

Local Public Agency (LPA) Policy

Local Public Agency



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11 Local Public Agency Construction

Introduction --This section is intended as a guide to Local Public Agency's (LPA) to ensure federal-aid project requirements are met while administering the construction of and corresponding documentation required of a typical LPA project. No work is to be initiated on any part of the project until federal funding has been approved (obligated) by [FHWA](#) and the local agency has been notified by MoDOT to proceed.

11.1 Project Oversight

The LPA shall have a **person in 'responsible charge'** (RC) of the administration of the project including construction inspection. This person must be an employee or a paid elected official of the local agency who is accountable for the project. If a consultant is hired to oversee the project the RC should be available at all times to respond to any issues on the project. The RC or designated consultant should have the necessary experience, training, and knowledge to ensure that project construction and administration follows all requirements as described in the project documents and standard practice. The RC will be the primary contact for MoDOT regarding any contract administration issues.

All items of work on the project shall be inspected. Major items of work such as bridge deck pouring, paving or other high cost or critical items may require more attention than other minor items of work. MoDOT's Engineering Policy Manual or MoDOT District representatives are good sources for tools to adequately administer the project.

11.2 Work by LPA Forces

The LPA may elect, with MoDOT and FHWA approval, to perform work with its own forces (see [EPG 136.9.8 Construction by LPA Forces](#) for more information), if done so they will not need to comply with the labor records, postings, payroll checking, interviews, and Davis-Bacon minimum prevailing wages requirements. However, it will be necessary for the LPA to comply with the provisions of [Form PR-1273](#), Required Federal-Aid Provisions - All Federal-Aid Construction Contracts, Section II - Equal Opportunity, and Section III - Non-segregated Facilities. These two sections essentially require that the local agency be an "Equal Opportunity Employer." See [EPG 136.12 Reimbursement and Auditing](#) for required records to support reimbursement for work performed by LPA forces.

11.3 Notice to Proceed

Following the concurrence of award of the contract from MoDOT, the LPA must submit executed copies of the contract to MoDOT. The district representative will review the contract for compliance and will inform the LPA that they can issue 'notice to proceed' (NTP) and proceed with construction.

No work is to be initiated on any part of the project until FHWA approves (obligates) federal funding and MoDOT notifies the LPA to proceed.

A pre-construction conference must be scheduled and attended by the LPA, the contractor and MoDOT before any work begins on the project.

11.4 Preconstruction Conference

A preconstruction conference shall be conducted by the LPA, prior to the start of work, to ensure that all parties involved are aware of their responsibilities. Those invited to attend shall include but not be limited to representatives from the consultant (if applicable), contractor, subcontractors, utilities (if involved), local police, fire, postal, other emergency services (if necessary), any school agencies (if traffic is to be severely restricted or road closed), and MoDOT. Arrangements for and notice given of the meeting shall be completed at least one week prior to the meeting date. [Fig. 136.11.1 General Guidelines for Preconstruction Conference](#) outlines this conference. Note that the initial data pertaining to the project is required within two working days after the start of work.

For projects that have specified contractor furnished borrow or require disposal of waste material off the LPA right of way, the contractor should be reminded of the requirement that the affected areas must be reviewed by DNR for environmental clearances that will include, but not be limited to the Clean Water Act, the Endangered Species Act, the National Historic Preservation Act, the Farmland Protection Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act and RSMo Chapter 194, Section 194.400 Unmarked Human Burial Sites. A copy of the correspondence from these agencies should be filed with the [MoDOT district representative](#). More information on contractor furnished borrow and waste sites can be found in [EPG 136.4 Environmental – Cultural - Historical](#). Failure to comply with this requirement can cause loss of federal funding.

If ADA improvements are included within the project, then the [ADA Post Construction Checklist](#) should be included in the discussion.

11.4.1 Initial Data from LPA - Within two working days after the start of work, the LPA shall furnish a letter to MoDOT containing the following information:

1. Project identification;
2. Contractor's name and address;
3. Construction Inspector's name, address, and phone number;
4. Name of full-time employee of agency to be in "responsible charge" of project, including projects with consultant services ([23 CFR 635.105](#)). "Responsible charge" means:
 - a. Aware of day-to-day operations on the project
 - b. Aware of and involved in decisions about changed conditions that require change orders
 - c. Aware of qualifications, assignments, performance of consultant staff at all stages of the project
 - d. Visiting the project on a frequency that is commensurate with the magnitude & complexity of the project
5. Name, address, and telephone number of local agency's consultant, if applicable;

6. Date of construction engineering contract approval;
7. Date of notice to proceed;
8. Completion date or working days;
9. Amount of contract;
10. Location and description of work;
11. Date of letting;
12. Date of award;
13. Date of preconstruction conference;
14. Date on which work actually started; and
15. Summary of Disadvantaged Business Enterprise (DBE) intent.

11.5 Subcontracts

Federal-aid contracts require that no less than 30% of the contract work shall be performed by the prime contractor's own forces and equipment. All contracts shall further hold to the right of approval of any subcontract prior to performance of subcontract work. The form of approval shall be such as to assure the local agency that the proposed subcontractor is both qualified to perform the proposed items of work and legally bound to comply with all the requirements of the contract as they would apply to the prime contractor, for example, wage rates, equal employment opportunity regulations, submittal of payrolls, etc. No subcontractor may further subcontract any of his work.

