

## CONSTRUCTION CONTRACT ADMINISTRATION

Construction contract administration refers to the standardized processes and procedures that the Department and the LGA utilizes to document, test and certify projects constructed by third parties, such as contractors and subcontractors, under contracts by the Department or an LGA.

**POLICY:** The LGA is responsible for documenting the construction of the project based on the Municipal Agreement. Failure on the part of the LGA or the Department to perform construction contract administration adequately can result in not being reimbursed for the work performed.

Generally, for locally administered projects, LGAs should follow the same procedures and provide the same or similar documentation for all construction projects. In many cases, locally managed projects are smaller in scope and complexity and as a result will not be required to provide the quantity of documentation and testing that larger scale projects do. However, it is important to understand that any project constructed with Federal Funds must follow Federal Guidelines in order to qualify for reimbursement.

The NCDOT Construction Manual is a comprehensive document that follows the North Carolina Standard Specifications and provides further clarification and examples of those standards.

### **RESOURCE:**

Construction Manual:

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/)

### **Project Inspection & Documentation**

The Department currently requires inspection personnel to be present any time major items of work are being performed by the contractor. Examples include but are not limited to:

- placing concrete and asphalt
- structures work
- significant utility work
- signals
- pavement markings
- installation of pipe

The Department also requires inspection personnel to be present at all time that the Contractor closes a lane or lanes of traffic.

**Note:** LGAs should ensure that consultant's include these costs for inspection personnel in their submitted costs for services. If the LGA is utilizing their in-house staff for contract administration, this would also be taken into account. See [Professional Services](#) for more details.

In order to ensure compliance with FHWA, NCDOT has developed specific procedures and documentation requirements. While NCDOT and FHWA will accept other methods of documentation, the LGA is advised to obtain approval prior to use. If the LGAs methods are found to be inadequate in an audit or review after the work has been performed, then reimbursement for that work may not be approved and the LGA would be responsible for the cost of that work.

The following include but are not limited to the basic minimum requirements for construction contract administration. These items are detailed in the NCDOT Construction Manual. Please note that depending upon the project, there may be additional requirements:

### **Posters**

Federal project requirements include posters that must be displayed at every jobsite. NCDOT and the LGA are responsible for ensuring that these posters are accessible to all employees on the jobsite. Posters include but are not limited to the following:

- Davis Bacon Minimum Prevailing Wage Rate Schedule from the Contract
- Notice Relating to False Statements (Form FHWA-1022)
- Wage Rate Information - Federal-Aid Project (Form FHWA-1495)
- EEO Poster (Form OFCCP-1420)
- Contractor's EEO Policy Statement
- Whistleblower Protection Act

A complete list of required posters and available electronic downloads are available at:

<http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm>

### **Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/DIV01.pdf)

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/rr3.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/rr3.pdf)

### ***Inspector's Daily Report***

This daily report should be used to give a detailed account of all activities occurring during the life of the project and will be included as part of the complete Project Diary. These reports provide the necessary documentation to research activities, checks, measurements and tests performed, payments and responses to requests for contract time extensions and additional compensation on a project.

#### **Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/rr2.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/rr2.pdf)

### ***Pay Records***

NCDOT and FHWA require that there be a "source document" for each pay item included in a construction contract. All entries pertaining to pay items should be entered in a bound book (pay record, level, or field), ticket book, or on a specified form.

#### **Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/rr6.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/rr6.pdf)

### ***Written Correspondence with the Contractor***

Copies of all correspondence to and from the Contractor should be maintained in the project file by date. All backup correspondence should be maintained in the project files for supplemental agreements, shop drawing approvals, changes in contract requirements, claims for time extensions and additional compensation.

#### **Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/rr1.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/rr1.pdf)

## **Meeting Minutes**

Complete meeting minutes must be issued for all project meetings and include key discussion concerns and any resolutions along with action items, time lines and those persons responsible for delivering them. Preconstruction conference minutes shall be prepared by the LGA and sent to the Department, Contractor and meeting attendees.

