
Chapter 23 - CONSTRUCTION ADMINISTRATION

23.1 OVERVIEW

Section 302 of Title 23 U.S.C. requires that adequate construction personnel are provided to ensure that quality highways are constructed under the Federal-Aid Highway Program (FAHP). Project staffing levels should be based on the project's complexity, work types, urgency, and location.

The Department may delegate the construction administration of Federal-Aid (FA) projects to local agencies (LA), under **23 CFR 1.11 (b)**, per the conditions of the **FHWA/FDOT Stewardship and Oversight Agreement**, and if the following conditions have been met:

- All Federal requirements including those in **23 CFR 635 Subpart A** must be met on work performed under a LA awarded contract.
- Force account work must be in full compliance with **23 CFR 635 Subpart B. (Chapter 24)**
- The LA must be adequately staffed and suitably equipped to undertake satisfactory completion of the work. (**Chapter 2**)
- The LA must provide a full-time employee of the agency to be in “*responsible charge*” of the Federal-Aid project. (**Chapter 2**)

The state is not relieved of its responsibilities under Federal law and regulations if it delegates Federal-Aid (FA) project delivery to LAs. The state performs oversight and monitoring of the LAs per the processes identified in this **Manual** to ensure its responsibilities are met. Federal-Aid projects are also subject to Equal Employment Opportunity Compliance reviews by FDOT and shall be administered in accordance with the [FDOT Contract Compliance Manual \(Topic No. 275-020-005\)](#).

23.1.1 Construction Administration Activities

Construction administration includes the following activities required to oversee the construction of a Federal-Aid project:

- construction project inspection,
- project administration and recordkeeping,
- materials acceptance testing and verification, and
- Federal contract compliance.

The LA may perform one or all of these components using their staff (**Chapter 2**), or the LA may award a professional services consultant contract for one or all of these components (**Chapter 18**). The LA is responsible for the documentation and completion of all construction administration activities whether or not consultant support is acquired for the LAP project. Consultant qualifications are identified in **Chapter 22**.

23.1.2 LAP Project Classification

As discussed in **Chapters 19 and 20**, the application of the appropriate design criteria and construction specifications is dependent upon the LAP Project Classification. This section further defines how the LAP projects classifications - A, B, C, and D- also determine construction administration requirements, including materials acceptance sampling and testing. All LAP projects, regardless of classification, are subject to performance of Federal contract compliance as identified in the **FDOT Contract Compliance Manual**.

Construction administration requirements for LAs are determined by LAP project classification as follows:

- 1) Class A and B projects, and the structures component(s) of Class C projects require construction administration in accordance with the **FDOT Construction Project Administration Manual (Topic No. 700-000-000)**. Materials will be inspected in accordance with the **FDOT Sampling Testing and Reporting Guide by Material Description** and the **FDOT Materials Manual (Topic No. 675-000-000)**. **FDOT Standard Specifications for Road and Bridge Construction** (including all modifications such as supplemental and special provisions) must be applied consistent with the requirements of **Chapter 20**. All materials testing data is entered into the FDOT Materials and Acceptance Certification (MAC) system.
- 2) For Class C non-structural components and Class D construction projects, LAs perform construction administration pursuant to the **LAP Manual**, the **FHWA Contract Administration Core Curriculum Manual**, and the agencies' identified process as approved via LAP Certification (**Chapter 2**). Materials acceptance sampling and testing is performed in accordance with the project specifications and the agencies' identified process as approved via LAP Certification. All materials acceptance sampling and testing data must be documented and retained per federal and state requirements.

In the event an off-system Class C or Class D project intersects an on-system roadway, contact your District Administrator for design criteria, specifications and construction administration guidance.