The Subcontracts will be submitted to MoDOT for approval. The LPA shall furnish the MoDOT representative the name and address of each subcontractor, the percentage of work sublet to that particular subcontractor, the percentages awarded to DBEs, and the total percentage of work sublet to date. DBEs must be on the MoDOT-approved listing at the time of letting. In figuring the percentage of the contract work performed, all prices for sublet work shall be at contract unit bid prices. Sample forms ([Fig. 136.11.4.1](#) and [Fig. 136.11.4.2](#)) may be used for submitting subcontractor information and [instructions for completing the forms are available \(Fig. 136.11.4.3\)](#).

11.6 Information Posters

The contracts for highway construction projects require certain information to be conspicuously displayed on the project where employees regularly congregate in preparation for the day's work. The RC or a delegated representative is to conduct inspections of the bulletin boards. The first inspection should occur when employees begin work on the project. After the initial review, inspections should be conducted every other month until the project is completed to ensure the bulletin board is in good condition and still displays the required posters. The list of required information to be posted both on the project and in the project office is located in [EPG 110.2](#). Many of the posters can be downloaded from MoDOT's internet contractor resources website. A [checklist of the job bulletin board posters](#) is also available. All posters shall be completed as required, showing names and telephone numbers where indicated. For more information on the Federal Davis-Bacon prevailing wage rates see [EPG 136.10.2 Wage Rate](#).

11.7 Equal Employment Opportunity Requirements

The [EEO requirements \(41 CFR 60.1\)](#) and [\(41 CFR 60.2\)](#) are contained in the contract. The local agency should be familiar with and enforce those requirements.

All contractors or subcontractors whose contract or subcontract is \$10,000.00 or more must submit Federal-Aid Highway Construction Contractors Annual EEO Report, [Fig. 136.11.6 Form FHWA-1391](#), to the MoDOT External Civil Rights Division. Employment data should total correctly on this report.

If a contractor or subcontractor has been active on a project but no work was performed during the above payroll report period, a “No Work Was Performed” report is to be submitted. If a project has not started, no report is required.

11.8 Disadvantaged Business Enterprise (DBE)

Disadvantaged Business Enterprise (DBE) requirements are also covered in EPG [Category 146](#). DBE compliance consists of ensuring that the prime contractors utilize DBEs as indicated in their good faith effort. These vendors will be a combination of subcontractors working on the project, suppliers, brokers, and trucking companies. DBE vendors must be on the MoDOT-approved [MRCC](#) listing at the bid opening. After the contract is awarded, the contractors should provide a [Request to Subcontract Work form](#) for each subcontractor noting the DBE/non-DBE classification. If a subcontractor is added to the project, they need to be pre-approved by MoDOT prior to performing any work. The LPA should track the DBE progress throughout the project to ensure the goal is met. In calculating the percentage of the contract work performed, all prices for sublet work shall be at contract unit bid prices. Sample forms ([Fig. 136.11.4.1](#) and [Fig. 136.11.4.2](#)) may be used for submitting subcontractor information and [instructions for completing the form \(Fig. 136.11.4.3\)](#) are available. If there is a concern during the project, contact the External Civil Rights unit. The prime contractor and LPA should ensure that the DBE vendors used to achieve the goal are performing a Commercially Useful Function (CUF).

11.9 Commercially Useful Function (CUF)

Commercially Useful Function (CUF) basically consists of checking that the DBE vendor performs the work, supplies the material, has its own labor, and controls its work. The RC or delegated representative shall conduct at least one CUF interview using the [CUF Determination](#) form or [DBE Trucker Interview](#) form for each DBE vendor on the project. Additional interviews shall occur if the inspector notices a change in the DBE vendor or prime contractors operations. The verification for CUF varies depending on the capacity the DBE vendor is being used. See [EPG 146.3](#) for a detailed description of what constitutes a check for CUF for various DBE uses.

11.10 On-the-job Training (OJT)

On-the-job Training (OJT) requirements are also covered in [EPG 136.10.4](#). All training goals are established by the [MoDOT External Civil Rights \(ECR\) Division](#) prior to letting.

Prior to the notice to proceed, the contractor shall submit the [Trainee Notification form](#) to the RC or delegated representative. They will then forward the notification to [MoDOT ECR Division](#) for approval of the proposed trainee(s). This process will be repeated if a trainee is added anytime during the project.

In addition to the trainee notification form, the contractor must submit [monthly trainee reports](#) throughout the course of the training and the [trainee completion form](#). The final trainee summary shall be completed at the end of the project or when the trainee goal on the project has been achieved. These forms shall also be submitted to the RC or delegated representative. The LPA will then forward the notification to [MoDOT ECR Division](#) for approval. The monthly trainee reports will be verified by the RC or delegated representative against the certified payroll for accuracy and then forwarded to [MoDOT ECR Division](#).

For further information and guidance about the OJT program and the submittal forms, you may access [the ECR website](#) or call (573) 751-1216.