### **Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/rr1.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/rr1.pdf)

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/rr2.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/rr2.pdf)

## **Buy America**

Buy America provisions ensure that transportation infrastructure projects are built with American-made products. That means that Federal funds support an entire supply chain of American companies and their employees.

23 U.S.C. § 313 – Buy America and 23 C.F.R. § 635.410 (100% Domestic Content of specific items) identify that all steel, iron, and manufactured products used in projects subject to the Buy America requirements are produced in the United States.

For LGA projects, all steel, iron, and manufactured products must include a certification statement from the contractor that the items provided for incorporation into the project were produced in the United States, including raw materials. The individual documents certifying the products are in accordance with this requirement should be maintained with the material test results and be available for audit or project material certification upon completion of the project.

### **Resource:**

<http://www.fhwa.dot.gov/programadmin/contracts/bas182.cfm>

## **Certified Payrolls**

The provisions of Form FHWA-1273, Paragraph IV require the submission of payrolls by the Contractor and each Subcontractor. Each LGA must become familiar with these contract provisions as well as the information contained in

the U.S. Department of Transportation's "Labor Compliance Manual." The LGA must obtain payrolls from the Contractor, including first and second tier Subcontractors and check those payrolls for wage violations.

Payrolls must be received for the period four weeks in advance of the period payment is being made. The completed payrolls should be maintained in the project file.

In accordance with the Davis-Bacon Act, certified payrolls are not required for the following classifications:

- Truck drivers, including those employed by the contractor, who come on the "site of work" to deliver or pick up construction materials.
- Project engineers, quality control or quality assurance inspectors and contract compliance inspectors are not usually considered to be laborers or mechanics.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/DIV01.pdf)

***Wage Rate Interviews – Calendar Year Quarterly Interviews***

In addition to checking weekly certified payrolls prior to making payments, it is the responsibility of the LGA to perform quarterly Wage Rate Interviews for all federally funded projects. LGAs should conduct spot interviews with the Contractor's employees to determine if they are properly classified and that each employee is paid at least the minimum hourly rate described for his classification that is contained in the contract and that each employee on the project is either on the Prime Contractor's payroll or on an approved Subcontractor's payroll. All individual interview documentation should be placed in the project files.

The LGA must take action on any and all complaints by Contractor's employees with regard to proper classification and payment. The LGA is required to take the investigative action he considers necessary to determine the validity of the complaint and submit his findings together with recommendations to the Department for further handling.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/DIV01.pdf)

## **Supplemental Agreements**

A Supplemental Agreement is an agreement between the LGA and the Contractor that amends the contract as necessary to satisfactorily complete the proposed construction. The information contained in the Supplemental Agreement becomes a part of the contract documents. It is important that the language and the quantities contained in that document be precise.

The LGA must verify that the Supplemental Agreement is within the scope of work for the contract and the work is necessary to complete the project. The LGA must obtain concurrence from the Department prior to executing the Supplemental Agreement with the Contractor. Failure to gain concurrence may result in non-reimbursement for the costs associated with the Supplemental Agreement. If the Supplemental Agreement includes additional costs, the LGA should verify that funding is available for these costs through the Municipal Agreement for the project.

When the LGA and/or the Department are not in agreement with the contractor's prices the Department may authorize the LGA to utilize Force Account provisions (Article 109-3 of the Standard Specifications). See the Force Account section below.

### **Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/DIV01.pdf)

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/rr4.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/rr4.pdf)

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/rr5.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/rr5.pdf)

## **Requests for Extensions in Contract Time and Additional Compensation (Claims)**

The Department provides avenues of relief (contract time and/or additional compensation) for contractors based on varying conditions and situations on a construction project through the use of the claims process.