23.2 PRECONSTRUCTION CONFERENCE

As soon as practicable after a contract is executed; the LA Project Engineer shall arrange a conference with the contractor. The LA shall notify:

- contractor
- subcontractors
- contractor and subcontractor EEO personnel
- Resident Compliance Specialist
- FDOT District LAP Administrator or designee
- FDOT Resident Compliance Specialist (District oversight)
- FDOT District Materials Office
- FDOT District Operations Center
- United States DOT Office of Inspector General* representatives
- United States Department of Labor (USDOL)* representatives
- emergency services providers
- transit providers
- utilities providers, and
- other interested and involved parties.

USDOT and USDOL contact information is provided in **Section 23.13 of this Chapter.*

The District LAP Administrator ensures Department staff are notified. For projects that are FHWA Projects of Division Interest (PODI) or located on the SHS or NHS, the meeting shall be coordinated a minimum of 14 days in advance in order to accommodate mandatory attending personnel schedules.

The purpose of the conference is to discuss the project plans and specifications, any unusual conditions, federal or state requirements, EEO requirements, training (if applicable), environmental commitments, and any other items that will result in a better understanding among the involved parties. In addition, the contractor will discuss the schedule of operation, type and adequacy of equipment, sources of labor and labor requirements, maintenance of traffic, and precautions for the safety of employees and the public. Links to a sample agenda and other resources are found in **Section 23.13**.

For additional information on EEO requirements, including reporting Disadvantaged Business Enterprise commitments prior to the pre-construction meeting date, see **Chapters 14 and 15** of the **FDOT Contract Compliance Manual**, and the **CPAM**.

23.2.1 Federal Subcontracting Requirements

FHWA requires that all executed subcontracts at any tier be in writing, as per **23 CFR 635.116(b)**. This includes contracts between the prime contractor and its subcontractors, and contracts between subcontractors and their agents. Each of these subcontracts also must physically contain the following documents; they cannot be incorporated by reference.

- A. [FHWA Form No. 1273, Required Contract Provisions Federal Aid Construction Contracts](#), and
- B. The minimum wage rates for the contract as required by **Title 29 Code of Federal Regulations (Davis-Bacon Wage Rates)**. **Applicable** wage rate decision dates are determined by the date the contracting agency formally publishes or issues its intent to award the contract to the contractor.

The applicable requirements of FHWA Form 1273 must be incorporated by reference for work done under purchase orders and rental agreements. In addition, FHWA Form 1273 requires the contractor to perform “not less than thirty (30) percent of the total original contract price” on the NHS.

23.2.2 Utilities Coordination

Utility relocation and coordination schedules should be identified at the preconstruction conferences as required. Note: utility relocation is generally not eligible for reimbursement by the Department. All utility reimbursements shall be approved by the FDOT’s Office of General Counsel during the project development stages and no later than prior to construction authorization.

23.2.3 Construction Permits and Lane Closures

The LAP Agreement serves as the LA’s permit to construct on the Department’s right of way; therefore, the LA and its contractor may, but are not required to, obtain a **General Use Permit** from FDOT to perform any LAP project on Department rights of way. LAs must coordinate with the District Permit Engineer and Traffic Operations Office to obtain required lane closure plans regardless of whether a General Use Permit is issued. In the event modifications or changes are required for any Department issued permit or lane closure plan, the LA must timely notify the District’s Traffic Operations Office at the earliest opportunity. The LA shall also ensure compliance with the CPAM, Section 9.1.8 regarding actions for maintenance of traffic and safety concerns. The LA shall require their contractors and CEI(s) to take emergency steps to close any public road whenever there is a risk to life, health and safety of the travelling public. The safety of the travelling

public is the Department's first priority for the LA. If lane or road closures are required by the LA to ensure the life, health, and safety of the travelling public, the LA must notify the District Construction Engineer and District Traffic Operations Engineer immediately once the travelling public are not at imminent risk. The Department expects professional engineering judgment be applied in all aspects of locally delivered projects. Defect management and supervision of LAP project structures components must be proactively managed, monitored, and inspected by department prequalified structures engineer(s). The District Construction Engineer must be notified immediately of defect monitoring that occurs in LAP project construction, whether or not the defects are considered an imminent risk to life, health, or safety of the travelling public.

