CHAPTER 15

ADMINISTER CONSTRUCTION CONTRACTS
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NOTE: This Chapter has associated appendices and forms that can be found on our website at: www.nysdot.gov/plafap.
15.1 INTRODUCTION

This chapter covers the administration of federally funded locally let construction contracts including construction supervision, contract documentation, and construction contract closeout. In accordance with 23 CFR 633.101(a) FHWA Form 1273, Required Contract Provisions, Federal-aid Construction Contracts, must be incorporated into each federal-aid highway construction contract other than Appalachian construction contracts. (A copy of FHWA Form 1273 is included in the Chapter 12 Appendices.)

Under Title 23 CFR 635.105(a) NYSDOT is responsible for oversight regarding the undertaking of a project using federal funds. NYSDOT chooses to delegate project responsibilities to the Sponsor. Each section in this chapter complies with the policies, requirements and procedures set forth in 23 CFR 635 and 637.

15.2 PROJECT MANAGEMENT

Title 23 CFR 635.105 specifies oversight requirements for locally administered federal aid transportation projects. Project Management is the key to meeting these requirements. Part 1A of the Manual of Uniform Record Keeping (MURK) is NYSDOT’s Contract Administration Manual (CAM), which is NYSDOT’s primary resource for project record keeping during construction. Each section of the document has been written either to implement a federal requirement or to clarify an issue related to construction contracts.

Sponsors have the option of using project management software to manage their projects. Sponsors are expected, however, to provide the NYSDOT Regional Local Project Liaison (RLPL) with baseline data and project milestones as outlined in the sample Project Management Plan (PMP) contained in the PLAFAP Chapter 2 Appendices.

15.2.1 Project Segments on and off the State or National Highway System

Sponsors must use the CAM when using NYSDOT design standards and construction specifications for projects on and off the State and National Highway Systems. CAM procedures have been reviewed and approved by NYSDOT and FHWA.

15.2.2 Definition of Project Management

Project Management is the discipline of planning, organizing, and managing resources to bring about the successful completion of a project on schedule.

15.2.3 The Project Manager

Title 23 CFR 635.105(c)(4) requires a Sponsor to provide a full-time employee to be in responsible charge of the project even if the Sponsor uses an engineering consultant as Project Manager.

1 http://www.fhwa.dot.gov/programadmin/contracts/1273.cfm
2 http://www.ipmsltd.com.tr/
The Project Manager (PM) supervises the entire project rather than focusing on specific tasks. Some of the PM’s primary responsibilities include facilitating communication and achieving agreement between the involved parties and anticipating and preventing problems before they happen. The PM needs to be involved in the entire project from start to finish, including attendance at all meetings, and have the authority to ensure adherence to contract provisions. It is expected that the PM will be an employee of the Sponsor (not necessarily full-time) and reimbursed by the Sponsor, by payroll or contract. If not a Sponsor employee, the PM must be consultant selected through a qualifications-based selection process. The number of days the PM spends on-site will depend on the size of the project and the operations in progress on a daily basis.

The PM will work directly with the Engineer-in-Charge (EIC) to complete designated duties. The PM should prepare a brief evaluation report at the time of monthly estimate submission.

An overview of the PM’s duties follows:

- Ensure CMP-approved staff is on-site.
- Ensure the CMP recordkeeping system is properly setup and being used. (The PM should be added as reviewer with the EIC if APPIA or another software system is utilized.)
- Review Daily Work Reports (DWRs) and Engineer’s Diary at least once a week.
- Receive schedule of work as provided by the contractor to track major items of work and to plan reviews.
- Review major construction items, spot-checking all operations at least once a week and note operations and inspection capability.
- Review project schedule once every 2 weeks.
- Review material acceptance documentation at least once a week – cover items under construction for the week.
- Ensure material quality assurance testing procedures are in place and followed.
- Review monthly contract estimate when prepared.
- Review DBE/Employee Utilization to ensure goal compliance, or ensure a Good Faith Effort (GFE) plan is in place at estimate submission.
- Sign-off on estimate submission with the EIC on monthly basis.
- Review required Maintenance and Protection of Traffic (M&PT) plan at least once a week or for major operations affecting traffic.
- Prepare monthly evaluation of consultant inspection for operations.

The PM will also work closely with the Regional RLPL staff and attend all RLPL oversight visits. The PM will also be required to attend all FHWA reviews, such as Financial Integrity Review and Evaluation (FIRE) reviews and 5%-10% spot checks.