11.11 Value Engineering Change Proposals

Value engineering change proposals (VECP) are meant to provide a product of equal or improved quality that will reduce the project cost, improve safety or decrease the time required to complete the project. See the [Sec 104.6](#) of the MoDOT Standard Specifications and [EPG 130.2](#) for guidelines on [contractor proposals for value engineering](#). A VECP must be approved by the contractor, consultant engineer (if applicable), LPA, MoDOT and FHWA (if applicable).

11.12 Consultant Construction Engineering Services

Under [23 CFR 1.33](#), neither a consulting engineering firm, nor any of its employees, that is providing engineering and inspection services for the contracting agency shall be allowed to perform work that is the construction contractor's responsibility.

It is unacceptable for a consultant to provide both project engineering services for the LPA and engineering services for the project construction contractor. Operating under this arrangement gives the appearance of a possible conflict of interest and is not allowed for federal-aid work, although, surveying will be permitted.

11.13 Documentation Requirements

All costs incurred by the local agency for which federal reimbursement is sought must be supported by original source documents or documentation that provides adequate assurance that the quantities of completed work were determined accurately and on a uniform basis. The primary source of administration information shall be found in two basic sources, the project inspector's diary and payment diary. These diaries are the primary documents used to verify construction progress and payment and may become a crucial element if any disputes or issues arise on the project. Samples of documentation may be obtained from the local MoDOT representative.

11.13.1 Project Diaries - Diaries and field books can be handwritten bound documents or saved as computer files. Handwritten diaries shall be completed in ink in securely bound high-grade field books. Any corrections shall be made by lining out the entry, initialing and dating. Do not use erasures or correction fluids to make changes.

If computer files are used, a secure back up shall be maintained. Any computer generated diaries must be kept in an approved software system that secures the documents from editing once created.

The following information shall be included in the daily diary:

- Include facts only, no opinions.
- Date
- Weather information including statement related to whether conditions are suitable for construction progress.
- Running total of contract time charged and reasons for days credited.
- Contractor information for each contractor on the project including:
 - Name of contractor
 - List of contractor personnel by job classification
 - List of contractors major equipment
 - Note if contractor is a DBE
 - Work performed by the contractor
- Notable discussion or interaction between the inspector and the contractor; e.g. deficient work order, etc.
- Noted events for the day examples may include:
 - Status of project Traffic Control Operations including any changes made to the traffic control plan
 - Status of project's erosion control including any changes made to the erosion control plan
 - Work or materials rejected and reasons why
 - Length and cause of any delay
 - Unusual conditions and effect on job
 - Visitors to the project site
 - Other inspector action i.e. note wage interviews, DBE compliance checks, major material status etc.
- Signature of Inspector completing the diary.

For more information on federal requirements and guidelines, see the [FHWA – Construction Contract Administration webpage](#).

A free online NHI training course on Daily Diaries is available through [MoDOT's LPA website](#).

11.13.2 Payment Diaries - The following information shall be recorded neatly and clearly in the payment diary:

- Date
- Inspectors signature or initials

- Location of the installed work.
- Quantity of work installed on that day.
- Running total of that item of work.
- Any pertinent calculations or measurements.
- Material received and approved (or rejected and reasoning).
- Receipt of materials certification.
- Notes related to how total compares to plan quantity.
- If material allowances are used, they must not exceed the estimated quantities required by the job nor the test reports or certifications. Care must also be taken to reduce the material allowance, as the material is paid-in-place. The invoice must be marked paid by the supplier. Being marked paid by the contractor is not allowed.
- For lump sum items and excavations, an estimated percentage of completed work shall be placed in the summary. Documentation for payment shall be shown in the project diary entries as the work is being accomplished.

11.13.3 Invoices - The LPA must submit invoices to MoDOT for reimbursement of costs contained in the agreements and contracts as they are incurred. The invoices may not be submitted more than once every two weeks. Progress invoices must be submitted monthly for invoices equal to or greater than \$10,000. The final invoice must be submitted within 30 days of final acceptance. For detailed information on the procedures to be followed, see [EPG 136.12](#) Reimbursement and Auditing.

11.13.4 Erosion Control - The LPA shall ensure the land disturbance site is inspected on a regular schedule and within a reasonable time period (not to exceed 48 hours) following a runoff event. Regularly scheduled inspections (recommend using MoDOT's [Erosion Control Inspection Record](#)) shall be conducted at a minimum of once every seven days. For disturbed areas where permanent ground cover has not been established, all installed BMPs and other pollution control measures shall be inspected for proper installation, operation and maintenance.

Locations where storm water leaves the site shall be inspected for evidence of erosion or sediment deposition. Any deficiencies noted during a weekly inspection shall be corrected within seven calendar days of that inspection. The results of the weekly inspections in a given month shall be recorded in that month's report. The inspector shall promptly notify the site contractors responsible for operation and maintenance of BMPs of the deficiencies. See [EPG 806.7](#) and [EPG 203.1 Borrow](#) for more information regarding storm water and erosion control requirements.