When defects, including but not limited to, structural cracks, are initially detected during bridge construction, the engineer of record, construction engineering inspector, design-build firm, or local agency that owns or is responsible for the bridge construction has the authority to immediately close the bridge to construction personnel and close the road underneath.

Permits required from other agencies (as identified in the construction bid package) that are necessary to commence construction shall be on hand at the meeting for review. Note: permit fees are generally not eligible for reimbursement by the Department. Coordination of eligible costs shall be completed prior to construction authorization.

23.2.4 Pre-Construction Meeting Minutes

Pre-construction Meeting Minutes shall be produced and transmitted to each agency, organization, and firm that has involvement or interest in the project. Pre-construction Meeting Minutes shall be uploaded to *LAPIT*.

23.3 CONSTRUCTION INSPECTION REQUIREMENTS

Congress requires that FHWA ensure that each Federal-Aid Highway construction project is designed and constructed in a way that ensures the maximum public benefit (**23 USC 109, 23 USC 114, 23 CFR 635.105, 23 CFR 637 Subpart B**). From FHWA's perspective, the inspection of on-going construction projects is essential to determining whether the project is being constructed in conformance with the approved PS&E, thereby maintaining its eligibility for Federal-Aid participation. Construction inspection activities cover both the quality assurance and the project documentation. The project record keeping system must provide for the reconstruction of the chain of events that occurs on a project. Assurance that the project is completed in close conformance with the approved contract documents, including plans and specifications is only accomplished by an appropriate level of on-site inspection and project management during all phases of the project.

FHWA provides detailed guidance and a list of references in the [Construction Administration Core Curriculum Manual](#) (CACCM 2014), **Section 10. Post-award procedures, part d. Inspection (pg 144)**.

In addition to any Department of Financial Services contracting requirements, **LAP Memorandum: 03-11** addresses minimum requirements for periodic reviews and documentation for LAP projects, as outlined in **Table 1** on the next page. LAs are responsible for addressing any findings in a timely manner.

Table 1: FDOT Minimum Construction Inspection Frequency

Project Type	Inspection Frequency
LAP Class A, B, C	Initial Inspection (less than 10% complete) Quarterly interim inspections Final Inspection
LAP Class D with construction value < \$500,000	Final Inspection
LAP Class D with construction value > \$500,000	Initial Inspection (less than 25% complete) Final Inspection
LAP Class D within travel way with construction value > \$500,000	Initial Inspection (less than 25% complete) One interim inspection near midpoint Final Inspection

A consultant providing CEI support does not preclude the agency from performing jobsite inspections nor does it alleviate the LA from monitoring the contractor and the consultants hired to deliver the LAP project. The LA must have a fulltime employee in responsible charge of the project at all times.

23.4 PROGRESS ESTIMATES AND PAYMENTS

The FHWA may only participate in the actual, allowable, and allocable costs of a project. The LA will make progress payments to the contractor based on accurate measurements of work performed so that the contractor can be fairly compensated and to ensure public funds will not be expended on work that has not been completed. Every progress payment request shall be prepared by determining the total amount of each item of work, including lump sum items, accomplished up to the date of the request. The LA Project Engineer must document the quantities shown on each monthly progress payment request.

Compensation for materials shall be based on measurable quantities. Delivery tickets for asphalt concrete, Portland cement concrete, or other batched or truck weighed material must be used to document the delivery of the material. These receipt tickets become a part of the final records and shall be maintained in the LA project files and made available for review upon request. Stockpiled materials (**23 CFR 635** and **CPAM 9-5.5.1**), when allowed under the contract, may be included in the progress payment when:

- Material is stored such that the quality, security, and inventory can be maintained;
- Material is supported by a paid invoice or receipt for delivery from the contractor;
- Material is approved as meeting applicable project specifications;
- Material was not stockpiled prior to the contract award; and
- Material quantity does not exceed the estimated total quantity required to complete the project.