### 15.3 CONSTRUCTION SUPERVISION AND CONSTRUCTION MANAGEMENT PLAN

#### 15.3.1 Preconstruction Phase

A Construction Management Plan (CMP) should be drafted at the Design Review and Approval stage of the project. Before the start of construction, the Sponsor must meet with the RLPL to review the Sponsor’s CMP and to coordinate the Sponsor’s functions with NYSDOT’s oversight responsibilities. (Note this is not the pre-construction meeting with the contractor which is covered later in this chapter.)
Chapter 15 Administer Construction Contracts

NYSDOT

Prepared by

Chapter 15 Administer Construction Contracts

Revised

NYSDOT Procedures for Locally Administered Federal Aid Projects

July 2011

The CMP serves as an aid in tracking such project milestones as construction monitoring and staffing, including the pre-construction meeting; Quality Control (QC)/Quality Assurance (QA) plan for major items of work; material quality assurance testing; project recordkeeping documentation; order-on-contract process; and pay estimate review process. Assignment of project staff should be finalized, and activities requiring additional attention should be identified and documented in the CMP. The construction inspection project staff qualifications must be included in the CMP, such as current National Institute for Certification of Engineering Technicians (NICET), American Concrete Institute (ACI) Field Testing Technician or NYS Field Testing Certification standards. The NYSDOT “Construction Inspection Staffing Patterns,” Table 1, is available in this chapter to aid in determining staffing needs. The Sponsor’s PM and construction inspection staff must be aware of NYSDOT and FHWA contract administration requirements, procedures and practices.

Final CMP review should confirm that the document is up-to-date, reflects the actual construction management conditions and ensures the adequacy of staff availability and qualifications. The CMP must be approved and signed by the RLPL. The CMP must be updated when project conditions change.

The Sponsor’s primary point of contact will be with the RLPL. Depending on project circumstances, the RLPL may require the Sponsor to contact the Regional Construction Group, which may appoint a Regional Construction Liaison to the project. (The RLPL must be copied on all correspondence when the Sponsor deals with other NYSDOT staff.) The CMP should be reviewed at the meeting along with other project-specific concerns. The following sub-sections summarize the key requirements of the CMP (see Chapter 12). The Construction Quality Assurance Checklist should be included in the CMP. (See the Construction Monitoring section and Appendix 15-16)

15.3.1.1 Materials Quality Control and Quality Assurance

For project segments on the State or National Highway System, NYSDOT will perform off-site Quality Assurance (QA) for materials as required by the NYSDOT Standard Specifications; Construction and Materials, the same as it would for State-let projects.

For projects off the State or National Highway System (including highways which are signed as US or NY touring routes but are not State-owned), NYSDOT may want to be involved in the material approval QA and inspections as required by NYSDOT Standard Specifications. The RLPL must be consulted during the development of the design approval document for a determination as to who will be responsible for material approval and inspections.

A QC/QA plan for major contract items must be prepared by the Sponsor and its contractor prior to the start of construction work. All contract items, regardless of origin, must comply with their individual specification requirements and with NYSDOT requirements which are available at the NYSDOT website. These plans should be reviewed and approved (i.e., signed) by the RLPL/RCL, Sponsor/PM, Contractor and Consultant Inspection firm prior to start of construction.

Checklists in Chapter 8 may assist the Sponsor in finalizing their Materials Quality Control and Quality Assurance Procedures.
15.3.1.1.1 Project Segments on the State or National Highway System

Projects on the State or National Highway System require the materials supplied to be in accordance with the NYSDOT Standard Specifications and associated addenda. The Sponsor must develop a QC/QA plan to ensure satisfactory work. The plan must be approved by NYSDOT. NYSDOT will perform off-site QA for materials required by NYSDOT Standard Specifications for locally administered transportation projects the same as it would for State-let projects. The Sponsor must ensure the contractor has provided the RLPL with the following:

- The name and address of each manufacturer of all materials requiring off-site quality assurance in accordance with NYSDOT’s Standard Specifications.
- The name and address of each fabricator of each steel item or any portion thereof.
- The name and address of each fabricator of structural precast and/or pre-stressed items or any portion thereof.
- The name and address of each fabricator of bridge bearings.

The RLPL will provide one copy of each of the above, along with a copy of the contract proposal and plans, to the NYSDOT Regional Materials Engineer, the Director of the Materials Bureau, and the Deputy Chief Engineer, Structures, with the name and telephone number of the RLPL.

15.3.1.1.2 Project Segments off the State or National Highway System

Projects off the State or National Highway System also require the materials supplied to be in accordance with the NYSDOT Standard Specifications and associated addenda. Sponsor or their engineer must develop a Quality Control/Quality Assurance (QC/QA) plan to ensure satisfactory work. The plan must be approved by NYSDOT as outlined in the Sponsor’s CMP. The QC/QA plan should reflect the scope, character and risks of the project. In general, large, complex projects should have plans equivalent to those of NYSDOT. For simple projects, at a minimum, the Sponsor should require the manufacturers, vendors, contractor and engineer to certify which materials, workmanship and design, as necessary, are in conformance with the specifications. There should be sufficient documentation as per the specifications to ensure project expenditures remain eligible for federal reimbursement.

NYSDOT may be able to assist the Sponsor with inspection support. For example, when the Sponsor’s contractor is obtaining hot-mix asphalt from a NYSDOT inspected plant, the NYSDOT inspector may be able to monitor the Sponsor’s material inspection requirements. The Sponsor must make arrangements as early as possible prior to the construction season with NYSDOT (through the RLPL) for inspection services on a project-specific basis. Depending on the items, source of supply, NYSDOT schedules and resources, etc., the following options may be available:

- NYSDOT inspection services available at no cost to the Sponsor if the work can be performed at no additional cost to NYSDOT.
- NYSDOT inspection services available at cost to the Sponsor if the work can be reasonably accommodated. (This arrangement will require a State-local agreement and submittal of a deposit of the Sponsor’s share of the cost prior to construction phase authorization.)
- NYSDOT can identify to the Sponsor consultants which provide both in-State and out-of-State inspection services. Project specific arrangements would have to be made by the Sponsor and the consultants. Inspection services must be paid for by the Sponsor, or its inspection consultant, but may not be paid by the contractor.
The consultant inspection services are eligible for federal reimbursement. The inspection services must occur prior to the Sponsor’s request for reimbursement. Inspection services procurement must comply with the Brooks Act (see chapter 6).

