

## Chapter 20

### Local Administered Projects

This chapter is used by local agencies operating under Certification Acceptance and choosing to administer construction contracts themselves. In the sequence of project development, this follows Chapter 18, *Advertising and Award Procedures*.

Local agencies whose construction contracts are administered by MDT should refer to Chapter 18, *MDT Administered Projects*.

The following chart illustrates the contract administration and oversight responsibilities for the Federal Highway Administration (FHWA) (F), MDT (S), and local agencies (L):

Action	Responsible Party
a. Construction Fund Auth.	F
b. Changes/Extra Work	S, L, F
c. Nonparticipation	S, L, F
d. Claims	S, L, F
e. Project Inspections	L, S

#### 20.1 General Discussion

MDT is responsible for the proper expenditure of FHWA funds on local agency projects. MDT will consult and work with local agencies as needed and will perform systematic project management reviews to ensure that proper procedures are followed.

The local agency will have the flexibility to administer the construction, material testing, and inspection in accordance with the *MDT Road and Bridge Standard Specifications* and contract documents. The local agency may include additional requirements or select MPWSS specifications as special provisions in the contract if determined during the Project Development phase.

The *MDT Construction Administration Manual (CAM)* is a guide for the local agency's reference.

For exceptions, see Section 20.4.2. In case of conflicting guidelines, this chapter governs over the *CAM*. All projects with federal funding are subject to EEO, Labor (Federal), and DBE compliance reviews by MDT. Refer to the *CTEP Manual for Enhancement Projects*.

Appendix 20.10.1 illustrates the major timeline for construction contracts and the minimum dates and project information that must be tracked.

Reimbursement of FHWA funds may be denied for work done contrary to or in disregard of the contract documents.

#### 20.2 Preconstruction Conference

After a contract is awarded, the local agency will arrange a pre-construction conference with the

contractor per specification 108.03.1. The local agency engineer must notify the MDT District Administrator (or designee) of the time and place of the conference. They will notify appropriate MDT parties. It may be desirable to hold separate conferences for some specialized construction items such as paving, roadside planting, or electrical work.

The meeting must be documented and copies of the minutes transmitted to the District Administrator and each agency, organization, and firm that has involvement or interest in the project.

Ensure that all permits have been acquired and scheduled requirements met by the contractor before work begins.

### **20.3 Compliance with Federal Contract Provisions**

Per Specification 108, all subcontracts must be in writing and consented by the local agency before they can begin work on the project. This includes subcontracts at any level. The prime contractor may not subcontract more than 60% of the original contract amount.

Each subcontract must physically contain the most current version of the following documents;

- General special provision (GSP) entitled “Required Federal Aid Provisions”
- Form FHWA 1273 “Required Contract Provisions Federal Aid Construction Contracts”
- Prevailing wage rates for the contract

None of these documents can be included by reference only.

It is the responsibility of the local agency to ensure full compliance with the provisions above.

Implementation of the DBE, Labor (Davis Bacon), and EEO programs are also federal contract requirements. Refer to Chapter 12 for Disadvantaged Business Enterprises and Equal Employment Opportunity and Training.

### **20.4 Quality Control**

The quality of materials and workmanship on a project must conform to the contract specifications so that the public funds expended will have purchased a safe, economical, and fully functional transportation facility.

#### **20.4.1 General**

The source for each type of material must be approved by the local agency.

Upon request, the District Administrator (or designee) will provide information regarding material sources and instruct the local agency of the updating process. MDT may provide materials testing at the request of the local agency.

The local agency is required to follow the qualified testing program and acceptance testing outlined in the *MDT Construction Administration Manual (CAM)*.

### 20.4.2 Exceptions to the CAM

The following exceptions to the CAM may be used by the local agency in developing a plan for construction oversight. The agency may submit their plan through the District Construction Engineer (DCE) for review and comment. If those alternate methods are not utilized, the CAM will prevail.

The following procedures are approved exceptions to the CAM requirements:

- The local agency may develop their own Record of Materials, and approve manufacturers not listed on the MDT QPL.
- Asphalt plant inspectors and scale persons are not required at established commercial sources. This exception does not allow the local agency to eliminate acceptance sampling of the materials.
- Local agencies have the option of independent assurance sampling.
- The following items may be accepted with an approved catalogue cut and documented by visual inspection or a manufacturer's material certification (provided manufacturer's certification is based on actual testing):
  - Electrical items
  - Paving or geotextile fabrics
  - Fencing of any kind
  - Landscaping or irrigation items
  - Glare screens
  - Traffic buttons or paints
  - Guardrail items
  - Drainage items

Buy America requirements must be met regardless of how the item is accepted.