Progress payment requests shall be prepared and submitted per the contract terms, including any retainage withholding. Both **23 CFR 635.122** and [218.735 F.S. Local Government Prompt Payment Act](#) provide federal and state requirements for developing contract terms for progress payments. In addition, **49 CFR 26.29** and Section **218.735 F.S.** provide for the prompt payment of subcontractors. The LAP Agreement requires the LA to submit an invoice and a progress report to the Department at least quarterly to demonstrate project activity to both FHWA and the State's Department of Financial Services. Lack of invoicing to the Department may result in the removal of Federal-Aid funding.

The LA shall properly separate Federal-Aid non-participating items and/or quantities from Federal-Aid participating items and/or quantities when preparing an invoice to the Department. Some guidelines for determining Federal-Aid participation of cost and time increases or decreases are contained in **Section 7.3.11** of the **CPAM**. Federal-Aid participation in all changes to State Highway System (SHS) and National Highway System (NHS) projects shall be determined as required by **Federal Aid Policy Guide 23 CFR 635.120**.

23.4.1 Withholding Payment

The LA Project Engineer may withhold progress payments in the following cases when:

- Work is done contrary to or in disregard of the instructions of the LA Project Engineer;
- Work is not performed in accordance with the lines, cross-section stakes, and

- grades shown on the plans or given by the LA Project Engineer;
- Any deviation is made from the plans and specifications without prior authority; or
- The contractor or subcontractor fails to submit the required EEO submittals per **FHWA 1273** and the **FDOT Contract Compliance Manual**, including but not limited to the [Certification Disbursement of Previous Periodic Payment to Subcontractors \(FDOT Form No. 700-010-38\)](#).
- Other causes stated in the contract specifications.

23.5 CONTRACT CHANGES

Contract changes include supplemental agreements, time extensions, and extra work orders. A contract change may involve any or all of the following:

- Plan changes or revisions
- Specifications changes
- Change in cost (+/-)
- Change in time (+/-)

A LA must develop and incorporate a written policy into the contract outlining the conditions under which a contract change is allowed per **23 CFR 635.120**. Within the policy, the LA shall identify that approval of all contract changes, either verbal or written, are documented prior to the contractor beginning work.

No work shall be performed prior to approval, except in the case of emergencies. All contract changes must have written approval from FDOT to be eligible for Federal-Aid participation. Verbal approval must be followed by submission of the corresponding written contract change within ten (10) calendar days. On all projects except those designated as a Project of Division Interest (PODI) by FHWA, and in which FHWA has retained contract changes oversight, the District Construction Engineer or designee shall determine the FA participation in accordance with the guidelines shown in **CPAM Section 7.3.11.1**.

For FHWA PODI projects, it is essential that the LA consult with the District LAP Administrator to obtain pre-approval from the FHWA District Transportation Engineer and a determination as to Federal-Aid participating or Federal-Aid non-participating for the contract modifications, in accordance with **Section 7.3.11.2** of the **CPAM**.

23.5.1 Review of Supporting Documentation/Justification

It is important to distinguish between actual changes to the contract work and normal overruns and underruns that may occur. Whenever a change in the contract is required,

the LA shall prepare a contract change document and submit it to District LAP Administrator for review and approval by the District's functional area expert. The submittal shall include the justification and explanation in sufficient detail so that everyone involved will understand the need for the change. A detailed engineering justification of the cost associated with the change shall be included with the explanation. Associated changes to the contract time also require justification. All contract changes must be numbered in sequence.

Major changes are defined in **23 CFR 635.102** as those that "significantly affect the cost of the project to the Federal government or alter the termini, character or scope of work".