15.3.1.1.3 Control of Materials/Materials Acceptance Procedures/Compaction Testing

In addition to the guidance in this manual regarding the testing, control and acceptance of all construction materials for project segments on and off the State Highway System or NHS, Sponsors of locally administered federal aid transportation projects must consult the following manuals:

- NYSDOT Standard Specifications for Construction and Materials
- NYSDOT Steel Construction Manual
- NYSDOT Prestressed Concrete Construction Manual
- NYSDOT MURK 1A (Contract Administration Manual)
- NYSDOT MURK 2A (Materials Inspection Manual)
- NYSDOT MURK 1B (Construction Inspection Manual)
- NYSDOT Materials Bureau Materials Methods
- NYSDOT Geotechnical Engineering Bureau Manuals and Procedures

15.3.2 Pre-Construction Conference

The Sponsor must schedule a pre-construction meeting with the contractor, construction inspection firm, and NYSDOT to discuss the contractor’s plan, schedule, any potential construction issues and the CMP, which should reflect the aforesaid matters. A representative from NYSDOT (the RLPL or Construction Liaison) must attend. The NYSDOT representative(s) will describe their role of routine checks for compliance and will discuss the level of NYSDOT’s involvement. If the project includes work on or affecting a State highway the NYSDOT Regional Permit Engineer must also be invited to attend.

Depending on the size and complexity of the project, the Sponsor may schedule a separate meeting with the contractor to discuss the contractor’s civil rights responsibilities and reporting requirements. The contractor’s civil rights responsibilities are specified in the contract, including non-discrimination, Equal Employment Opportunity goals, Disadvantaged Business Enterprise goals, and training.

During the pre-construction and construction phases, the Sponsor must give advance notice to the RLPL concerning significant construction meetings such as utility, pre-pave or pre-pour for bridge decks. Advance notification is to allow the RLPL adequate time to notify, and to coordinate with, the various regional construction specialists, if need be, who might be asked to attend such meetings. The type and frequency of such meetings must be outlined in the CMP.
15.3.3 Construction Phase

15.3.3.1 Construction Safety

Title 23 CFR 635.108 requires the Sponsor to ensure the contractor complies with all applicable federal, state and local laws governing the safety, health and welfare of any person working on the project site. The contractor must provide safeguards, safety devices, and protective equipment and take any other reasonable steps to protect the life and health of persons working on the project site. All reasonably necessary actions must be taken to safeguard the public and to protect property in accordance with the performance of the work covered by the contract.

On public works projects all laborers, workers, and mechanics must be certified as having successfully completed the 10-hour OSHA construction safety and health course. The contractor will provide the Sponsor’s EIC with certificates of completion of the 10-hour OSHA course for each worker. The contractor will provide a list of the employees who have completed the 10-hour course, and the EIC will review the list with each certified payroll submission.

15.3.3.2 Construction Inspection

Title 23 CFR 635.123 requires inspections with a frequency appropriate for the work being performed. Providing satisfactory construction supervision and inspection is the responsibility of the PM. The Sponsor or its designee must perform detailed inspections. Construction inspection must verify the materials installed meet the requirements of the contract documents, the project is built in accordance with approved plans and specifications, and quantities used are documented sufficiently through measurement or other means to support payments for completed work. Projects must be staffed with an EIC and additional field inspectors in accordance with the approved CMP. NYSDOT will review the staffing plan in light of staffing patterns established for similar State-inspected construction contracts.

Sponsors must use NYSDOT Standard Specifications, approved Special Specifications and current NYSDOT policies and procedures (see Chapter 9). The Sponsor or its designee is responsible for compliance.

NYSDOT’s role concerning construction supervision is one of oversight, spot checking, verifying compliance and, on a limited basis, technical and administrative assistance. NYSDOT oversight will include field visits as well as office reviews of contract documents. The RLPL will be responsible for determining the amount of oversight necessary.

Sponsor’s designer or consultant inspection firm must provide shop drawings review and approval services for all structural steel and pre-cast or pre-stressed concrete work. Structural steel design and approval, fabrication, and erection must be done in accordance with the provisions of the Steel Construction Manual (SCM).

Construction Inspection activities and staff availability should be documented in the Construction Management Plan (CMP). Any changes to information contained in the CMP made during the course of the construction contract must be documented with a revision date and acknowledged by the signature of the EIC, RLPL, and Sponsor.

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3MURK Part 1C Safety & Health Program Manual (S&H)
The following table can be used to determine appropriate construction inspection staffing.

