CUF review results, negative findings and DBE goal Subcontractor payments for ODOT's process reviews.

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. The prevailing wage monitoring schedule is the same as that for EEO (see EEO monitoring schedule above). In addition to the interview schedule provided, there shall be a 30 percent spot check of all certified payrolls submitted by both the prime and all subcontractors.

The Prime Contractor is responsible for all forms to be furnished to Subcontractors along with wage rates and any wage rate modifications for those projects that are using state prevailing wages. An Owner, Foremen 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, they are to be paid 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 the US Department of Labor Form WH-347 (Appendix Q). A certified payroll must be accompanied by a Statement of Compliance Form (Appendix H), carrying an original signature. Each certified payroll shall show the following:

- Employee name, address, social security 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 in addition if not 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 not more than the allowable number of apprentices for any given craft is being used by the Contractor.

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

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 and should include, but not be limited to, the following:

1. THE LAW;
2. THE LAW (En Espanola);
3. Ohio Fair Employment Practices Law;
4. FHWA Notice (1022);
5. Wage Rate Information (FHWA 1495);
6. Wage Rate Information (FHWA 1495A) (En Espanola);
7. Contractually required wage rates;
8. Family & Medical Leave Act of 1993;
9. Minor Labor Laws;
10. Federal Minimum Wage;
11. U.S. Department of Labor (1321);
12. Contractor’s EEO Policy; and
13. The company EEO Officer’s name and telephone number.

This information is available for downloading from ODOT’s Office of Contracts’ website. . It is required that the LPA check bulletin board compliance when performing Prevailing Wage Interviews and/or Commercially Useful Function Reviews.

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 Materials Reference Laboratory (AMRL) 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. Following this section is guidance titled LPA Local-let Materials Process, Guidelines and Documents (Appendix J), developed to assist LPAs in setting up controls to assure materials meet ODOT specifications during construction management.

CHANGE ORDERS

As part of the LPA Participation Requirements Chapter described process, the LPA must submit their Change Order Review Process for ODOT's concurrence. This process should closely follow 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, and changing specifications. Only work necessary to complete the project as originally scoped 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.

Notification of all "significant" change orders must be submitted to the CM for review and concurrence prior to the Contractor performing the work. If the project is designated a FHWA full oversight project 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 Form following this section (Appendix M) and provide necessary copies to ODOT District staff.

Quantity Measurements

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

Issues of efficiency or other similar factors may arise that may impact unit costs when the quantities actually performed differ significantly from those shown in the plan. For these occurrences the quantity records shall be thorough enough to determine actual production rates and other such items.

CLAIMS

The LPA is subject to claims by the Contractor performing the work. The terms of the contract between the LPA and the Contractor exist in the contract, the specifications, and the plans (PS&E). It is required that the LPA formalize a claims management process that includes progressive administrative reviews prior to formal legal action by the Contractor or the LPA. The claims management process is 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 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 established claims management process 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. There are two types of termination: Termination for Convenience (ODOT C&MS 108.09) and Termination by Default (ODOT C&MS 108.08). Termination for Convenience means the LPA can terminate the contract at any time. This usually occurs when project plans have huge errors or the project is severely affected by other projects or emergencies outside the control of the LPA. In a Termination for Convenience the Contractor is compensated in accordance with the appropriate sections of ODOT's Construction and Material Specifications (for Altered Quantities and Eliminated Items, and for Extra and Force Account Work).

Termination by Default means the LPA can terminate the contract for the following reasons:

- Contractor fails to commence his work within a reasonable time;
- Contractor does not perform with reasonable progress;
- Contractor abandons, fails or refuses to complete work;
- Contractor improperly performs the work; or
- Contractor goes out of business or files bankruptcy.

Termination by Default is not an immediate event. This type of default requires a series of events to occur over a period of time, all of which must be documented by the LPA. The use of a Daily Diary is a very critical aspect of this termination.

BILLING

The CPE shall have the responsibility to make sure the Contractor receives prompt payment for all completed and accepted items of work. 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 by ODOT. The payment should be made to the Contractor within thirty (30) days of receiving the Contractor's invoice after the completion of the work per the Ohio Revised Code Section 126.30. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted. Located at the end of this section are LPA invoicing procedures (Appendix N) and ODOT invoicing procedures (Appendix O).