Contract changes for LAP projects are reviewed by FHWA (and FDOT) in relation to the four (4) basic components identified in the **Contract Administration Core Curriculum Manual**:

- 1) Federal-Aid eligibility
- 2) Impact on "original scope of work"
- 3) Basis of payment
- 4) Time adjustments

FDOT includes major changes in the **CPAM, Chapter 7**:

- Revisions of geometric design (main roadway, ramps, frontage roads, or crossroads) including any project and construction limit extensions.
- Revisions of pavement structural sections.
- Revisions in conflict with standards.
- Revisions, addition, deletions, or relocations of structures.
- Any changes in the plan access control/management.
- Any changes that alter specifications, special provisions, or other contract requirements, including previously approved provisions.
- Any changes in material type or quality.
- The grant of any additional contract time in a Supplemental Agreement.
- Any time extensions.
- Any contract adjustments made by the LA Project Engineer when acceptable prices for a significant change cannot be obtained through negotiations.
- Contract claim settlements.
- Supplemental Agreements and Unilateral Payments that total \$50,000 or more, or five (5) percent or more of the original total contract amount, whichever is less.
- Substantial overruns and underruns.

23.5.2 Federal-Aid Eligibility

Federal-Aid contract changes that have not been approved by District LAP Administrator (in consultation with the functional area expert) are not eligible for Federal-Aid reimbursement regardless of dollar value.

The following contract changes shall be Federal-Aid non-participating:

- A. Spare parts turned over to the maintaining agency and not incorporated into the construction.
- B. Material or equipment called for in the plans but not used in the construction.
- C. Closed drainage systems structures that are not justified in the environmental process.
- D. Fishing Piers.
- E. Drainage items, including water retention ponds that are not supported through the environmental process.
- F. Storm and sanitary sewer work and other drainage or utility work that are not a result or purpose of the road and bridge work.
- G. Premium costs due to design or CEI errors or omissions.
- H. Sole source items unless specifically approved by the Federal Highway Administration prior to project authorization.
- I. Construction changes for items that were set up as alternate bid items.
- J. Repairing items that had not been properly maintained (cleaning pipe, etc.)
- K. Additional contract time and/or costs for utility or right of way delays beyond what was identified in the contract documents.
- L. Additional contract time and/or costs to attain greater vertical or horizontal bridge clearance than deemed necessary to fulfill the intent of the original project documents.
- M. Additional contract time and/or costs due to arbitrary one foot or less backwater criteria in construction or reconstruction of Interstate Highway Bridges.
- N. MOT items for Federal Aid Non-participating time extensions.
- O. Work resulting from insufficient subsoil investigation.
- P. Claim Settlement Costs not approved by the FHWA Transportation Engineer.

23.5.3 Impacts to Original Scope of Work

When changes in the work will alter the scope of an approved project, the District LAP Administrator's (in consultation with the functional area expert) approval is required in advance of the effective date. In addition, changes to the scope such as project limits or altered work types require the execution of a **LAP Supplemental Agreement (Form No. 525-010-32)** by both the LA and the Department prior to reimbursement, and also requires Federal Authorization Modification approval from FHWA.

23.5.4 Basis of Payment

Regulations require analysis and documentation of the costs for each contract change independent of the contractor's price proposal. Documentation may include wage rates and work hour estimates, price quotes or invoices specific to pay items, etc. When an estimated cost is increased beyond that authorized in the **LAP Agreement**, FEDERAL-AID participation is subject to the requirements identified in **Chapter 5** of the **Manual** including the availability of Federal funds as determined by the District LAP Administrator, the execution of a **LAP Supplemental Agreement**, and the modification of the Federal Authorization as required.

23.5.5 Time Extensions

Each contract change shall provide the time needed to accomplish the work, or a reduction in contract time if work is reduced. FHWA distinguishes changes that may also require time extensions as those where the "*proposed work affects a controlling operation*". **FHWA's Contract Administration Manual** and **FDOT Standard Specifications for Road and Bridge Construction** list typical events that require time extensions and also typical events that are not eligible for participation in time extensions. Some examples of these events are listed here.