### TABLE 1 Construction Inspection Staffing Guidance

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**NOTE:** If contractor proposes Shift Operations adjust these numbers accordingly. These numbers are approximate values and should be adjusted based on project complexity and contractor schedule.

For all projects the construction inspection staff must be working under the direct supervision of a Licensed Professional Engineer (Architect for building projects and Landscape Architect for planting or environmental remediation projects). This does not mean, however, that the EIC must be a licensed engineer. The definitions of the National Institute for Certification in Engineering Technologies (NICET) job titles are included in Appendix 15-15, Construction Inspection Job Descriptions.

The following are the NICET Title Descriptions:

**Level I (Student Technician)**
A Transportation Engineering Technician - Level I performs beginning level technician work within a specified career field under direct supervision of a qualified technician or engineer.

**Level II (Associate Engineering Technician)**
A Transportation Engineering Technician - Level II is qualified to perform intermediate level technical work within a specified career field under direct supervision of a qualified technician or engineer.

**Level III (Engineering Technician)**
A Transportation Engineering Technician - Level III is qualified to independently perform, test, inspect and record technical work of a considerable degree of complexity within his career field.
Level IV (Senior Engineering Technician)
A Transportation Engineering Technician - Level IV is qualified to act as an assistant to a Professional Engineer and to act with authority as delegated by the Professional Engineer in matters in which engineering precedent has been established.

15.3.3.2.1 Construction Inspection on the State or National Highway System
NYSDOT will take a more active inspection role in project segments on the State or National Highway System. Depending on the complexity of the project, the NYSDOT representative may conduct site visits weekly, daily, or, for simple projects, only once. On complex projects, NYSDOT may assign a NYSDOT representative to a project full time. The Sponsor must coordinate with the RLPL to determine if a NYSDOT representative will be assigned to the project so that the State-Local Agreement can include this arrangement and the necessary deposit from the sponsor can be submitted.

15.3.3.2.2. Construction Inspection off the State or National Highway System
NYSDOT will take a less active inspection role in projects segments off the State or National Highway System. For instance, if the project consists of installing landscape features, the RLPL may make a site visit only once, at the conclusion of the work. Prior to the start of construction, the PM should work with the RLPL to establish a procedure and schedule for individual project reviews.

15.4 CONTRACT ADMINISTRATION AND DOCUMENTATION
Records must be created and maintained to document the contract was administered in compliance with the contract provisions and specifications, including compliance with prevailing wage rates, civil rights, safety, and other requirements. Costs claimed for undocumented or improper work cannot be reimbursed with federal funds. The contractor and the Sponsor must provide timely notification to NYSDOT of all serious accidents, safety violations and quality-related issues. This notification policy should be reflected in the CMP and the project records must show the resolution of any such issues.

Title 23 CFR 635.123 requires the project records be available at the project field office for inspection by NYSDOT staff, typically represented by the RLPL, and the Federal Highway Administration (FHWA) personnel, although other State and federal agencies such as the Office of the State Comptroller (OSC), the U.S. Government Accountability Office (GAO) and the USDOT Inspector General (IG) can legitimately ask to review the project records. (Sponsors should always verify the credentials of those requesting to review the project records.) If certain records are kept off-site, this must be noted at the pre-construction meeting, documented in the CMP, and the location clearly identified at the site.

NYSDOT has established record keeping procedures and forms to assure adequate documentation for NYSDOT projects. Manual of Uniform Record Keeping; Part 1B, The Construction Inspection Manual (CIM) outlines these procedures in detail and includes instruction for the use of the related forms.

The Sponsor may adopt NYSDOT’s MURK procedures and documents, or utilize its own, provided adequate automated records (using APPIA, Field Manager, or equivalent application) are created and maintained. If the Sponsor uses its own procedures, those procedures will need to be reviewed and approved by NYSDOT and FHWA. Such approvals require additional time,
which should be reflected in the Sponsor’s project schedule. Request for approval of alternate procedures and documents should start during the project development phase.

*Contract Administration Manual*[^4], MURK Part 1A, Section 96 (Bulletin Boards) has a list of all posters and notices which are required to be posted on the bulletin boards at the work site. This requirement should be discussed at the pre-construction meeting (prior to establishing the field office).

### 15.4.1 Inspection Records

The Sponsor must create and maintain adequate inspection records to ensure documentation exists for the acceptance of both the quality and quantity of materials, equipment, labor and other items as necessary. The basis of acceptance for quality, the method of measurement and the basis of payment are established by the specifications. The records must indicate work accomplished, checks and tests performed, the results of those checks and tests, and payments made in accordance with specifications. The Sponsor must ensure each item in the contract is documented sufficiently to satisfy an audit at a later date. Care must be taken so double billings are avoided. Detailed documentation is required for work performed by railroads or utilities paid for on a force account or time and materials basis.

The PM is responsible for assuring that all recordkeeping/documentation is in accordance with the Manual for Uniform Record Keeping (MURK) requirements. The PM must review on a scheduled basis all inspection records produced by the EIC, consultant and staff to assure MURK compliance.