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, weight tickets, 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 www.dot.state.oh.us. (Accessing CMS Information Instructions are located at the end of the chapter).

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.

RECOVERY OF OVERHEAD AND FRINGE

This section details processes and procedures LPAs must follow to recover overhead costs associated with internal labor forces performing contract work on Federally funded projects. The LPA can recover indirect expenses incurred on Federally funded projects through one of the three methods described below.

A. Safe Harbor Rate Method

The Auditor of State (AOS)'s Bulletin 2003-003, *Legislative Changes Regarding Force Account Projects*, set forth "safe harbor" rates that local governments can use when estimating project costs for force account projects. The Auditor of State has additionally issued Bulletin 2007-001 and 2008-004 regarding the requirements for force account projects. All three bulletins should be consulted for force account projects. AOS bulletins can be accessed at <http://www.auditor.state.oh.us/services/lgs/bulletins/default.htm>. LPAs have the option to also use these safe harbor rates when calculating and billing LPA labor, fringe benefits, and indirect costs on Federally funded projects. This method for calculating total labor cost is hereinafter referred to as the "Safe Harbor Rate Method."

Under the Safe Harbor Rate Method, the LPA is able to invoice costs for the actual direct labor incurred on the project plus fringe benefit and overhead expenses. The fringe benefits are computed by using the safe harbor rate of 30 percent of the total base wage amount. Overhead costs are computed by using the safe harbor rate of 38 percent of the total amount of the base wages and fringe benefits.

The LPAs may only apply the Safe Harbor Rate Method to work performed by the LPAs own labor forces subject to the terms of the LPA Project Agreement executed between ODOT and the LPA.

B. Cost Allocation Plan Method

2 CFR part 225 establishes the cost principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments. Attachment E of 2 CFR Part 225 specifically addresses how LPAs should determine its indirect cost rate for Federal grants. LPAs that choose to use the Cost Allocation Plan (CAP) Method should submit a CAP in accordance with 2 CFR Part 225 to ODOT's Office of External Audits. More information can be found at:

<http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx>.

The Office of External Audits will complete a desk inspection of the CAP which includes, but is not limited to:

- reconciling the CAP to the underlying account records;
- performing horizontal and vertical analytics;
- sampling of select transactions to source documents; and
- reviewing costs for allowability in accordance with 2 CFR Part 225 and other Federal and State guidance.

CAPs must be submitted to ODOT's Office of External Audits within the first three months of the year. Written approval will be granted to the LPA for a one year period. The LPA must submit a new CAP request each year it elects to use the Cost Allocation Plan Method for calculating total labor costs on ODOT funded projects administered by the LPA.

C. Actual Cost Method

LPAs also have the option to recover the actual cost of fringe benefits incurred by its employees for work performed on Federally funded projects. LPAs choosing this method are only able to recover the actual pro-rata share of fringe benefits paid to its employees for direct labor. The LPA would not be able to recover any overhead expenses under this method.

The LPA is required to obtain written approval from ODOT prior to billing labor costs computed using the Actual Cost Method. The LPA should submit its request into the ODOT Office of External Audits with documentation supporting the fringe benefit expense for each employee at both the regular and overtime pay rates. Written approval will be granted to the LPA for the current calendar year. The LPA will need to submit a new request each year it elects to use the Actual Cost Method for calculating total labor costs on ODOT funded projects administered by the LPA.

D. Salary Support Requirements of the LPA

The LPA must maintain adequate documentation to support the salaries and wages charged to ODOT funded contracts. Timesheets must be completed and maintained; showing the distribution of time worked by the employee to the various work assignments and should reflect all hours worked, regardless if the hours are paid. The LPA bears the burden to support claimed expenses. Unsupported costs will be disallowed.

The Office of External Audits provides a template for an A-87 compliant timesheet (MS Excel format). on their website at the following location -
<http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx>

PROJECT CLOSEOUT

Final Inspection

When work on a project has been completed to the satisfaction of the CPE / person in “responsible charge”, a final inspection is conducted. The LPA is responsible to lead and perform the Final Inspection. The Final Inspection team should include the CPE/person in “responsible charge”, the CM, the Contractor, and may also include representatives of other agencies, utilities, railroads and other ODOT and LPA representatives as needed. The person in “responsible charge” shall forward to the CM the LPA’s written acceptance and final project certification and notify the Final Inspection team of the established time and date for the Final Inspection “walk-through”. The LPA 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 DCA/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 is 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 for the project 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 are the responsibility of the CPE. Once the CPE has resolved all material deficiency issues, final project certification may proceed.

