



Local Programs Procedures

LPP 02-03 Manual Update

Subject: Local Assistance Procedures Manual, Chapter 12

Reference: *Local Assistance Procedures Manual* (LAPM), Chapter 12, “Plans, Specifications & Estimate”

Effective Date: November 28, 2002 Approved : *Original Signed By*
TERRY L. ABBOTT, Chief
Division of Local Assistance

User-Friendly Features:

These new procedures are incorporated in the electronic version of the *Local Assistance Procedures Manual* (LAPM). The LAPM can be found on the Division of Local Assistance Home Page on the Internet at: www.dot.ca.gov/hq/LocalPrograms/. Once there, click on “publications” and then click on “Local Assistance Procedures Manual.”

PURPOSE

The purpose of this Local Programs Procedures (LPP) is to update Chapter 12, “Plans, Specifications & Estimate” Section 12.9, “Required Federal Contract Provisions,” pertaining to Federal Wage Rates. Changing the way local agencies access the Federal Wage Rates streamlines the process and also saves both time and money.

EXISTING PROCEDURE

The Federal Wage Rates are available on the Caltrans Local Programs Home Page under Reports and Databases, Federal Wage Rates and require the use of a password by the local agencies. The password is provided by the District Local Assistance Engineers (DLAEs).

NEW PROCEDURE

The use of a password will not be required. The Department of Labor now posts Federal Wage Rates on the United States Government Printing Office's website at <http://www.gpo.gov/davisbacon/>. Click on "*Browse all determinations by State*" then click on *California* to view the Federal Wage Rates for California.

The attached pages replace pages 12-15, 12-16 12-25, 12-26.

Incorporation of Form FHWA 1273 into the contract, subcontracts, and purchase orders. The provisions apply to all work performed on the contract including work performed by subcontract. The Form FHWA 1273 is required to be physically incorporated into each contract, subcontract and subsequent lower-tier subcontracts. The provisions may not be incorporated by reference.

Failure of the local agency to incorporate the Form FHWA 1273 in the contract is considered an unrecoverable project deficiency and shall make the construction phase of the project ineligible for federal reimbursement (see Chapter 20, “Deficiencies and Sanctions” of this manual).

The prime contractor is responsible for compliance with the requirements by all subcontractors and lower tier subcontractors. Failure of the prime contractor to comply with this requirement is grounds for local agency termination of the contract with the contractor and debarment of the contractor by the FHWA.

Modification of Form FHWA 1273. Sections IV (Payment of Predetermined Minimum Wages), Section V (Statements and Payrolls), Section VI (Record of Materials, Supplies and Labor), Section VII (Subletting or Assigning the Contract), and Section VII (Subletting or Assigning the Contract) of Form FHWA 1273 need not be included in the contract provisions for some projects, as described below. If the project is exempted from any of these provisions, the appropriate section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Use of Local Hiring Preference. The local agency shall not include contract provisions that require preferences to hire locally on any federal-aid contract. The contract provisions included in Form FHWA 1273 also require that the contractor not discriminate against labor from any other State.

Any contract that includes provisions that require a contractor to give any preference in hiring (with the exception of Indians living on or near a reservation on eligible projects) shall make the contract ineligible for federal reimbursement (see Chapter 20 “Deficiencies and Sanctions” of this manual).

Use of Convict Labor. Construction work shall not be performed by convict labor within the site boundaries of any federal-aid construction project. An exception is “labor performed by convicts who are on parole, supervised release, or probation.” The use of convict labor restricts competition because the labor rates are below market costs and force account rates. A person on a daily-release program could be eligible to work on a federal-aid project if that person was employed by the contractor and was being paid at least the minimum prevailing wage.

II. NONDISCRIMINATION

On all federal-aid construction contracts and all related subcontracts of \$10,000 or more, nondiscrimination provisions prohibit discrimination because of race, color, religion, sex, national origin, age or disability. This applies to the contractor’s employment, solicitations, selection of subcontractors and procurement of materials. Contractors are required to have an Equal Employment Opportunity (EEO) policy that provides: for affirmative action in employment; a designated EEO officer to administer the EEO

program; and posted notices or posters containing EEO information. The contractor shall not discriminate in recruitment and is required to review the project sites, wages and personnel action for compliance with EEO policy. The contractor is required to notify employees regarding available training and provide opportunities for the improvement of skills for minorities and women. The contractor should cooperate with the union to incorporate EEO clauses.

Non-compliance with EEO specifications may be a breach of contract. Payment may be withheld or the contract canceled. The local agency must have staff to conduct reviews, check for required posters and make noncompliance determinations.