- Minor quantities may be increased to 500 tons for all aggregate items, treated or untreated, from an established commercial source.
- Local agencies may test their own signal cabinets.
- Local agencies may lower the density testing requirements to 90 percent of the Rice density for nonstructural overlay pavement designs with a thickness of 1.25 to 2 inches. This should be limited to areas or projects with documented foundation problems and on overlay of existing pavements.

### 20.5 Progress Payments

Progress payments must be based on measurements of work performed so that the contractor can be fairly compensated and so that public funds will not be expended on work that has not been done.

Progress estimates should be prepared on a pre-selected date each month. The local agency must document the quantities paid each month on a form pre-approved by MDT.

### 20.6 Changes and Extra Work

Prior to beginning work, an agency must have a written policy for the approval of change orders to ensure that approval, either verbal or written, is given and documented.

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 agency must prepare a change order. The change order must include documentation that explains the change in sufficient detail so that all involved parties understand the need for the change, and must include a detailed justification of the cost and time associated with the change. All change orders must be numbered in sequence.

To be eligible for FHWA participation, all change orders must be approved by the local agency. Except for emergency work, a change order must be executed prior to the work. In the case of emergency situations, (see the *Standard Specifications* and *CAM* for definition) verbal approval may suffice. Verbal approval must be followed by submission of the corresponding change order within ten (10) business days.

When changes in the work will alter the termini, character or scope of an approved project, the local agency must notify the District Administrator (or designee) prior to the commencement of the physical work. A new environmental document and program modification may be required.

### **20.6.1 Administrative Settlement Costs**

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of contracting officers or their authorized representatives, attorneys or members of arbitration boards, appeal boards, etc., which are allowable to the findings and determination of contract claims, but not including administrative or overhead costs.

FHWA funds may participate in administrative settlement costs which are:

- Incurred after notice of claim;
- Properly supported;
- Directly allocable to a specific FHWA project; and
- For employment of special counsel for review and defense of contract claims when recommended by the agency's legal counsel and approved in advance by MDT.

When a claim is submitted, the District Administrator (or designee) should be contacted for advice on how to proceed.

## **20.7 Project Management Review**

In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines, the District Administrator (or designee) will conduct project management reviews periodically on selected local agency projects. These reviews will include, but are not limited to:

- General procedural compliance items noted in OMB Circular A-133.
- Procedures in the Local Agency Guidelines.
- Items of special interest developed from State Auditor's reports, recommendations from FHWA, and previous process reviews.
- Compliance with Equal Employment Opportunity (EEO) and Disadvantaged Business Enterprise (DBE) programs, Federal Davis Bacon and Montana Prevailing wage laws.

### **20.7.1 Preparation**

The LAG Certification Liaison will schedule management reviews with the designated agencies

and will request that the local agency managers participate. The local agency should have all pertinent documentation ready for the scheduled review. Typical procedural review questions are listed in Appendix 19.10.3. All deficiencies will be identified for the agency at the Project Management Review (PMR). Copies of documentation not available at the time of review must be submitted through the LAG Certification Liaison within 21 calendar days. After the 21-day period, the final PMR letter will be sent to the agency.

### 20.7.2 Deficiencies

If no major deficiencies are found in the local agency's project management methods, the local agency will be informed in writing of the review team's findings and recommendations.

If major deficiencies exist, the local agency will be asked to take corrective action within 60 calendar days. If the deficiencies include ineligible work, MDT will issue a citation letter.

If deficiencies exist in the agency's procedures, management practices, or systems or if specific project errors are found, MDT's administrative response might be one or more of the following:

- No action against the agency.
- Joint conference with the local agency, LAG Certification Liaison and the MDT District Construction Engineer (or designee).
- Limit or withhold the agency's future Certification Acceptance authority (Chapter 3) to the extent deemed necessary:
  - Allow Certification on a project-by-project basis.
  - Assign an MDT Project Manager to each project for supervision, inspection and administration.
  - Contract the supervision, inspection and administration to a consulting firm.
  - Delay project authorization until adequate supervision, inspection, and administration is available from the local agency, MDT or consultants.
- Establish a repayment plan when violations to procedures make certain expenditures ineligible for federal reimbursement, Per Section VII of the Local Agency Agreement, withholding of funds from the local agency.

### 20.8 Termination of Contract

Follow procedures contained within the Standard Specifications.

### 20.9 Project Closure

The local agency will carry out the requirements to finalize and close the construction contract listed in Chapter 20 *Project Closure*.