A log of each inspection shall be kept. The inspection report is to include the following minimum information: inspector's name, date of inspection, observations relative to the effectiveness of the BMPs, actions taken or necessary to correct deficiencies, and listing of areas where land disturbance operations have permanently or temporarily stopped. The inspection report shall be signed by the inspector.

The LPA shall at all times ensure that all pollution control measures and systems are in good order to achieve compliance with the terms of the general permit.

11.13.5 American's with Disabilities Act (ADA) Check List - Pedestrian facilities must be accessible to all people to the maximum extent feasible in accordance with Title V of the Americans with Disabilities Act of 1990 (ADA). For detailed information and criteria see [EPG 642](#).

Prior to or during the final inspection, the MoDOT district representative will utilize the [ADA Post Construction Checklist, EPG Fig 136.9.4](#), to verify the project has been constructed to meet the current ADA requirements. Providing the checklist to the contractor at the preconstruction conference is considered a best practice.

11.13.6 Progress Reports - The LPA shall submit a copy of a monthly report to the MoDOT district representative stating the progress of the work. [Fig. 136.11.3 provides the Progress Report](#) format. The LPA may elect to summarize construction activities for the project on a weekly basis and consolidate them into the monthly report

11.13.7 Document Retention - The MoDOT district or FHWA representative may review daily diaries and payment diaries on the project site at any time. The LPA shall maintain all books, documents, papers, accounting records and other evidence pertaining to the costs incurred. Such materials shall be available at the LPA's office for inspection by MoDOT, [FHWA](#) or their authorized representatives at all reasonable times during the contract period and for (3) three years after the date on which the local agency receives reimbursement of its final invoice from MoDOT, and copies thereof shall be furnished if requested.

11.14 Labor

Missouri and federal law requires minimum wage rates (pay) for the various skilled trades. These wage rates are specified in the contract at the time of bidding and are enforced by MoDOT, the LPA, and the [Department of Labor](#) during the construction of the project. For more information on the Federal Davis-Bacon prevailing wage rates see [EPG 136.10.2](#).

11.14.1 Labor Records - The LPA shall obtain payrolls and forms related to [Equal Employment Opportunity \(41 CFR 60.1\)](#) and [\(41 CFR 60.2\)](#). They shall also ascertain that necessary posters (see [EPG 136.11.13](#)) are in place on the project.

A certified copy of each weekly payroll must be submitted by the prime contractor within 7 days of the payment date of the payroll. The certification may be attached to the payroll or may be on the payroll itself. The prime contractor will be responsible for the submittal of payrolls and certifications for all subcontractors on the project. In the event that work is temporarily suspended, the last payroll shall be marked appropriately to note that it will be the last payroll until work is resumed.

Payrolls to be submitted shall be checked for compliance with the contract requirements. The local agency shall retain all payrolls for a period of three years after the date on which the local agency receives reimbursement of its final invoice from MoDOT, during which time they shall be open to inspection by MoDOT and/or FHWA.

The LPA shall check payrolls, with the following checks being made to ensure proper labor compliance:

1. The employee's full name, identifying number (such as last four digits of Social Security Number) and complete address, including zip code, must appear on each payroll. For projects that are only state-funded projects, addresses will be required to be placed on certified payrolls. For federal-aid projects, placing addresses on the payrolls will be optional. The contractor is no longer allowed to include complete Social Security numbers on certified payrolls for projects let after January 18, 2009. In lieu of the Social Security number, the contractor must assign the employee an identification number and place that identification number on the certified payroll. This identification number can be the last four digits of the employee's Social Security number. For those projects that were let prior to January 18, 2009 the contractor must still provide Social Security numbers and addresses on certified payrolls.
2. Check the payroll for correct employee classification.
 - a. Check to assure each employee has a classification.
 - b. Make sure classifications are correct as related to the type of work the company has subcontracted.
 - c. Employees enrolled in the MoDOT training program must be shown on the payroll in the classification they are enrolled in as trainee. (i.e. Crane Operator Trainee, Carpenter, Laborer, etc.)
 - d. When possible, confirm that employees are classified correctly as to what type work they are performing by using the interview process, jobsite visits, and communication with the inspectors, and by reviewing the Inspector's Daily Report of Construction.
 - e. Foremen or supervisors who perform 20% or less of the day with the tools of the trade are exempt from the Davis Bacon Act. They must appear on the payroll as "foreman" or "supervisor" with a breakdown of hours per day and total hours and, since hourly wage rates are not required, they can be listed under Salary Agreement.
 - f. Foremen or supervisors who work with tools of the trade more than 20% of the day are not entitled to an exemption under the Davis Bacon Act. Thus, if the hourly wage rate is the same for both classifications the

employee will be listed on the payroll to show both classifications in which they performed (i.e. Foreman/Carpenter), hours per day listed along with an hourly wage rate, gross amount earned, deductions and net wages paid. But, if the hourly wage rate is not the same for both classifications then multiple listings for the employee shall be included on the payroll to show each classification of work performed in each day along with all the appropriate information.