III. NONSEGREGATED FACILITIES

On all federal-aid construction contracts and all related subcontracts of \$10,000 or more; organizations, firms, subcontractors and suppliers shall certify (in the contract) that they maintain nonsegregated facilities which conform to requirements of 41 CFR 60.1.8. The only exception to the nonsegregated facilities provision is access for the disabled.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGES

The payment of predetermined minimum wages applies to all federal-aid construction contracts exceeding \$2,000 and all related subcontracts, except for projects not located on a federal-aid route.

Note: All public roads other than those functionally classified as local roads or rural minor collectors are considered Federal-aid Routes (see Chapter 3, "Federal-Aid Routes and Functional Classifications" in the *Local Assistance Program Guidelines*).

The Davis-Bacon Act of 1931 was enacted to prevent contractors from importing cheap labor from outside the area. The U.S. Department of Labor enforces these statutes and determines the minimum federal wage rates. The federal wage rates are determined by a review of payroll or a survey based on wage data from active projects. Disputes involving wage rates shall be resolved using local agency - U.S. Department of Labor procedures.

Notice of wage-rate decisions are published in the *Federal Register*. The minimum federal wage rates are also available from the Department of Labor via the Internet at www.gpo.gov/davisbacon. Click on "Browse all determination by State" then click on "California".

All employees must be classified with a wage-rate determination as set forth by the U.S. Department of Labor. There are provisions for fringe benefits and requirements for paying less than the full wage rate for apprenticeships and trainee programs. Apprenticeship and trainee programs are subject to other Department of Labor requirements. The contractor and subcontractors should pay employees at least the minimum wage and fringe benefits specified for the classification of work performed. The local agency is responsible for including the project wage rates in the federal-aid contract.

The local agency has the authority to withhold funds from the progress payments to the prime contractor for under payment to employees and the subcontractor full wages. The contractor is required to pay overtime at one and one half times the employee's basic pay rate for time worked in excess of eight (8) hours per day. Liquidated damages may be

Number of Federal Trainees

<u>\$ Value</u>	<u>No. Trainees</u>	<u>\$ Value</u>	<u>No. Trainees</u>
Under \$200,000	0	\$3,000,000	7
400,000	1	4,000,000	8
700,000	2	5,000,000	9
1,000,000	3	6,500,000	10
1,500,000	4	8,000,000	11
2,000,000	5	10,000,000	12
2,500,000	6		

Over \$10,000,000 add 1 trainee per
\$5,000,000

FEDERAL WAGE RATES

The payment of predetermined minimum wages on federal-aid contracts is derived from the Davis-Bacon Act of 1931 and is prescribed by 23 USC 113. These wage rates must be inserted in the special provision on all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempted.

The federal minimum wage rates are available directly from Department of Labor Home Page under www.gpo.gov/davisbacon. Click on "Browse all determination by State" then click on "California". For local agencies in California to be in conformance with the federal "10-day rule," local agencies are to access the "Federal Wage Rates" ten days prior to bid opening to see if updated federal wage rates have been posted. If the updated wage rates have been posted, local agencies are required to issue an addendum to insert the updated wage rates in their contract.

Local agencies who do not have Internet access, please contact your District Local Assistance Engineer to receive federal wage rates.

RELATIONS WITH RAILROAD

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local

agency and the railroad company. This agreement is discussed in the *Local Assistance*

Program Guidelines, Chapter 10, Section 10.6 “Local Agency/Railroad Agreements.”

FHWA approval of railroad agreements is required for nonexempt projects. A copy of the conformed agreement shall be transmitted through the DLAE for FHWA review.

The pertinent portions of this agreement applicable to any protective services required during performance of the work must be included in the project specifications and special provisions for any construction contract. Caltrans uses standard special provisions for this section on Caltrans projects.

CHANGED CONDITION CLAUSES

Standardized changed condition clauses are required to be included in all contracts. The Caltrans’ standard specifications and the *Standard Specifications for Public Works Construction (Green Book)* contain standard changed condition clauses. If a local agency chooses to use a different standard specifications book, the federal regulations shall still apply.

The regulation requires the use of three different clauses:

DIFFERING SITE CONDITIONS CLAUSE

This clause provides for the adjustment of the contract terms if the contractor encounters:

- Subsurface or latent physical conditions that differ materially from those indicated in the contract, or
- Unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work

SUSPENSIONS OF WORK ORDERED BY THE ENGINEER

This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the resident engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the resident engineer within 7 calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work are not allowed.

This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency’s actions, without written notification. The local agencies may address constructive delays and suspensions, as they chose, in their standard specifications and contract administration procedures.

Suspensions must be for unreasonable periods and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing; approval of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is

suspended for other reasons or if an adjustment is provided for, or excluded, under other