Final Payment and Release

The final report shall be certified by the CPE stating that the project was developed and delivered in compliance with the terms, conditions and requirements of the project agreement with his/her Professional Engineer's seal and signature. The LPA shall then issue final payment and release the Contractor from further responsibility. Items that must be provided in the final report are as follows:

- Final invoice which reconciles each individual pay item to final quantities;
- LPA Program Final Report (Appendix P);
- District Construction Inspection Report (Appendix U);
- Affidavit of DBE Subcontractor Payment (Appendix R), or Affidavit of EDGE Subcontractor Payment (Appendix S), when applicable; and,
- Disposition of Material, when applicable (Appendix T).

The LPA shall then provide the final report 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 can not 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. If the extended deadline is not met, then this process must be repeated until the project is completed. Failure to follow this process may result in the immediate close-out of the project and loss of further funding.

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 and 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. The *LPA Maintenance Monitoring and Oversight Program* document is located at the end of this chapter for reference.

APPENDICES

- A - Pre-Construction Meeting Checklist
- B - Progress Meeting Agenda
- C - Documentation List
- D - EEO/Prevailing Wage Employee Interview Form
- E - Superintendent/Supervisor/Foreman Interview Form
- F - Project On-site Visit Report
- G - DBE Commercially Useful Function Site Review
- H - Statement of Compliance
- I - LPA Prevailing Wage / EEO Monthly Report
- J - Materials Management Guidance
- K - Change Order Process Guidance
- L - Change Order Notification Form
- M - Extension of Project Limits Form
- N - LPA Invoicing Procedures
- O - District Invoicing Procedures
- P - LPA Final Report
- Q - WH-347 Payroll Form
- R - Affidavit of DBE Subcontractor Payment
- S - Affidavit of EDGE Subcontractor Payment
- T - Disposition of Materials

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 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. 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 if he is in violation. Questionable practices should be brought to the LPA's attention immediately.

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. Not only must Construction provide input on the LPA's team members' qualifications but 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.

Project Files

Files must be maintained for each project. 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.

Pre-Award Meeting

Should it be decided that a pre-award meeting is required, the CM schedules it and sets the agenda, but it is typically conducted by the LPA Manager. This meeting is to take place after PS&E submission but preferably before the LPA bids and awards the project. The purpose of this meeting is to reach final agreement on all construction contract administration responsibilities and procedures. Attendees include the LPA Manager, CM, LPA and others as appropriate, such as district DBE and EEO coordinators and LPA project personnel. The CM's role is to provide the rules and discuss LPA and CM responsibilities. This meeting is also the time to discuss the 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.

Pre-Construction Meeting

The pre-construction meeting takes place prior to the Contractor starting work. This meeting is scheduled and conducted by the LPA, but the CM must be in attendance. The CM does not actively participate but is there to observe 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. Ask any questions that may need to be addressed for the CM's records. The CM will need a number 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. Often the Contractor does not have this information available at the pre-con, thus, the CM must follow-up and obtain this information when it becomes available. After the meeting, send copies of the lists of Subcontractors and material suppliers, along with the PID, LPA, location and contract value to the District Testing Engineer with copies to all attendees. Record and distribute Pre-Con Meeting minutes.

Site Visits

The CM should make a reasonable attempt to visit each project and review the LPA's performance (person in responsible charge, project engineer, 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 and overall operation of the project. Findings include any problems or issues identified in the execution of the contract. Items to review and note include: Daily Diary, measurement of all pay items, calculations that are performed to determine pay items, pay quantities, materials, tickets, change orders, testing and traffic related notes. Also, note the completion date (make sure this is entered into Ellis) and how close to the contract is to schedule. Project site visits are documented on the District Construction Inspection Report Form (Appendix U) with indication of Project On Site under the Inspection Type section.