Typical participating events:

- Labor strikes
- Public protests of the project
- General riots
- Declaration of war
- "Acts of God"
- Area-wide shortages in required materials
- State of Emergency declarations by the Governor or President

Typical Non-Participating events:

- Maintenance shutdowns
- Breakdowns
- Suspensions or stop work orders due to safety, permit, or pollution violations
- Shutdowns due to construction accidents
- Material delays not caused by shortages or strikes
- Inclement weather*
- Conflicts due to utilities, railroad, or right of way clearances

*The LA contract shall identify conditions under which time extensions for weather delays, holidays, and non-working days (i.e., weekends) are granted. If the contractor is prevented from working at least 50% of the normal work day on pre-determined controlling work items as documented by the LA's Project Engineer's daily inspection logs, then the contractor is eligible for the additional day(s).

Time extensions that modify the original project schedule require the District LAP Administrator to prepare and submit through the FDOT Federal Aid Office a Federal Authorization Modification for FHWA approval. Refer to the [FDOT Federal Aid Technical Bulletin 15-01 "FHWA Implementation of 2 CFR Part 200 \(the Supercircular\)"](#) for additional guidance.

If a LA grants additional contract time, but the Department and/or FHWA determine that these days are Federal-Aid non-participating, then project overrun costs shall not be covered as part of the LAP Agreement total participating amount in the LA contract. Calculated non-participating costs include items such as construction, engineering, and inspection (CEI) and maintenance of traffic.

23.6 MATERIAL ACCEPTANCE

Acceptance samples and tests are used to determine the quality and acceptability of the material of the project. The LA will use these results to determine compliance with the contract documents and specifications. LA staff (LA's CEI included), or a private testing facility employed by the LA will perform the acceptance sampling and testing on the job site or at the appropriate location as determined by the contract documents. As indicated in **Section 23.1.2**, the LA will accept materials in accordance with the contract documents for the project, which are determined by the LAP Project Classification as defined in **Chapter 20**.

All materials acceptance sampling and testing data must be documented and retained as required by the terms of the **LAP Agreement**. LAP projects with classification A, B, or C that require a Final Project Materials Certification Review and Project Materials Certification Letter generated by the Department are required to be entered into the FDOT Materials Acceptance and Certification system. Instructions for access and use are found on the State Materials Office website at:
<https://mac.fdot.gov/> .

23.6.1 Materials Certification Letter

The intent of the material(s) certification is to assure that the quality of all materials incorporated into the project are in conformance with the contract documents, including

the plans and specifications. A copy of this must be sent to the District LAP Administrator before the LA's final invoice on the LAP Agreement will be paid. The final materials certification to FDOT shall state:

"The results of the tests used in the acceptance program indicate that the materials incorporated in the construction work, and the construction operations that are controlled by sampling and testing, were in conformity with the approved contract documents, including the project plans and specifications. Exceptions, if any, are attached."

The LA is expected to submit a certification statement to the Department for Class A and B contracts (full FDOT Specs) and the Department will in turn issue the Certification Letter. On Class C contracts, the Department issues the Certification Letter for the structures components (constructed per FDOT Specs) and the LA certifies the remaining elements – a dual Certification. Finally, on Class D contracts, the LA issues the Certification Letter for all of the elements of the work.

23.6.2 Additional Requirements for Structural Components

When structural products or components such as precast concrete bridge beams, piles or drainage products or structural steel components such as bridge beams, sign structures, lighting structures, and traffic signal structures are fabricated in a plant remote from the immediate site of the project then acceptance sampling, testing and inspection must be performed in the plant. These services are performed by LA staff (LA's CEI included) or a private testing facility employed by the agency. Refer to the Department's **Materials Manual (Topic No. 675-000-000)** for additional information.

Additional inspections may be required if the structural component of the project is subject to FDOT Specifications. For example, commercial inspections are required by Section 105-1.2.3 Notification of Placing Order of **FDOT Standard Specifications**.... Class D projects (**LAP Manual Chapter 20**) with structural components are not governed by FDOT Specifications and should conform to the approved project specifications.

23.6.3 Materials Quality Assurance Reviews on Local Roadways

For projects off the SHS and NHS, the District Materials Offices will review the LA materials quality assurance programs in conjunction with a LA's LAP Certification (**Chapter 2**). The Materials Office review focuses on the process the LA uses to certify materials on LAP projects and may include a limited review of project data to inform the certification review. A sample [Materials QAR Checklist](#) is located on the LAP Website Forms Page.