3. Check the payroll for correct hourly wage and, where applicable, the correct overtime hourly rate.

- a. Check employee's rate of pay against the state and federal wage rates, where applicable, to make sure he/she is receiving at least the minimum for his/her classification as per the prevailing wage schedule in the contract. For federally funded projects the rate of pay is the highest of either the federal or state wage rates.
- b. Make sure fringe benefit amount plus base pay amount matches or exceeds the designated fringe benefit amount plus designated base pay amount from the applicable wage order. For example, the base pay amount could be less than that designated as the prevailing wage, if the fringe benefit amount is more than that designated, and the two together meet or exceed the designated gross prevailing wage. The contractor should be encouraged to list the exact fringe paid for each employee on the payroll. If the contractor chooses to certify that the fringe benefits are being paid to approved plans, funds, or programs, the contractor shall provide documentation that the correct payment amount is being paid to the fund for the individual employees.

Check the daily and weekly hours worked in each classification including actual overtime hours worked (not adjusted hours).

4. All deductions shall be listed and the net wage shown. The [Form WH-347](#) is to be used where fringe benefits are paid into established programs. However, if fringe benefits are paid in cash to the employee, the amount shall be indicated on the payroll and noted on the statement of compliance.

- a. All deductions must be identified. If a deduction of "other" is listed on the payroll it must be explained on the statement of compliance.

- b. Some typical deductions include
 - 1) State or federal taxes
 - 2) Voluntary insurance, pension, and/or retirement plans
 - 3) Child support and other payments ordered by a court (but not payments to the employer)
 - 4) Prepaid wages
 - 5) Payments to charitable organizations
 - 6) Union dues when agreed to by the union (fines are not allowable)
 - c. All deductions must be an approved deduction. (If not on the approved list above, documentation giving employee's permission for the deduction must be on file.)
 - d. Non-standard deductions can be approved by the Division of Labor on a yearly basis. The contractor must provide documentation along with the payroll when any approved non-standard deductions are in use.
- 5. To assure that the payrolls are arithmetically correct, approximately 10% of the extensions on the first three payrolls shall be checked. The contractor is to be advised of any violations noted on the labor payroll. All the errors are to be corrected by means of a supplementary payroll.
 - 6. All checking by the local agency shall be initialed by the checker.
 - 7. Final payrolls shall be marked "Final" or "Last Payroll."
 - 8. The local agency is to maintain a secure record of all payrolls.

The prime contractor and each subcontractor are required to submit a weekly statement of compliance within seven days of the payment date of each payroll period. This statement must be signed by the contractor, subcontractor, or their agent who pays or supervises the payment of persons employed under the contract and shall certify that the payroll for the pay period contains the information required and that such information is correct and complete, [Form WH-347](#), is to be submitted in the prescribed form as set out in the "Required Contract Provisions" included in the contract. The local agency is to maintain a secure record of all statements. This Form [WH-347](#) is available to contractors from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

11.14.2 Labor Interviews - LPA personnel are to conduct one wage rate interview on each project every two weeks. Labor interviews are not required on railroad and other utility adjustments. The interviewer shall determine the employee's name, the classification of the employee, the actual wage paid, and the posted wage rate.

Interviews shall be documented as shown on form, [Fig. 136.11.5 Wage Rate Interview \(Labor Compliance/EEO\)](#).

The LPA shall submit a semi-annual report to the MoDOT district representative containing the following information:

1. Number of contractors or subcontractors against whom complaints were received
2. Number of investigations completed (if complaints were received)
3. Number of contractors or subcontractors found in violation
4. Amount of restitution due under:
 - a. Davis-Bacon and Related Acts
 - b. Work Hours Act of 1962
(The Davis-Bacon Act encompasses prevailing wage rate violations, whereas the Contract Work Hours Act encompasses daily and weekly overtime violations.)
5. Number of employees due wage restitution under Davis-Bacon and related Acts and/or Work Hours Act of 1962
6. Amount of liquidated damages assessed under Work Hours Act of 1962

The above report is due not later than April 4 for the period from October 1 to March 31 and not later than October 5 for the period from April 1 to September 30. This report shall include all information gathered on all projects.

11.15 Change Orders

A change order is a supplement to the contract. It is prepared to provide authority to pay for revisions in quantities and to authorize changes in scope of work, schedule, design concept or specifications. Changes in scope should be limited to the original intent, purpose and limits (length and width) of the job.

11.15.1 Change Order Documentation - Change orders should be documented on the MoDOT change order report form ([Fig. 136.11.2](#)) and be identified by the Federal-aid project number, if applicable. The LPA representative writing the change order should use brief, accurate and complete reasons for the contract changes. The reasons should include construction facts; such as utility locations, incorrect shrinkage factors, plan sheet errors, excessive erosion, etc.; rather than general statements that merely state quantities vary. Change order items should be listed in the same order as they appear in the contract. No combination of items will be permitted. Controlling specifications should be checked carefully to establish the LPA's responsibility for payment. Change orders are to be numbered consecutively per contract.

If the change order includes a contingent item for which the method of payment is not established by the contract specifications, a detail of all work covered by that item and the supplemental specification covering construction of that item must be shown including description, materials, construction requirements, method of measurement and basis of payment. References to the contract specifications may be used when applicable.