### 20.10 Tools

Link to FHWA training videos on Project construction and Contract Administration:

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=80>

### **20.11 Appendices**

The following documents are available from the Department. Contact the LAG Certification Liaison to obtain the most current version:

- Pre-construction conference agenda and meeting minutes
- Notice to Proceed letter
- Change Order form
- Payroll Form WH347 (weekly payroll)
- Labor Compliance Spot Check

Additional documents are shown in the following appendices:

20.11.1 Timeline for Construction Contracts

20.11.2 Weekly Time Assessment

20.11.3 Local Agency Documentation Review Checklist

**Appendix 20.11.1 Timeline for Construction Contracts**

- \_\_\_\_\_ Letting Date
- \_\_\_\_\_ Award Date
- \_\_\_\_\_ Execution Date (MDT)
- \_\_\_\_\_ Notice to Proceed Date
- \_\_\_\_\_ Work Begin Date
  
- \_\_\_\_\_ Working or Calendar Days set by Contract
- \_\_\_\_\_ Change Order Days
- \_\_\_\_\_ Total Contract Time
- \_\_\_\_\_ Days Over/Under
- \_\_\_\_\_ Liquidated Damages (if applicable)
  
- \_\_\_\_\_ Final Inspection Date
- \_\_\_\_\_ Substantial Complete Work Date
- \_\_\_\_\_ Contractor’s Request for Certification and Acceptance
- \_\_\_\_\_ Certificate of Completion
- \_\_\_\_\_ Commission Acceptance Date
  
- \_\_\_\_\_ Bid Amount
- \_\_\_\_\_ Change Order Total Amount
- \_\_\_\_\_ Total Contract Amount
- \_\_\_\_\_ Final Payment

**Appendix 20.11.2 Weekly Time Assessment**

Contractor					
Contract Description					
Contract ID	Fed/St Prj Nbr	Highway No. or County	Statement Nbr	Date	
THE FOLLOWING STATEMENT SHOWS THE NUMBER OF WORKING DAYS CHARGED TO YOUR CONTRACT FOR THE WEEK ENDING:					
Date	Day	Charge Type	High/Low Temps	Weather (AM/PM)	Credit Reason
	Monday				
	Tuesday				
	Wednesday				
	Thursday				
	Friday				
	Saturday				
	Sunday				
Days Previously Charged					NOTE: ROUND ALL TIME TO THE NEAREST WHOLE DAY
Charge Days This Report					
Days Charged to Date					
Days Remaining					
CURRENT STATUS					
Bid Days					
Change Order Days					
Current Bid Days					
SUMMARY OF WEEK'S ACTIVITIES					
				PROJECT ENGINEER	
NOTE: The contractor has 10 business days from date of this report in which to protest in writing the correctness of this statement, otherwise it will be deemed to have been accepted as correct.					



**Appendix 20.11.3 Local Agency Documentation Review Checklist**

Agency: \_\_\_\_\_ Review Date: \_\_\_\_\_  
Contract Description: \_\_\_\_\_ Contract ID: \_\_\_\_\_  
Fed/St Prj Nbr: \_\_\_\_\_  
Reviewers: \_\_\_\_\_

**Table of Organization and CA Agreement Review:**

Design Approval \_\_\_\_\_  
PS&E Approval \_\_\_\_\_  
Contract Award \_\_\_\_\_  
Change Orders \_\_\_\_\_

**Preliminary Engineering:**

Design Approved By: \_\_\_\_\_ Date: \_\_\_\_\_  
PS&E Approved By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency Supplied Materials Approved By: \_\_  
Sole Source Items? Yes \_\_\_ No \_\_\_ MDT Approval date: \_\_\_\_\_  
Changes in Scope, Limits, Character, Cost? Yes \_\_\_ No \_\_\_  
If Yes, MDT Approval Date: \_\_\_\_\_

**Advertising and Award:**

MDT Construction Authorization Date: \_\_\_\_\_  
Advertising Date: \_\_\_\_\_  
Three Week Advertising Period? Yes \_\_\_ No \_\_\_  
Affidavits of Publication in File? Yes \_\_\_ No \_\_\_  
Bid Opening Date: \_\_\_\_\_  
Award Date: \_\_\_\_\_  
Award to Lowest Bidder? Yes \_\_\_ No \_\_\_ If No, Explain: \_\_\_\_\_  
Contract Execution Date: \_\_\_\_\_  
Contract Award Amount: \_\_\_\_\_  
Award Information Transmitted to MDT? Yes \_\_\_ No \_\_\_  
Notice to Proceed: \_\_\_\_\_  
No. of Working Days: \_\_\_\_\_ No. of Working Days Complete: \_\_\_\_\_  
Preconstruction Conference Minutes Review:  
Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Minutes Sent To: MDT? Yes \_\_\_ No \_\_\_  
Contractor? Yes \_\_\_ No \_\_\_  
All Invitees? Yes \_\_\_ No \_\_\_

