



NORTH CAROLINA

Department of Transportation

Contract Administration Breakout

Michelle Gaddy

Connecting people, products and places safely and efficiently with customer focus, accountability and environmental sensitivity to enhance the economy and vitality of North Carolina

New FHWA 1273 – October 23, 2023

- New FHWA 1273 – Revised October 23, 2023. Should be included in all new contracts advertised. This includes prime/sub contracts and any lower-tiered subcontract contracts.
- New ruling amends methodology on how prevailing wage rates are determined
- Goal of DOL is to update wage rates that are 3 years or less. NC highway rates were last updated in 2014
- New ruling does specify if a contract is modified to include additional, substantial work, alteration, and/or repair work not within the scope of the original contract or requires the contractor to perform work for an additional time not originally obligated, the most recent version of application wage rates must be incorporated into the contract
- ID/IQ federal contracts – should incorporate most up to date wage rate determinations on annual basis
- Multiple Wage Rate Determinations (Highway, Heavy, Building) – if scope of work is greater than \$2.5M or 20% of costs, should include wage rate determination

FHWA-1273 -- Revised October 23, 2023	
REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS	
<p>I. General</p> <p>II. Nondiscrimination</p> <p>III. Non-segregated Facilities</p> <p>IV. Davis-Bacon and Related Act Provisions</p> <p>V. Contract Work Hours and Safety Standards Act Provisions</p> <p>VI. Subletting or Assigning the Contract</p> <p>VII. Safety: Accident Prevention</p> <p>VIII. False Statements Concerning Highway Projects</p> <p>IX. Implementation of Clean Air Act and Federal Water Pollution Control Act</p> <p>X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion</p> <p>XI. Certification Regarding Use of Contract Funds for Lobbying</p> <p>XII. Use of United States-Flag Vessels:</p> <p>ATTACHMENTS</p> <p>A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)</p> <p>I. GENERAL</p> <p>1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).</p> <p>The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).</p> <p>Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.</p> <p>Contracting agencies may reference Form FHWA-1273 in solicitations-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).</p> <p>2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work</p>	<p>performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).</p> <p>3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.</p> <p>4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).</p> <p>II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)</p> <p>The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.</p> <p>In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.</p> <p>The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60.14(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.</p> <p>Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.</p> <p>The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.</p>

New FHWA 1273 – October 23, 2023

- Site of Work – applies to secondary construction site (borrow pits, waste pits, etc) if specifically used for the project – We have always interpreted in this manner
- Truck Drivers – required to be paid wages for onsite time for materials produced offsite if the time is not de minimis.
- Recordkeeping - Final ruling requires record keeping of payrolls and other basic records must be kept 3 years after all work on the prime is complete – this includes federal closeout. Records should include each worker's last known telephone number and email address. This is the contractor's responsibility to maintain

FHWA-1273 -- Revised October 23, 2023

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60.1-4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

Title VI Language

- Title VI language is included in both federally funded and state funded contracts.
- Ensures protection against discrimination on all contracts. Applies to anyone working on NCDOT contracts – includes all related subcontracts, material suppliers, etc.
- Must post NCDOT's Notice of Discrimination and contractors EEO Policy at jobsite
- All subcontracts executed with subcontractors and lower-tier subcontractors must physically incorporate Title VI language
- Include Solicitation Language in requests for bids
- FHWA will be auditing NCDOT to ensure that we are following all Title VI requirements

(1) Title VI Nondiscrimination Program (23 CFR 200.5(p))

The North Carolina Department of Transportation (NCDOT) has assured the USDOT that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, sex, age, or disability (including religion/creed or income-level, where applicable), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:

(a) During the performance of this contract or agreement, contractors (e.g., subcontractors, consultants, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. To comply with this section, the prime contractor shall:

1. Post NCDOT's Notice of Nondiscrimination and the Contractor's own Equal Employment Opportunity (EEO) Policy in conspicuous locations accessible to all employees, applicants and subcontractors on the jobsite.
2. Physically incorporate the required Title VI clauses into all subcontracts on federally-assisted and state-funded NCDOT projects, and ensure inclusion by subcontractors into all lower-tier subcontracts.
3. Required Solicitation Language. The Contractor shall include the following notification in all solicitations for bids and requests for work or material, regardless of funding source:

"The North Carolina Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. In accordance with other related nondiscrimination authorities, bidders and contractors will also not be discriminated against on the grounds of sex, age, disability, low-income level, creed/religion, or limited English proficiency in consideration for an award."