- If a contingent item price can be agreed upon between the LPA and the contractor then the substantiating data shall be attached to show how the price was determined including an independent estimate of cost by the LPA.
- If a contingent item price cannot be agreed upon between the LPA and the contractor and the work has to be performed under force account, then the unit price will consist of the actual local agency or contractor material, labor and equipment costs in accordance with EPG [136.12](#) 'Reimbursement and Auditing'. The unit price should be shown as 1.00 and the units to be constructed would be the estimated cost.

Supplemental information necessary to document the change order should be attached to the change order. The attachments should include the contract number and change order number. A clear description or drawing can expedite processing the change order.

Contract time extensions granted by the local agency which affect project costs or liquidated damages must be fully justified and adequately documented. The local agency will be liable for any liquidated damages for time extensions granted by them and not approved by MoDOT. Under these conditions, the money value of the damages will be deducted from money due the LPA.

The final change order is used to convert quantities to final status as determined at completion of the project. The final change order should be completed within 45 days of Final Inspection. If no final change order is necessary due to all quantities being updated to final status by previous change order, a statement to that effect should be included in the final plans submittal letter.

11.15.2 Change Order Approval - Change orders must have approval from the LPA, consultant (if applicable), MoDOT and the FHWA (if applicable) before the work is started. Exceptions are granted for routine or minor changes, or emergency revisions for which verbal approval has been granted. In rare cases it may be necessary to proceed with emergency measures without prior approval. In such cases verbal approval should be sought from the authorizing parties as soon as practicable. Indicate in the diary or letter of transmittal the name of the individual who provided that verbal approval.

The contractor's signature should also be requested on change orders. If the contractor refuses to sign the change order, it should be documented and this documentation included with the change order when submitted to the authorizing parties.

Change orders must be submitted as soon as practicable if they involve contingent items or changes in design features so that approval or rejection will be made before plans to perform the work materialize. Change orders covering overruns or under runs should be submitted promptly since they affect the contractor's monthly payment estimate.

Any electronic copy with digital signatures is considered official however the primary copy should be immediately saved to a protected location with at least one back up. When the contractor's digitally signed copy is returned it should be saved over the primary copy and further digital signatures, if necessary, should be encoded to that primary copy.

If paper is used, regardless of the approval level, the local agency will produce a total of two copies of change order. The LPA will forward both copies of change order to the contractor for signature. The contractor will sign and return one, and keep the other. The original signed change order will be retained by the LPA for 3 years after final settlement.

There are three levels of change order approval:

Change Order Level 1 is approved in documentation, by the contractor, consulting engineer (if applicable), the LPA and verbally by the MoDOT District representative. Copies of Level 1 change orders must be submitted with the next progress invoice. Level 1 conditions include:

1. Any no-cost change orders (used when the direct substitution of a particular line item with a contingent item does not generate an additional cost or cost reduction).
2. Any change in a contract or contingency item less than \$5,000.

Examples of a Level 1 change order are available.

Change Order Level 2 is approved in documentation, by all listed in Change Order Level 1 and the MoDOT District Representative and the FHWA, if applicable. Level 2 conditions include:

1. Final change orders
2. Any change in a contract item or contingency item from \$5,000 to \$50,000.
3. Any new contingency item from \$5,000 to \$50,000.
4. Any specification change.
5. Any revision in a contract unit price.
6. Any change in a major line item greater than 25% from the original contract amount for that line item (in dollars).
7. Any change of the contract amount greater than 25% of the original contract bid amount (also in dollars).
8. Any change in design concept.
9. Any change order not approved by the contractor.

10. Any change order for adjustments due to differing site conditions or significant changes in the character of the work.
11. All value engineering change orders regardless of cost.
12. Any change order granting a time extension.

Change Order Level 3 is approved in documentation, by all listed in Change Order Level 2 and MoDOT's State Construction and Materials Engineer. Level 3 conditions include:

1. Any change in a contract or contingency item greater than \$50,000.
2. Any new contingency item greater than \$50,000.
3. Additions greater than 50% of the original contract amount
4. Additions greater than \$50,000.

11.16 Dispute and Claim Resolution

Occasional Escalation of an Issue – Conflicts are inevitable in any human endeavor. Key players should be encouraged to escalate to the next level of management any issues they are unable to resolve themselves. Escalation saves time and money and may prevent the stakeholders from taking a rigid position and thus keep a relatively minor issue from becoming a claim. Most importantly, escalation of an issue may preserve the working relationship of the key players.

Development of an Issue Resolution Process – The key players should design their own systems for resolving issues on the project. Specific teams composed of personnel from the various stakeholders, who are knowledgeable about their particular technical portions of the contract, discuss potential problems and the way they would like to see them handled. They decide how issues that are not resolved at their level will be escalated to the next level in a timely fashion so that the decision-making process becomes more efficient and costly delays are avoided.

[Link to MoDOT Conflict Resolution Flowchart](#)

Contractor Claims – In the event of a claim, contact your MoDOT representative. If federal-aid participation is desired in a contract claim payment, early and often coordination is necessary between FHWA, MoDOT and the LPA.

11.17 Materials

Testing and certification are necessary for all material incorporated into an LPA project. The testing and certification documentation must show the quantity of material being reported and whether it meets the specifications. . All materials in a Federal-aid LPA project must comply with [Buy America](#) requirements.