NYSDOT previously developed the Computerized Engineer’s Estimate System (CEES), an engineer estimate worksheet to track quantities and prepare monthly estimates. NYSDOT no longer uses CEES for new projects, although it is available free of charge on the NYSDOT website. NYSDOT no longer provides technical support for the product and intends to phase out the product by 2015. NYSDOT recommends using a more versatile software application to document project administration activities. The costs of purchasing such products are reimbursable with federal transportation funds as part of the cost of inspection services.

### 15.4.2 Change Orders

A change order (or Order-on-Contract) is prepared and processed when it is necessary to:

- Change the project scope and/or limits, including the addition of detours. (Significant changes to the project scope and/or limits may require the contract to be terminated and the project re-let.)
- Increase or decrease significantly of any contract pay items. (Payments will only be processed for authorized quantities.)[^5]
- Add new or modified pay items required to complete the work in accordance with the contract.
- Adjust payments due to contract provisions.


[^5]: See Section 104-04, Significant Changes in the Character of Work, NYSDOT Standard Specifications
The change order must provide sufficient explanation to document that the work is necessary and consistent with the approved Design Approval Document (DAD), the specifications and the scope and intent of the State-Local Agreement.

All change orders must be prepared in accordance with the MURK and be reviewed by NYSDOT, regardless of size or fund source. NYSDOT will obtain FHWA approval as appropriate for project scope changes. For NYCDOT change orders, contact the NYSDOT Region 11 Construction Group for special procedures.

The following changes must be approved by NYSDOT prior to starting work covered by a change order:
- Significant* changes for any project on the NHS.
- Significant changes within the contract scope and limits.
- Changes outside the contract limits.
- Total net value of all changed work exceeding the field change payment item established for the project in the contract plans. (This may require the processing of a Supplemental Agreement to the State-Local Agreement.)

*Significant, as defined in the NYSDOT Standard Specifications, Sec.104-04 Significant Changes in the Character of Work, or as defined in the contract documents.

Although, the following minor changes do not require NYSDOT approval prior to construction, they must be submitted for review, concurrence and documentation purposes:
- Minor changes within the contract scope and limits.
- Quantity increases or decreases, not indicated above.
- New items not defined as significant (within the original scope).
- Changes within field change payment item amount.

23 CFR 635.120 (b) outlines approval process for change orders. In addition, 23 CFR 635.120 (f) specifies that non-participating change orders are subject to review and concurrence (not necessarily approval) by NYSDOT.

Change order procedures should be included in the CMP with specific information provided regarding the funding eligibility of the change order costs and the approvals required. (See Chapter 12.)

The Sponsor’s EIC will prepare a change order which will be reviewed for approval and recommendation by the PM. The PM will submit the approved change order to the RLPL for review and/or approval.

15.4.3 Time Extensions

The Sponsor must have adequate written procedures to determine contract duration as per 23 CFR 635.121, Contract Time and Contract Time Extensions. Contract duration (time) must be in the construction contract. Section 108 Prosecution and Progress of NYSDOT’s ‘Standard Specification’ will be used unless the Sponsor has a documented time extension process.

Contract time extension requests submitted by the contractor must be fully justified and adequately documented and are subject to approval of the Sponsor. Time extension requests must be submitted at least 30 days prior to the contract completion date. The Sponsor must submit all requests for time extensions to the RLPL for approval, regardless of project type.
The RLPL must also determine if a time extension of the construction contract requires a time extension for the State-Local Agreement. Time extensions for the construction contract which do not extend the work into another construction season or impact the traveling public but result in a change to the State-Local Agreement often can be accommodated through a No-Cost Time Extension. Extensions of the construction contract may also require processing of a Supplemental Agreement to the State-Local Agreement (see Chapter 4).

It is imperative that the PM monitors and EIC documents all contract delays in a timely manner throughout entire duration of the project. All Time extension requests and approvals shall be in writing and must follow the documented procedures.

15.4.4 Subcontractor Approvals

In accordance with 23 CFR 635.116, the prime contractor must perform not less than 30% of the total original contract bid price (excluding any identified specialty items) with its own organization. NYSDOT Standard Specifications, however, require that the prime contractor perform not less than 50% of the total original contract bid price excluding any identified specialty items. In this instance, the stricter New York State requirement supersedes federal law. The contract documents may place additional restrictions on subcontracting. Specialty items as defined in Section 108-05 of the NYSDOT Standard Specifications may be performed by subcontract, and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. Specialty items must be identified in the contract documents.

Each subcontractor must be approved by the Sponsor prior using page 2 of Form AAP20LL/CONR89LL to the subcontractor starting work. The subcontractor approval process is identical to the process used to verify the eligibility of the prime contractor described in Chapter 14. The Sponsor is required to check the subcontractor's status for federal debarment, NYS Department of Labor debarment and the eligibility of a firm to perform work in New York State as certified by the NYS Department of State. The Sponsor must also make sure the relevant federal contract clauses are contained in the prime contractors' agreements with its subcontractors.

The Sponsor must provide assurance to the RLPL that each subcontractor’s eligibility has been verified. This may be a note, memorandum, e-mail, etc., explaining to the RLPL how the Sponsor verified eligibility. The RLPL is available when necessary to assist the Sponsor to determine subcontractor eligibility.