4. Physically incorporate the FHWA-1273, in its entirety, into all subcontracts and subsequent lower tier subcontracts on Federal-aid highway construction contracts only.

Standard Special Provisions – Minimum Wages

- Executive Orders 14026 and 13658 reference minimum hourly wages for all employees
- These executive orders **DO NOT** apply to NCDOT contracts.
- NCDOT contracts are considered Davis Bacon Related Acts (not Davis-Bacon Acts)

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

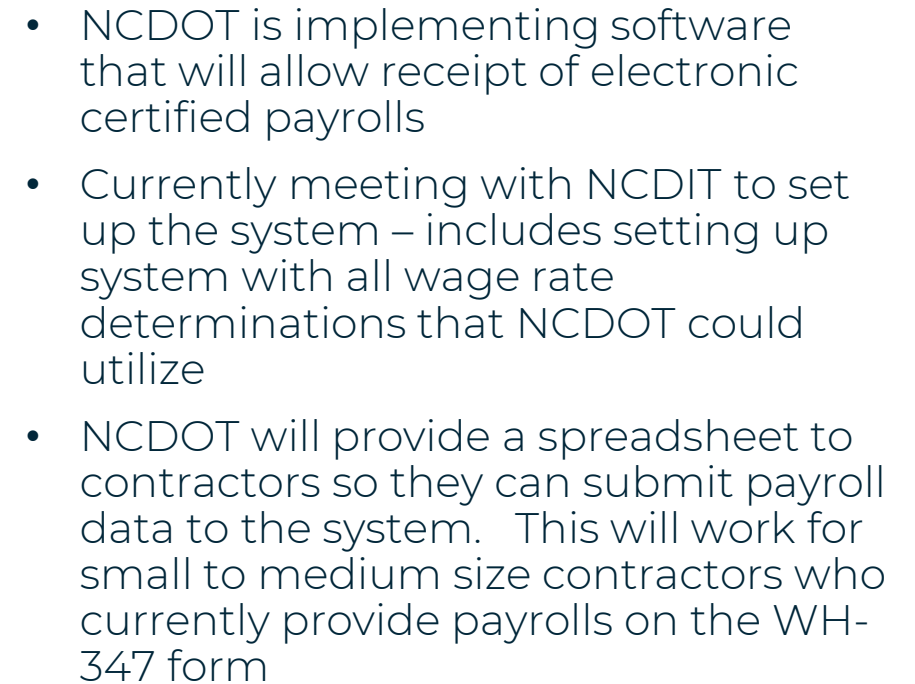
If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

DOL Survey – Most Likely Coming Soon



- Surveys would be conducted by the Department of Labor (DOL) Branch of Wage Surveys
- WD-10 Form will need to be submitted. Contractors will have to provide specific employee data regarding classifications and benefits provided. Each wage paid will require a separate submittal
- Certified payrolls from Davis Bacon Related Acts contracts will supplement data – DOL could request information from NCDOT and Industry
- The greater the participation leads to a complete wage rate determination. Low participation can result in rates based on insufficient data
- Once we get notice, NCDOT will provide additional information on how the contracting industry will need to respond