11.17.1 Material Acceptance

Material acceptance is based on the following three types of sampling and testing:

1. Job control samples are taken and tests are conducted as work progresses to assure the project is constructed in compliance with the applicable specifications. All project sampling and testing of materials shall be performed by the LPA or by a consultant employed by the LPA. If a LPA does not use MoDOT QC/QA practices, the guidelines in the [Off-Systems Guide Schedule for Federal-Aid Acceptance Sampling and Testing \(FAST\) table](#) should be followed.

All technicians who perform, or are required by the FHWA to witness, such sampling and testing shall be deemed as qualified by virtue of successfully completing the requirements of [EPG 106.18 Technician Certification Program](#), for that specific technical area. They will be identified by a certification card issued by the certifying authority. The card will note the expiration date and each certification level. Any individual who has not been qualified is not eligible to perform these functions on federal-aid projects.

Test reports or certifications are necessary for all material incorporated into the work. The test report or certification must show the quantity of material being reported and whether it meets the specifications.

Submission of job control test results to MoDOT is not required unless requested by MoDOT or the FHWA. These test results must be retained as outlined in this article.

2. Independent assurance samples and tests will be performed by MoDOT personnel in accordance with the procedures and at the frequency set forth in [EPG 106.22 Material Inspection Revisions](#). Independent assurance samples and tests will not be required of the LPA or the LPA's consultant.
3. Small quantities of materials may be accepted for an LPA project based on some combination of certification documentation, delivery tickets and visual inspection. This allowance is intended for materials that will not adversely affect the traffic-carrying capacity of the completed facility and are not to be used for concrete in major structures, permanent mainline or ramp pavements, or other structurally critical items. The table below provides the schedule of materials quantities which may be accepted without complying with the sampling and testing requirements mentioned above. Any major deviation from this schedule should be approved by MoDOT at the PS&E submission.

Small Material Quantity Acceptance Table

Type of Construction or Material	Basis of Acceptance	Quantity Limits
Aggregate for base	<ul style="list-style-type: none"> • Weights on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 100 tons/day • 500 tons/project
Aggregate for surfacing	<ul style="list-style-type: none"> • Weights on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 500 tons/project
Sand for asphalt primer	<ul style="list-style-type: none"> • Weights on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 500 tons/project
Bituminous mixes	<ul style="list-style-type: none"> • Weights on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 50 tons/day • 250 tons/project
Asphalt cement	<ul style="list-style-type: none"> • Visual inspection • Material certification 	<ul style="list-style-type: none"> • 100 gal/project
Concrete sidewalks	<ul style="list-style-type: none"> • Volumes on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 500 yd²/project
Concrete base	<ul style="list-style-type: none"> • Volumes on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 500 yd²/project
Pavement patching	<ul style="list-style-type: none"> • Weights or volumes on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 100 tons/project (PCC) • 50 yd³/project (AC)
Temporary pavement	<ul style="list-style-type: none"> • Weights or volumes on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 500 yd²/project
Concrete curb and gutter	<ul style="list-style-type: none"> • Volumes on delivery tickets • Visual inspection 	<ul style="list-style-type: none"> • 500 lin ft/project
Slope paving	<ul style="list-style-type: none"> • Volumes on delivery 	<ul style="list-style-type: none"> • 50 yd³/project

	<ul style="list-style-type: none"> tickets Visual inspection 	
Culvert headwalls	<ul style="list-style-type: none"> Volumes on delivery tickets Visual inspection 	<ul style="list-style-type: none"> 50 yd³/project
Paved ditches	<ul style="list-style-type: none"> Volumes on delivery tickets Visual inspection 	<ul style="list-style-type: none"> 50 yd³/project
Precast masonry items	<ul style="list-style-type: none"> Visual inspection Material certification 	<ul style="list-style-type: none"> 100 pieces/project
Concrete for guardrail anchorage	<ul style="list-style-type: none"> Volumes on delivery tickets Visual inspection 	<ul style="list-style-type: none"> 10 yd³/project
Concrete for metal pile shells	<ul style="list-style-type: none"> Volumes on delivery tickets Visual inspection 	<ul style="list-style-type: none"> 50 yd³/project
Concrete for fence posts	<ul style="list-style-type: none"> Volumes on delivery tickets Visual inspection 	<ul style="list-style-type: none"> 10 yd³/project
Concrete for pole bases	<ul style="list-style-type: none"> Volumes on delivery tickets Visual inspection 	<ul style="list-style-type: none"> 10 yd³/project
Concrete for catch basins, manholes, inlets	<ul style="list-style-type: none"> Volumes on delivery tickets Visual inspection 	<ul style="list-style-type: none"> 50 yd³/project
Pipe	<ul style="list-style-type: none"> Visual inspection Material certification 	<ul style="list-style-type: none"> 100 lin ft/project
Paint	<ul style="list-style-type: none"> Visual inspection 	<ul style="list-style-type: none"> 20 gal/project
Lumber	<ul style="list-style-type: none"> Visual inspection 	<ul style="list-style-type: none"> All recognized commercial grades
	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">

11.17.2 Material Documentation - The following material documentation shall be kept for 3 years following project acceptance.