For contracts on the State or National Highway System, Form CCA-2, New York State Uniform Contracting Questionnaire is also required for all subcontractors, (see Chapter 14). Sponsors and contractors can inquire about the eligibility status of subcontractors on the Vendors List by calling the Vendor Responsibility Office at (518) 457-1564.

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6 [www.epls.gov](http://www.epls.gov)
7 [www.labor.state.ny.us/workerprotection/publicwork/PDFs/debarred.pdf](http://www.labor.state.ny.us/workerprotection/publicwork/PDFs/debarred.pdf)
8 [http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry](http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry)
15.4.5 Disputed Work

If the contractor files a claim on the contract or a dispute arises over the work, the Sponsor will notify the RLPL as soon as possible so the Sponsor and RLPL can coordinate efforts to resolve differences. The RLPL is available to provide guidance but will not arbitrate or mediate of the dispute. The Sponsor is expected to pursue diligently a satisfactory resolution of disputed work issues or claims within a reasonable period of time as required by the Standardized Changed Condition clauses per 23 CFR 635.109 (see Chapter 12) and Section 105-14 of the NYSDOT Standard Specifications. The Sponsor’s costs to settle work disputes, contract claims, or court awards must be reviewed and approved by NYSDOT prior to reimbursement per 23 CFR 635.124. Any disputed work should be documented in the project records. Disputed work issues or claims must be resolved prior to the closeout of the State Local Agreement. There is no mechanism for payments to be made concerning such disputed work issues and claims after project closeout.

15.4.6 Buy America

Buy America statutory and regulatory provisions require all steel and/or iron products used in federal aid projects to be of domestic origin. In accordance with 49 USC 5323(j) and with 49 CFR Part 661 and 23 CFR 635.410, as well as with Section 146 of the State Finance Law, as amended, permanently incorporated steel or iron materials must be domestically produced regardless of the percentage they comprise in a manufactured product or form they take. Not following Buy America requirements places the entire project at risk of losing all federal aid. The Sponsor should be aware of the Buy America requirements if the contractor requests a change in materials due to availability problems. Contractors must be aware of the Buy America contract provisions and take this into account in developing their bids and proposed schedules. Even inadvertent use of foreign steel or an inadequate search for domestic steel by the contractor is a violation of the Buy America requirements.

Contractors must supply only domestic steel or iron materials and, consequently, will be paid the domestic price contained in the bid proposal. The contractor is responsible for ensuring the domestic steel or iron materials supplied are in conformance with this regulation. All items, regardless of origin, must comply with their respective specification requirements.

The contractor may permanently incorporate in the construction of a project a minimal amount of foreign steel and/or iron materials if the combined cost of such materials does not exceed one tenth of one percent (0.1 %) of the total contract cost or $2,500, whichever is greater. The combined cost of foreign steel and/or iron materials will be the value of the materials as they are delivered to the contractor, documented by invoice or bill of sale to the contractor.

The way in which the steel or iron materials are utilized has an impact on when to apply the Buy America provisions. Steel or iron material uses can be categorized into the three following categories:

- Permanently incorporated
- Temporary
- Temporary but must remain in place

Permanent incorporation includes items specified in the contract documents (or bid option specified in the contract documents) which must remain in place at the end of the project.
includes items which are impractical to remove due to design, construction staging or other functional requirements. If an item is specified in the contract documents and it is impractical to remove the item, the Buy America provisions apply. The Buy America provisions also apply to the re-use of steel or iron items for permanent installations such as railroad rail, tie plates, rail anchors, steel beams or girders, guiderail and manhole castings.

Temporary steel or iron materials specified in the contract documents, which are not required to be permanently incorporated into the project, are not subject to Buy America coverage. This includes an item specified in the contract documents for one stage of the project, but for all practical purposes, may be removed during a subsequent phase of the project or may be removed at the contractor’s convenience (or left in place if requested by the contractor and approved by the contracting agency). Examples of such items include:

- Temporary sheet pile walls used to support an excavation which can be removed after the work is completed.
- Drilled shaft casing utilized to hold the drilled hole open which can be removed while the contractor is placing concrete.

Buy America provisions apply to steel or iron materials that are temporary but must remain in place. These are materials specified in the contract documents to facilitate construction activities on a temporary basis but must remain in place to maintain the integrity of the permanent work or are impossible or impractical to remove. Examples of such items include:

- Temporary sheet piling which cannot be removed because tiebacks for the permanent wall have been installed through the temporary sheet piling.
- Stay-in-place bridge deck forms.
- Interim sheeting – the top portion of the sheeting is cut off and removed but the remainder of the sheeting is required to remain in place.
- Contractor’s means or methods which prevent the removal of temporary steel or iron materials.

Waivers from the Buy America requirement may be requested from FHWA if it can be demonstrated that the materials are not produced in the United States in sufficient and reasonably available quantities or are not of satisfactory quality or that use of domestic steel or iron materials would otherwise be inconsistent with the public interest. When steel/iron products are available domestically, project schedule is not a factor in the consideration of Buy America waiver approval. Waivers must be approved prior to installation. (Refer to NYSDOT Standard Specification, Section 106-11.)