23.7 ADMINISTRATIVE SETTLEMENT COSTS

The Federal-Aid participation in contractor claims is decided on a case-by-case basis by FDOT in coordination with the FHWA Florida Division Office. The LA is required to follow the process identified within the contract documents to handle contractor claims. For projects on the NHS, the state must address a claim's eligibility based on **23 CFR 635.124**, and consider past precedent. For projects off the NHS, the state shall determine FEDERAL-AID participation based on State procedures in compliance with the allowable cost principles of **2 CFR 200 (FDOT Standard Specification 5-12 and CPAM Chapter 7.5)**.

Federal-Aid may participate to the extent that the claim can be supported by the facts and has a basis in the contract and under applicable State law. The basis for adjustment and contractor compensation should be in accord with the prevailing principles of contract law (**23 CFR 635.124 (a)**). The eligibility of costs associated with settling contractor claims is covered under **Chapter 10, Financial Management**.

23.8 LIQUIDATED DAMAGES

The liquidated damages contract provision provides a mechanism for the LA to recover its costs associated with a contact time overrun by the contractor. For projects on the SHS and NHS, construction contracts are required to incorporate liquidated damages provisions per **23 CFR 635.127**, and **FDOT Standard Specification 8-10.2** shall be applied. The LA may calculate and apply their own schedule of damages for off-system projects. To be eligible for use on Federal-Aid projects, the rates must comply with 23 CFR 635.127. Significant guidelines for development include:

- Minimum LD rates must cover the average daily CEI costs attributable to contract time overruns. CEI costs for time overruns are non-participating.
- Costs attributed to project-related delays or inconveniences to the public may be included if the project does not incorporate a time-related incentive/disincentive clause.
- Rates are subject to verification and approval by the FDOT.
- At least every two years, but not more than once per year, LD rates must be reviewed and adjusted as needed.
- Business impact costs are **not** an acceptable component in the calculation of LDs.

23.9 TERMINATION OF CONTRACT

All Federal-Aid projects valued at \$10,000 or more shall contain provisions for:

- Contract termination for cause,
- Contract termination for convenience, and
- Contract termination and/or legal remedies for default.

Generally, when termination for cause or convenience is enacted, the contractor is paid for all completed work and any work needed to preserve and protect the completed work, and for materials stockpiled for the project.

It may or may not be appropriate for a LA to terminate the construction contract for default. The LA contracting process may require that the contract stay active while the Surety's contractor completes remaining work under the contract. Whether the agency terminates a contract in a default situation or leaves the contract active while the Surety completes the work, language documenting how this process will be administered by the agency shall be incorporated into the contract for all projects \$10,000 and above.

Termination for default is used in circumstances that are under the contractor's control. AASHTO has identified the following situations as grounds for default terminations:

- Failure to begin work under the contract within the time specified in the Notice to Proceed (NTP).
- Failure to perform the work with sufficient manpower, equipment, or materials to ensure prompt completion.
- Performance of the work is not in conformance with the contract requirements or refusal to remove/replace rejected materials or unacceptable work.
- Discontinuance of the work or failure to resume work which has been discontinued within a reasonable period of time after notice to resume.
- Committal of any act of bankruptcy or insolvency.
- Failure to comply with contract requirements regarding payment of minimum prevailing wages or EEO.

FDOT Standard Specification 8-9 may be adapted by a LA for use in Federal-Aid construction contracts. Generally, use of the Surety contractor (**255.05 F.S.**) to complete construction will ensure the cost of the project remains Federal-Aid participating.

The District LAP Administrator must provide concurrence to the LA for the termination of a contract with the contractor and the LA intends to seek reimbursement. The District LAP Administrator will consult with FDOT executive management and the FHWA District Transportation Engineer on the termination of all LAP construction contracts.