### *Extensions in Contract Time*

Requests for Extensions in Contract Time are made under Section 108-10(B) of the Standard Specifications and are normally granted for delays, additional or

extra work, winter months or changed conditions. There are five conditions that may warrant an extension in contract time which include:

- Pro-Rata Time Extensions (Automatic based on Monetary Values)
- Time Extensions for Extra Work (Work under a Supplemental Agreement)
- Time Extensions for Delays (Delays to the Controlling Operation)
- Time Extensions for Additional or Altered Work (Changed Conditions & Costs)
- Time Extensions for Winter (Contract extensions past December 15<sup>th</sup>)

The LGA should obtain concurrence from the Department prior to approving contract time extensions. The LGA should notify the Contractor of the final determination in writing as soon as possible. Delay in notification may require the Contractor to incur additional cost in an effort to complete the work by the original completion date that would be unnecessary if the appropriate time extension had been granted.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/DIV01.pdf)

*Additional Compensation Requests*

Requests for Additional Compensation are made under several sections of the Standard Specifications and are typically granted for additional or extra work, changes in quantities and altered work as follows:

- Alteration of Plans or Details of Construction (Article 104-3) – Altered work that includes changes in the character of the work and the cost.
- Overruns and Underruns of Contract Quantities (Section 104-5) – Changes in quantity of items causes the unit costs to increase or decrease.
- Extra Work (Section 104-7) – Work not included in the contract that is necessary to complete the project.

The LGA should obtain concurrence from the Department prior to approval of additional compensation claims. The LGA should notify the contractor in writing of their response to the contractor's claim. Complete documentation should be included with the project files to document the contractor's request and any subsequent decision and Department concurrence in granting additional

compensation. The LGA should note that based on the terms of the Municipal Agreement, additional funds may not be available for reimbursement under certain situations. The Division can advise the LGA on possible courses of action under these situations.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/DIV01.pdf)

**Force Account**

For Construction Administration, Force Account refers to the LGA directing the Contractor's operations to perform work that is required under the contract, when a price cannot be agreed upon. There are two situations that occur that will require the LGA to issue a Force Account notice to the Contractor.

The first situation is when the LGA directs the Contractor to perform work and the two parties cannot agree on the price for the work. The LGA has the authority and responsibility to direct the Contractor's operations to the extent that only the equipment, material, labor, and hours worked as authorized by him will be allowed for payment. The LGA must maintain separate and detailed records reflecting the performance of disputed work.

The second situation is when a Contractor is required to perform work that he considers to be extra work or work he feels justifies additional compensation and his request for additional compensation has been denied. In these instances, he should advise the LGA that he intends to file a claim for additional compensation. The LGA must maintain independent cost records (Article 109-3) reflecting the performance of disputed work. The LGA does not have the authority to direct the Contractor's operations in this situation.

The LGA must gain concurrence from the Department to issue a Force Account notice to the Contractor. The LGA must review and approve the base wage rates for labor and the equipment that will be utilized in the affected work. Note that the Specifications contain specific guidelines for payment of work performed by force account.

A pro-rata extension in the contract completion as provided in Article 108-10(B)1 of the Standard Specifications will be allowed for performing force account work. When adequate justification is provided by the Contractor, the completion date may be further extended in accordance with Article 108-10(B)4 of the Standard Specifications.



**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/DIV01.pdf)

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/DIV01.pdf)

**Prompt Payment**

The LGA must ensure that the Contractor meets the requirement of the prompt payment provisions for all subcontractors and materials suppliers for the project. Generally, payments should be made to subcontractors and materials suppliers within 7 days of receiving payment.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/DIV01.pdf)

**DBE Payments Reporting**

The Contractor must provide the LGA with an accounting of payments made to DBE firms, including material suppliers, contractors at all levels (prime, subcontractor or second tier subcontractor). This accounting is furnished to the LGA along with each pay request. Also, the LGA should have a record of final payments as compared with commitments and explanation of any shortfall. Failure to submit this information accordingly may result in withholding payment until the information is provided. See [Minority Business Participation](#) for more information on solicitation and utilization of DBEs.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/rr3.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/rr3.pdf)

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/rr5.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/rr5.pdf)

## ***Project Final Acceptance***

The LGA is responsible for scheduling and performing the final inspection with Department staff to ensure all work has been completed satisfactorily. The LGA should not advise the contractor in writing of acceptance of the project until all work is complete and concurrence has been obtained from the Department. See the [Project Closeout](#) section for additional details.