For federally aided transportation contracts, final approval of any Buy America waiver request will be made by the Federal Highway Administration Headquarters in Washington, D.C., and must be concurred with by the Director of the NYSDOT Office of Construction.

FHWA Buy America waiver resources can be found at the websites below.¹⁰

¹⁰ [www.fhwa.dot.gov/construction/contracts/waivers.cfm](http://www.fhwa.dot.gov/construction/contracts/waivers.cfm)  
[www.fhwa.dot.gov/construction/cqit/buyam.cfm](http://www.fhwa.dot.gov/construction/cqit/buyam.cfm)  
[www.fhwa.dot.gov/construction/contracts/080313.cfm](http://www.fhwa.dot.gov/construction/contracts/080313.cfm)
15.4.7 Compliance With Prevailing Wage Requirements

Title 23 USC 113 provides the FHWA’s statutory authority to implement Davis-Bacon provisions on federal aid highways. Title 23 CFR 635.117(f) provides the FHWA’s regulatory reference that requires the inclusion of Davis-Bacon prevailing wage rates on federal-aid projects. Title 23 USC 101(a)(5) and Title 23 CFR 635.309(f) provides the FHWA’s regulatory reference that requires the inclusion of Davis-Bacon prevailing wage rates as a condition of the FHWA’s construction authorization. Federal Davis-Bacon wage rate schedules must be included in the Contract Documents in their entirety. (See Chapter 12.)

Payment of Predetermined Minimum Wage applies to all federal-aid construction contracts within the right-of-way of a federal-aid highway exceeding $2,000 and to all related subcontracts. The Davis-Bacon Act limits coverage to laborers and mechanics employed directly upon the site of the work. Davis-Bacon requirements are not applicable to highways functionally classified as local roads or rural minor collectors. Work on such facilities, however, falls under the jurisdiction of NYS Labor Law.

NYS Labor Law, Section 220, Hours, Wages and Supplements, contains several provisions that require Sponsors to develop procedures to administer or ensure compliance with the Labor Law. Prior to letting a project, the Sponsor must submit a PW 39 Request for Wage and Supplemental Information to the New York State Department of Labor (NYSDOL) Bureau of Public Works. If NYSDOL determines that Article 8 or Article 9 of the NYS Labor Law applies to the work, it will assign a Prevailing Rate Case (PRC) number and provide a prevailing wage rate schedule which must be included in the contract proposal. As an alternative to including State wage rate schedules in Contract Documents in their entirety, a reference or internet link to the most recent NYSDOL wage rate determination can be provided in a Note in the contract proposal. NYSDOL bulletins or cover letters that may accompany the issuance of State wage rate determinations should not be included in the Contract Documents, as they do not apply to local Sponsors and may consequently cause confusion.

In some circumstances, NYSDOT or Sponsor may perform the construction work using their own forces. Davis-Bacon provisions do not apply to governmental agencies and states. Public agencies are not considered “contractors” or “subcontractors” within the meaning of the Davis-Bacon Act.

15.4.7.1 Prevailing Wages

The contractor must pay prevailing wages for a legal day’s work of not less than the rate of wages plus supplements prevailing at the time the work is performed to the “laborers, workingmen or mechanics employed in the performance of the contract,” in accordance with the prevailing wage rate schedule included in the contract proposal. (Note that not every person working on a contract site is necessarily a “laborer, workingman or mechanic.”) Prevailing wage rate schedules are typically effective from July 1 to June 30 of the following year. Current wage rate schedules and corrections/updates are available on the NYSDOL website. Corrections are typically posted for the first of each month, and identify what crafts in what counties have been corrected or amended. Wage rates for labor classifications required by the contractor not appearing in the prevailing wage rate schedules must by requested from the NYSDOL. Work
without an applicable labor classification (such as mowing grass) that is required by the contract (though not necessarily a contract pay item) must be paid a prevailing wage if conducted by a “laborer, workingman or mechanic”. Note that watchmen/guards and quality control technicians are not a “laborer, workingman or mechanic”. (Security services firms must be licensed in accordance with NYS General Business Law, Article 7.)

The contractor is responsible for, and will be held accountable for, paying the current wage rate. Failure to comply with this requirement could result in a fine being levied against the contractor, in addition to the contractor paying whatever monetary compensation is owed to the employee(s) in question.

If a prevailing wage rate schedule is not included in the contract proposal, (for mowing, litter pick-up contracts, etc.) then the work has been determined by NYSDOL to not be prevailing wage work. The only labor-related requirement for these contracts is that the contractor must pay minimum wages.

15.4.7.2 Labor Affidavits

NYS Labor Law 220-a concerns the distribution of wage rate schedules and labor affidavits.

1. The prime contractor must provide the EIC with a Prime Contractor’s Certification, Form AC 2947, with original signature with each payment request submitted to verify payments were made to laborers and that such payments met prevailing wages and supplements for labor classifications employed.

2. The contractor must provide each subcontractor with a copy of the prevailing wage rate schedules and supplements included in the contract before the subcontractor starts work and immediately obtain a Subcontractors Certification, Form AC 2948. A certification with an original signature must be provided to the EIC by the contractor before each subcontractor starts work. If a subcontractor goes out of business and the contractor neglected to secure the certification, the State Comptroller will not process the final estimate until NYSDOL authorizes it, which could cause an extensive delay in close-out.