**Commitment File (DOT Form 220-021 or equal)**

Environmental and Permit Conditions Met Yes \_\_\_ No \_\_\_  
Met with Maintenance and Corrected Problems Identified in PS&E Yes \_\_\_ No \_\_\_

**Right-of Way**

Right-of-Way Commitments to Landowner Met Yes \_\_\_ No \_\_\_

Right-of-Way Acquired Yes \_\_\_ No \_\_\_

Right-of-Way Acquisition Procedures Dated: \_\_\_\_\_

Listing of Right-of-Way Staff Current Yes \_\_\_ No \_\_\_

(If No, attach new listing with individual staff qualifications)

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Project Right-of-Way Certification Dated: \_\_\_\_\_

Certification Review Letter in file (after 1/1/97) Yes \_\_\_\_\_ No \_\_\_\_\_

**Construction Contract Administration**

Subcontractors:

Subcontractor	Amount (\$)	Approval Date	DBE/WBE?
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Specialty Items Subbed: \_\_\_\_\_ Amount: \_\_\_\_\_

Percent of Contract Subbed: \_\_\_\_\_ %

Allowable (60%) \_\_\_\_\_

Change Orders:

Verbal Date	Written Date	Comments	Documented
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Claims by Contractor? Yes \_\_\_\_\_ No \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Project Diaries and DWR Reports Signed and Up to Date? Yes \_\_\_ No \_\_\_

Payrolls:

Wage Rates Included in Contract? Yes \_\_\_\_\_ No \_\_\_\_\_

Payrolls on File? Yes \_\_\_\_\_ No \_\_\_\_\_

Certified by Contractor? Yes \_\_\_\_\_ No \_\_\_\_\_

Checked and Initialed by Agency? Yes \_\_\_\_\_ No \_\_\_\_\_

Prime/Subs	Wage Rate Interview	Intent to Pay Wages	Affidavit Wages Paid
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Any DOL Violations of Contract? Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, how resolved? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EEO Compliance:

PE Right-of-Way Yes \_\_\_\_\_ No \_\_\_\_\_

Consultant Yes \_\_\_\_\_ No \_\_\_\_\_

Hearings (Title VI) Yes \_\_\_\_\_ No \_\_\_\_\_

Monthly Utilization Reports (CC 257) on File

For Prime and Subs (Greater than \$10,000) Yes \_\_\_\_\_ No \_\_\_\_\_

PR-1391 on File and Sent to Regional Local Programs? Yes \_\_\_\_\_ No \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Training:

Training Goal Set? Yes \_\_\_\_\_ No \_\_\_\_\_ Hours \_\_\_\_\_

Training Plan Approved by Agency: Yes \_\_\_\_\_ No \_\_\_\_\_

Training Goal Met? Yes \_\_\_\_\_ No \_\_\_\_\_ Hours \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DBE Compliance:

DBE Goal Set: \$ \_\_\_\_\_

DBE Condition of Award Amount: \$ \_\_\_\_\_

How Was DBE Certification Verified Prior to Award? \_\_\_\_\_

DBE On-Site Review Conducted for Each Sub? Yes \_\_\_\_\_ No \_\_\_\_\_

Change Orders Effects on DBEs: Yes \_\_\_\_\_ No \_\_\_\_\_

Additional Work Provided to DBEs? Yes \_\_\_\_\_ No \_\_\_\_\_

Any Changes to DBE Goals? Yes \_\_\_\_\_ No \_\_\_\_\_

Approved by Regional Local Programs Engineer? Yes \_\_\_\_\_ No \_\_\_\_\_

Affidavit of Amounts Paid to DBEs Sent to

Regional Local Programs Engineer? Yes \_\_\_\_\_ No \_\_\_\_\_

Bridge Construction Projects:

Bridge Rail Crash Tested Design Used? Yes \_\_\_\_\_ No \_\_\_\_\_  
(New Construction Only, Any Funding Program)

Contract Completion:

Completion Date: \_\_\_\_\_  
Completion Letter to Contractor Date: \_\_\_\_\_  
Final Materials Certification Date: \_\_\_\_\_