7

AASHTOWare Software – Civil Rights and Labor

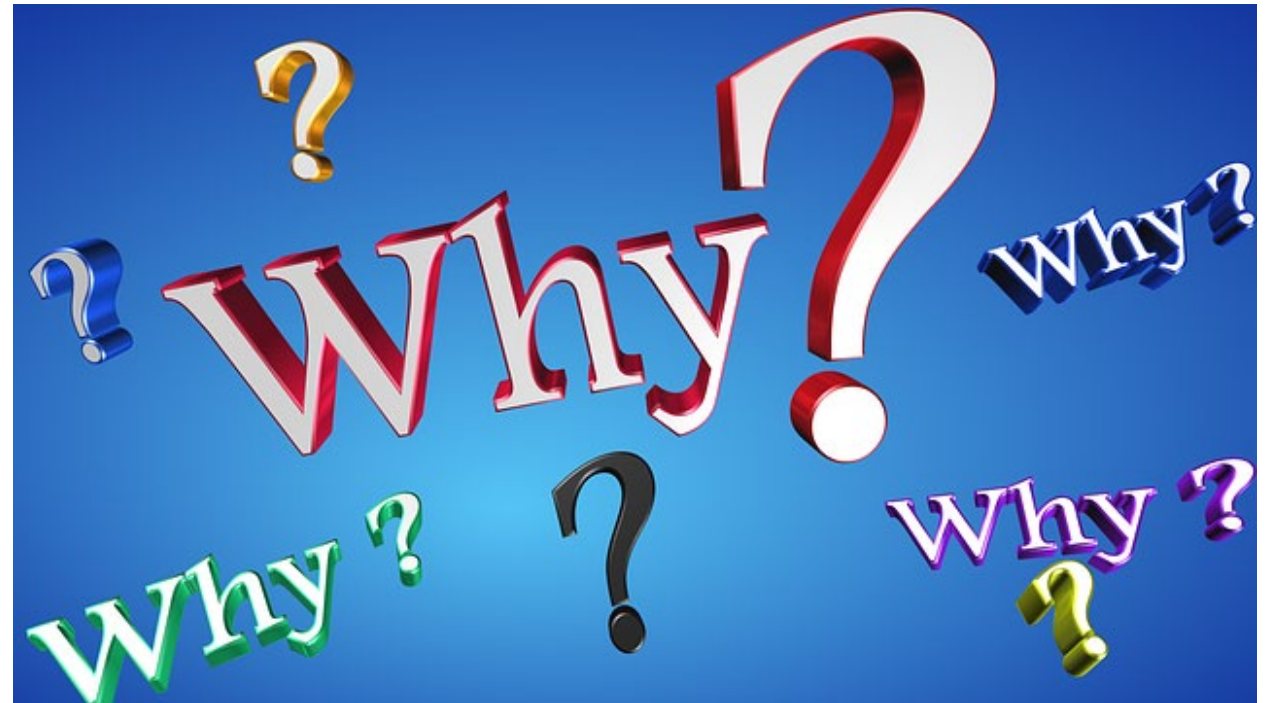
Labor Values	Code	Craft Values	Code
Select Labor Code			
PLUMBER/PIPEFITTER		101 PIPEFITTER/PLUMBERS	100
PLUMBER/PIPEFITTER (EXCLUDING HVAC SYSTEM INSTALLATION)		102 PIPEFITTER/PLUMBERS	100
PLUMBER		103 PIPEFITTER/PLUMBERS	100
PIPEFITTER		104 PIPEFITTER/PLUMBERS	100
PIPEFITTER (EXCLUDING HVAC SYSTEM INSTALLATION)		105 PIPEFITTER/PLUMBERS	100
PLUMBER, EXCLUDES HVAC UNIT INSTALLATION		106 PIPEFITTER/PLUMBERS	100
PLUMBER (HVAC UNIT INSTALLATION)		107 PIPEFITTER/PLUMBERS	100
ASPHALT BROOM TRACTOR		201 EQUIPMENT OPERATORS	200
BULLDOZER FINE		202 EQUIPMENT OPERATORS	200
BULLDOZER ROUGH		203 EQUIPMENT OPERATORS	200
CONCRETE GRINDER/GROOVER		204 EQUIPMENT OPERATORS	200
CRANE BOOM TRUCKS		205 EQUIPMENT OPERATORS	200
CRANE OTHER		206 EQUIPMENT OPERATORS	200
CRANE ROUGH/ALL-TERRAIN		207 EQUIPMENT OPERATORS	200
DRILL OPERATOR ROCK		208 EQUIPMENT OPERATORS	200
DRILL OPERATOR STRUCTURE		209 EQUIPMENT OPERATORS	200
EXCAVATOR FINE		210 EQUIPMENT OPERATORS	200
EXCAVATOR ROUGH		211 EQUIPMENT OPERATORS	200
GRADER/BLADE FINE		212 EQUIPMENT OPERATORS	200

PAINTER		
Bridge	20.67	
POWER EQUIPMENT OPERATORS		
Asphalt Broom Tractor	10.00 **	
Bulldozer Fine	16.28 **	
Bulldozer Rough	14.51 **	
Concrete Grinder/Groover	19.20	
Crane Boom Trucks	18.19	
Crane Other	18.69	
Crane Rough/All-Terrain	19.19	
Drill Operator Rock	15.00 **	
Drill Operator Structure	21.07	
Excavator Fine	16.02 **	
Excavator Rough	14.67 **	
Grader/Blade Fine	19.86	
Grader/Blade Rough	15.12 **	
Loader 2 Cubic Yards or Less	12.38 **	
Loader Greater Than 2 Cubic Yards	17.91	

- For larger size contractors, NCDOT will provide the list of craft codes/labor classifications for your payroll system to match to.
- Your payroll software company can assist in setting it up so your software program produces an XML file that can be uploaded to the CRL system.
- What is key is that you will need to adapt to the current classifications approved by DOL. If you need additional classifications, you will need to apply for them for your project.
- Contractors should review their current classifications and make sure you are adhering to the wage rate determinations included in your contract. General classifications such as Laborer, Truck Driver, Operator will not work. Helpers and Apprentices will have to be enrolled in an OJT training program with NCDOT.