- The name and work area being tested for any personnel conducting materials tests for acceptance.
- Material receipts must be retained and shall show proper reference to the job and indicate proper weight and measurements and moisture deductions when applicable. Each material ticket must be validated by both the scale inspector and the inspector at the job site. Certain small quantities are exempted from weight requirements. It is suggested that tickets be bound according to type of material and date. Each bundle would then support the entries in the field book.
- Testing and certification reports must be retained. It is also necessary that they be received by the LPA prior to their payment to the contractor for the material represented. Certain small quantities are exempted from testing requirements. Certification and test reports shall be labeled with the number of the bid item represented and shall be kept in numerical order.

11.18 Final Plans

If any project involves work on state right of way or if MoDOT will be maintaining any portion of the completed improvement, the local agency shall furnish to the MoDOT district representative two complete sets of final “as built” plans. Final plans shall be submitted within 60 days of final acceptance of the project.

For all bridge plans, if there are any design changes, final “as built” bridge plans shall be submitted to the MoDOT district representative.

11.19 Final Acceptance

Final acceptance of a project by an LPA can occur through one or more stages.

When the LPA and the contractor presume that project construction is complete, an inspection is scheduled by the LPA. The inspection party includes representatives from the LPA, MoDOT, general contractor, and in some cases, the FHWA and subcontractor(s).

- If it is determined by the inspection party that all contract items have been completed in their entirety and are of satisfactory quality, then this inspection constitutes a ‘final inspection’.
- If it is determined by the inspection party that corrections must be made before final acceptance, then this inspection constitutes a ‘semi-final inspection’. After the corrections have been made, another inspection takes place with essentially the same inspection party and if everything is satisfactory, then the inspection becomes the ‘final inspection’.

The LPA may deem the project substantially complete after a semi-final inspection and grant a 'partial acceptance', halting the working/calendar day count until the corrections are made. Typically, this should only be granted when the corrections can be made without delaying opening the project limits to normal public travel. Also, completion of the construction activities that constitute substantial completion should be outlined in the original contract agreement.

'Final acceptance' by the LPA occurs after the successful final inspection. The LPA takes over maintenance responsibility for the project from the contractor when the corrections are completed.

Final acceptance by MoDOT occurs after the LPA has submitted all the applicable [final documents](#) (certifications) listed in EPG [136.11.17](#). Afterwards, MoDOT will issue a final acceptance report ([form C-239](#)) to the LPA.

11.20 Project Closeout Certifications

Full payment of the final invoice will not be considered until the local agency has furnished two (2) copies of the following documents:

1. The local agency's semi-final inspection letter stating the date of semi-final inspection and listing those who were present. Required for both contractor and local agency work, where applicable.
2. The LPA's final acceptance letter showing the number of working days or calendar days charged, completion date and the amount of liquidated damages, if any.
3. A certification stating
 - a. "The results of the tests or acceptance samples indicate that material incorporated in the construction work and the construction operations controlled by sampling and testing were in reasonably close conformity with the approved plans and specifications, and such results compare favorably with the results of independent assurance sampling and testing." Any deviations from the specifications must be explained along with the reason for acceptance.
 - b. "All field tests were performed in conformity with the governing specifications and the results were in reasonably close conformity with the specifications." Explain any deviations and why the work was accepted.
 - c. "In conformity with the plans and specifications, the project was constructed substantially."
4. Contractor certification and local agency recommendation
 - a. The [Fig. 136.11.7 Contractor Certification](#) showing the final DBE participation on the project including the DBEs used, the type of work performed, and the dollar amount paid to each DBE.
 - b. The local agency's recommendation regarding the contractor's fulfillment of the DBE requirements. If DBE goals were not met, include documentation as to why.

5. Final Invoice
6. Final Detailed Estimate of Quantities
7. [Fig. 136.11.8 Contractor's Affidavit Regarding Settlement of Claims](#)
8. [Final Change Order](#) (if needed)
9. [Fig. 136.11.9 Affidavit \(Compliance with Prevailing Wage Law\)](#)

MoDOT will certify the dates on which any on-site inspections were made.

11.21 Guidance for MoDOT Oversight

The MoDOT District representative shall periodically review the local project to verify that project administration procedures are adequate. A [LPA Site Visit Checklist](#) has been formulated to be used as a guide when visiting a LPA Site. The checklist covers a wide range of details related to project administration and should be used as a guide by the LPA. The MoDOT review shall cover as many of the areas as possible and notations made regarding the project visits. A diary entry shall be made by the MoDOT reviewer to document the project visit. Observations from the project and noted items from the [LPA Site Visit Checklist](#) should be included in the diary entry. Any actual documents used or obtained during a site visit shall also be retained by the MoDOT District representative for three (3) years past the final reimbursement for the project by FHWA.

The frequency of the site visits will be at the discretion of the MoDOT District Representative and the adequacy of the LPA's administration. At least one visit and review at the beginning of the project and near the end of the project shall be conducted. If any deficiencies are sited or further assistance is required by the LPA more visits are warranted.