23.10 COMPLETION OF CONSTRUCTION

Upon nearing the end of the contract term and per the project schedule, the LA shall notify the District LAP Administrator of all semi-final and final inspections scheduled for completion. The District Operations Center shall also be notified of all semi-final and final inspections. The Department requires a copy of draft/final plans to complete the inspection.

The LA Project Engineer will make a semifinal inspection (per the contract terms) after notice from the Contractor of presumptive completion of the entire project. If, at the semifinal inspection, all construction provided for and contemplated by the contract is found completed to the LA Project Engineer's and to the Department's satisfaction, such inspection shall constitute the final inspection, as prescribed below.

If, however, at any semifinal inspection any work is found unsatisfactory in whole or in part, the LA Project Engineer shall give the Contractor the necessary instructions detailing the replacement of materials and the performance or re-performance of work that is a necessary prerequisite to final completion and acceptance. The Contractor shall comply with and execute the LA Project Engineer's instructions. Upon satisfactory replacement of materials and performance or re-performance of such work, another inspection shall be performed.

Whenever all materials have been furnished, all work has been performed, and the construction contemplated by the contract has been satisfactorily completed, the LA Project Engineer shall give the Contractor written notice of final acceptance.

23.10.1 Project Close Out

The LA is responsible for providing the following project-close out information to the District LAP Administrator, uploaded to LAPIT, within 120 days of Final Completion (*LAP Agreement, Section 5*):

- Copy of the LA's written notice of final acceptance to the contractor.
- **Form No. 525-010-42 LAP Final Inspection and Acceptance of Federal-Aid Project**
- **Form No. 525-010-47 LAP Record of Final Plans and Documents**
 - Requires the attachment of all Contract Changes and/or a summary report of overruns and underruns.
- Materials Certification Letter
 - State Materials Office will provide if the project is on the SHS or NHS.
- Final Invoice

- Must include the final project time, cost and final plan quantities.
- Final as-built plans
 - All bridge as-built plans and foundation construction records (pile driving records, shaft top elevations, and borings) shall be submitted to the District Structures Maintenance Engineer for permanent retention.
 - As-built plans for projects located on the NHS or SHS shall be submitted to the FDOT Operations Center.
 - As-built plans for off-system projects shall be available to the Department upon request.
- Schedule of Values is only required for Design-Build and Lump Sum projects.
- **Project Commitments Record (PCR)**
 - LA must provide documentation showing all commitments were fulfilled. See Chapter 11 for additional information on the PCR.

23.11 FINAL RECORDS RETENTION

The LA Project Engineer must document the work performed on the contract. Documentation consists of field books, inspector's record of field tests, LA Project Engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, and work profiles.

Records of costs incurred under the terms of the **LAP Agreement** shall be maintained and made available upon a request to the Department at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the Department for a proper audit of costs (also reference **2 CFR 200**).

If a warranty provision was included in the contract specifications, then records of activities related to monitoring during the warranty period shall also be maintained by the LA. Projects that are to be maintained by the Department after final acceptance, per the executed project LAP Agreement, will be monitored by the District Maintenance Offices.

23.12 RESOURCES

[FHWA Contract Administration Core Curriculum Manual](#)

FHWA Technical Advisories related to various topics:

<http://www.fhwa.dot.gov/construction/techadvisories.cfm>

[FDOT Materials Acceptance and Certification system](#)

[LAP Manual Glossary](#)

The following items are available on the [LAP Website Forms Page](#):

- [Sample Preconstruction Conference Agenda](#) (also found in **CPAM Chapter 3**)
- Sample Materials Certification Letter
- Sample Materials QAR checklist
- Sample Daily Log
- Sample Certification of Payment
- Sample Certification of Stockpiled Materials
- Sample Estimate of Contract Time
- LAP Supplemental Agreement (Form No. 525-010-32)
- LAP Final Inspection and Acceptance of Federal-Aid Projects – Instructions (Form No. 525-010-42)
- LAP Record of Final Plans and Documents (Form No. 525-010-47)

USDOT contacts for Pre-construction Meeting Notifications:

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