## ***Project Materials & Testing Requirements***

The Department is responsible for insuring that all materials and manufactured products incorporated into transportation projects meet the required criteria and will function as intended. The Materials and Tests Unit performs this function and will work with the LGA and the Division to provide the required materials oversight and assurance testing.

NCDOT must certify that LGAs met the Department's Requirements for:

- Sampling and Testing (Minimum Sampling Guide)
- Using Qualified Technicians (Training & Certifications)
- Fulfilling The FHWA "Buy America" Requirements & North Carolina State Law
- Using Approved Materials (Approved Producer/ Supplier List, Mix Designs for both Asphalt And Concrete)
- Resolving Any Failures Or Discrepancies (Must Be In Writing)

M&T personnel (Section Materials Specialists and Area Materials Engineers) will work with the LGA to ensure that materials documentation requirements and testing requirements are met.

## ***Materials Receipt and Acceptance Requirements***

A Materials Received Report (MRR) should be completed when any material is received on the project that is to be incorporated into the construction on a temporary or permanent basis. The MRR is not required for certain items including, ABC, Ready-Mixed Concrete, Materials used in Ready-Mixed Concrete, and Asphalt; as these items are accounted for by tickets. Refer to the Records and Reports Section of the Construction Manual for more information about receiving project materials. The MRR is necessary to ensure that all materials are tested and meet the requirements of Division 10 of the Standard Specifications.

The Minimum Sampling Guide (MSG) lists materials that are pretested and materials that are to be sampled by project personnel. The MSG can be accessed from the Materials and Tests Home page at:

<https://apps.dot.state.nc.us/vendor/approvedproducts/MinimumSamplingGuide.aspx>

When the LGA is notified of a failing test result, they should investigate and take appropriate action to ensure that the material represented is replaced or a unit price reduction is performed. The LGA should document all actions in writing. Area Materials Engineers are available for technical assistance and guidance.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/rr3.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/rr3.pdf)

***Certified Construction Technicians***

The LGA will provide Technicians to inspect and document the construction of the project. Specific items of work including the placement of asphalt and concrete and testing of certain materials such as soil and aggregate base course materials require certifications by the Department. It is the responsibility of the LGA to make sure that individual Technicians are thoroughly familiar with the contract requirements and certified for the various phases of work which they are called upon to inspect.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/construction/DIV01.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/formsmanuals/construction/DIV01.pdf)

***Independent Assurance Testing***

The FHWA requires independent assurance test samples be taken to provide independent verification of the reliability of project material test results. Independent Assurance is required to independently assess the testing procedures performed by each technician and to insure the proper operation of any equipment used in inspection or testing. These test results are compared with the acceptance test results for verification.

The Department's Independent Assurance Section personnel will periodically visit the LGA project. However, the LGA should advise the Independent Assurance Section personnel and/or the Area Materials Engineer when operations and the progress of work allow key samples to be taken. Feedback is given to the construction technicians once an evaluation has been made as to accuracy of the acceptance tests.

**Resource:**

[http://www.ncdot.gov/doh/operations/dp\\_chief\\_eng/constructionunit/forms/manuals/construction/rr3.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/constructionunit/forms/manuals/construction/rr3.pdf)

***Project Materials Certification***

FHWA requires the Department to materially certify each project that receives Federal funding. This includes the verification of the field and lab test results, certifications and Buy America requirements. To accomplish this certification, the LGA is required to submit the original project materials records to the Materials and Tests Unit. Copies of the submitted materials should be maintained by the LGA in accordance with the Records Retention Schedule for the project.

***Records Retention Schedule***

FHWA requires that all project records must be retained for three (3) years from the date of the FHWA final payment voucher. The Department will include the records retention date as part of the final closeout letter to the LGA.