Be familiar with the DBE process and the DBE goal, if applicable, on each project. It is not the CM's responsibility to monitor the DBE or how the LPA handles the DBE documentation. However, the CM must be aware of any DBE concerns or issues and share them with the district DBE coordinator.

Maintain documentation in the project files and provide a copy to the LPA. It is the CM's responsibility to help resolve any problems. This does not mean the CM should intervene in a contract issue, including how the LPA deals with the Contractor. The LPA holds the contract, not ODOT. Therefore, the LPA has the responsibility for communicating with the Contractor.

When visiting the site, know what work is being accomplished by the Contractor. It is necessary to know what is being accomplished in order to review and approve invoices. Evaluate the LPA's inspection practices. How many inspectors are on site? Is there a Project Manager or Engineer on the project? It should be the person approved as part of the LPA Participation Requirements Review.

Notice the traffic control when first arriving on the project site. The Contractor is responsible for the traffic control and the LPA should be monitoring Maintenance of Traffic for the safest practice. Ensure that the LPA documentation includes daily traffic notes showing that the zone is checked and that there are no abnormalities.

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.

Change Orders

The LPA must follow its own Change Order policy submitted and reviewed at the time of LPA Participation Requirements review and placed in the project contract documents. The CM does not approve change orders but rather reviews and provides concurrence. It is the LPA's responsibility to determine if a change order is necessary and justified. The LPA is also responsible for price negotiations. However, the CM must review all change orders of "significance" to determine if the documentation supports the proposed changes, and the cost is justified in the documentation. First, determine if the work is within the project scope and footprint. Next, evaluate the proposal to make sure there is no violation of any environmental commitments. 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. At the end of this section is guidance to aid the CM with change order review (Appendix K).

Should the documentation not be complete, the CM must relay to the LPA the need for any revisions. When the documentation is acceptable, provide the information to the LPA Manager for any adjustment of the Agreement files and funding encumbrances.

Claims

The CM serves as a resource to the LPA in the resolution of Contractor complaints, disputes and claims. The CM shall monitor the LPA's approved Claims Resolution Process to ensure that it is being followed, and shall determine Federal eligibility should a decision result in additional project costs. The CM must receive a copy of the Contractor's intent to file a claim.

Invoices

The LPA Manager is responsible for setting up the invoice template and providing it to both the LPA and the CM. The CM is responsible for reviewing and approving the invoices. Payment is not made until the invoice is processed so the CM must act quickly, and, in fact, the district should hold the invoice no more than 14 days as ODOT has responsibility for paying invoices within 30 days. Following this section are Invoicing Procedures for CMs (Appendix O).

Progress Meetings

Progress meetings take place during the duration of the project. Location is usually on site but the CM is not required to attend these meetings. However, this is a good opportunity for the CM to see the LPA since that individual may not be on site during a site visit. If site visits are scheduled to coincide with progress meetings, records can be ready for review and any necessary issues brought to the LPA's attention. Progress Meetings are documented on the District Construction Inspection Report Form (Appendix U) with indication of 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 help serve the process.

Finalization

The LPA will notify the CM of the established time and date for the Final Inspection once the project is finished and corrective work items identified by the LPA are completed. The CM will coordinate with the

DCA/Designee, or other ODOT / FHWA representatives as appropriate, for attendance at the Final Inspection “walk-through” 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 and assurance of completion is the responsibility of the LPA. The LPA will supply the remaining close-out documentation to the District who will then close out the encumbrance. This completes the project.

EEO CONTRACT COMPLIANCE, DBE, PREVAILING WAGE COORDINATOR RESPONSIBILITIES

These ODOT District employees are responsible for monitoring the LPA and providing guidance on Federal and State contract provisions in the areas of Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), and Prevailing Wage Compliance. If any activity is not in compliance, the respective ODOT coordinators must inform the DCA to determine if corrective actions are required. ODOT may reduce or halt reimbursements until the project is brought back into compliance, and the project is appropriately monitored.

APPENDICES

- U District Construction Inspection Report

REFERENCES

23, 41 and 49 Code of Federal Regulations

Title VI authorities:

- Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq);
- Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 USC 324);
- Age Discrimination Act of 1975;
- Section 504 of the Rehabilitation Act of 1973;
- Americans With Disabilities Act of 1990;
- Civil Rights Restoration Act of 1987

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