AASHTOWare Software – Civil Rights and Labor

- Streamlines the payroll process for both NCDOT and contractors
- Acceptance/Rejection by all parties will be documented in system. Includes prime review of sub payrolls.
- Ensures conformance with federal requirements
- Payroll data can be used to create FHWA 1391 forms in the future
- Electronic records retention



Implementation of CRL



- NCDOT will be working with DIT over the next year to set the system up:
 1. System Connections to HICAMS and SAP (contract data and vendor information)
 2. Personnel Setup – Internal Use
 3. Setting up system to evaluate payrolls – 44 different options for what to review
 4. Understanding system messages when a potential error is found in payroll so both RE staff and contractor staff can respond
 5. Preparing materials for training - both RE and contractors.
 6. Pilot Program coming in 2025

Retainage

- When a subcontractor has completed work, retainage should be released upon agreement that the subcontractor has successfully completed all work
- Request verification of final quantities from the subcontractor and NCDOT
- Discuss quantities at monthly construction meetings to make sure all parties. DO NOT wait until end of project

The Contractor shall not withhold any payments to a subcontractor, lower tier subcontractor or material supplier for any claim or action arising outside the current contract with the Department. Notwithstanding the provisions of this section, the Contractor may withhold up to 3% retainage if any subcontractor does not obtain a payment and performance bond for their portion of the work. Additionally, this retainage may be increased to a maximum of 10% where the Contractor and any subcontractor have supplied to the Engineer a satisfactorily executed mutual agreement for an increased amount. If any retainage is held on subcontractors, all retainage shall be released within seven calendar days of satisfactory completion of all work. For release of retainage, satisfactory completion is defined as completion of all physical elements and corresponding documentation as defined in the subcontract, as well as agreement between the parties as to the final quantities for all work performed in the subcontract. The Department will provide internal controls to expedite the determination and processing of the final quantities for the satisfactorily completed subcontract portions of the project.

Coming Soon in 2024

- NCDOT has developed a FHWA 1391 submittal system for all federal projects. Includes municipal projects. Continuing to enhance the Sharepoint solution to streamline submittals/approvals. Webinars will be coming in May/June 2024
- OJT Trainee Letters – sent out by the Office of Civil Rights by February 2024
- Disparity Study – look for information on public stakeholder involvement
- Federal Triennial Goal – Deadline August 1, 2024. – look for information on public stakeholder involvement
- State Triennial Goal – Deadline October 1, 2024 – look for information on public stakeholder involvement



Final Estimate Stats

Calendar Year	Average of Days Notify	Average of Days Docs	Average of Total Days
2023	146	105	251

- Based on final estimate paid in 2023
- Average of 146 days for NCDOT to notify contractor and 105 days for the contractor to provide final estimate documents
- Division staff is reaching out to contractors to request final estimate documents. If they are unable to obtain these documents in a timely manner, the Construction Unit will send a letter and close out the project in accordance with Article 109-10 if no response is provided

The Department is in the process of reviewing projects in which the contractor has been notified of the final quantities, but the final estimate documents have not been received. The final quantities letters that were sent to your firm for the below referenced projects:

	Administrative Division Number	Acceptance Date	Contractor Notification Date	Amount of Final
	1	12/13/2022	5/12/2023	\$150.00

To move forward with processing the final estimate, we are in need of the following documentation:

- Statement of Consent of Surety on the contract bonds for payment of money due to the contractor (if applicable)
- Affidavit of the contractor that all obligations and debts arising from construction have been satisfied or affidavit that shall include a list of obligations not satisfied.
- Written notice that the contractor had no request for any extension in the completion date or any adjustment in compensation from that shown in the final estimate or in lieu thereof written notice presenting all request for adjustment of the final estimate setting forth full justification for such requests.
- Reimbursement Checks for negative estimates.

If you have a need for a closeout conference, please advise and the Construction Unit can coordinate the scheduling.

Failure to respond to this letter by **October 16, 2023** will result in the contractor deemed nonresponsive and we will move forward with processing the final estimates in accordance with Article 109-10 of the Standard Specifications.

Thank you!