3. When a contract is audited by NYSDOL or the FHWA, labor affidavits verify that the proper wages were paid throughout the contract.

4. When revised schedules of wages and supplements are issued (typically annually, on July 1), the contractor must provide each subcontractor with the revised schedules and obtain a revised certification (Form AC 2948). Each wage rate period during which the subcontractor will perform work requires a separate certification. A copy of these revised certifications should also be provided to the EIC before work is performed in the new wage rate period.

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5. For the Final Agreement closing the construction contract, final labor affidavit(s) must be provided to the Sponsor. (See Standard Specifications, Section 109-09.)

15.4.7.3 Wage Rate Interviews

Wage rate interviews are required as a check on compliance with prevailing wage rate schedules. The EIC must ensure contractor personnel are interviewed and wage rate interview forms are completed. Interviews should be conducted as soon as possible after workers in a new trade appear on the job site so that problems can be resolved in a timely manner. (Interviews may be of limited value until after the worker has received at least one paycheck.) A suggested sampling rate for conducting interviews is at least one interview in each trade employed by the contractor and each subcontractor. For long duration (multi-year) contracts, interviews should be conducted annually, particularly after wage rate increases on July 1. On contracts with larger workforces, the percentage of interviews will be lower, as the intent is to sample each contractor/trade combination. It is recommended that interviews be conducted on payday so that the contractor's employees will know their pay rate. The interview results must be documented on the Form MURK 10 Wage Rate Interview and checked against contract requirements and payroll records.

15.4.7.4 Prompt Payment

The Sponsor is responsible for ensuring that all contractors comply with the prompt payment contract requirements. These requirements must be included in the Sponsor's contract documents.

NYS General Municipal Law, Section 106-b, and NYS Finance Law Article 9, Section 139-f, require prime contractors to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor and provide for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be permitted. Be advised that New York State law is more stringent than 49 CFR 26.29, which allows 30 days for payments to subcontractors, and the stricter requirements supersede the federal regulation.

15.4.8 Civil Rights Reporting

In accordance with Title VI of the Civil Rights Act of 1964 and 49 CFR Part 26, a Sponsor shall ensure equal opportunity for Disadvantage Business Enterprises (DBEs) for contractors and Equal Employment Opportunity (EEO) for employees participating in the federal-aid highway program. This information is included in Appendix A-1 which must be appended to all contracts for contractors and subcontractors.

The Sponsor is responsible for monitoring the contractor's performance in meeting civil rights requirements. To the extent feasible, the contractor and Sponsor shall use the current version of NYSDOT-approved civil rights reporting software on all contracts. The contractor shall submit complete, accurate, electronic data to the Sponsor each month, not later than the 15th of the following month. Data shall be current through the end of the last full payroll week for that month, or as otherwise approved by the EIC or PM to coordinate with contract payment

submittals. As soon as practicable, but not later than prior to the first contract payment, the contractor shall enter all current utilization data into the NYSDOT-approved civil rights reporting software. When it is not feasible to use the NYSDOT-approved civil rights reporting software, electronic Excel application forms are available on the PLAFAP web site, Chapter 15. Below is a table showing the required reports and when they are to be submitted. Fill-able reporting forms can be found on the Chapter 15 page of the NYSDOT PLAFAP website.\footnote{\url{www.nysdot.gov/plafap/view-document?id=1415}}

**TABLE 2 Civil Rights Reporting Forms**

<table>
<thead>
<tr>
<th>Report No.</th>
<th>Report Name</th>
<th>Due to Sponsor</th>
<th>Due to RLPL</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAP15LL</td>
<td>Designation of Affirmative Action Representatives by Contractors/Subcontractors</td>
<td>As revisions occur</td>
<td>Within 1 week of Sponsor review</td>
</tr>
<tr>
<td>AAP19LL</td>
<td>DBE Schedule of Utilization</td>
<td>As revisions occur</td>
<td>Within 1 week of Sponsor review</td>
</tr>
<tr>
<td>AAP20LL/CONR89LL</td>
<td>DBE Utilization Worksheet/Approval to Subcontract</td>
<td>As revisions occur</td>
<td>Within 1 week of Sponsor review</td>
</tr>
<tr>
<td>AAP21LL (formerly AAPHC89LL)</td>
<td>Contractor Report of Contract Payments</td>
<td>With Payment Requests</td>
<td>Within 1 week of Sponsor review</td>
</tr>
<tr>
<td>AAP22LL</td>
<td>Pre-Award DBE Material Supplier Commitment Information</td>
<td>As suppliers are added</td>
<td>Within 1 week of Sponsor review</td>
</tr>
<tr>
<td>AAP23LL</td>
<td>Pre-Award DBE Trucking Commitment Information</td>
<td>As trucking firms are added</td>
<td>Within 1 week of Sponsor review</td>
</tr>
<tr>
<td>AAP26LL</td>
<td>Monthly Training Progress Report</td>
<td>15\textsuperscript{th} of the month</td>
<td>20\textsuperscript{th} of the month</td>
</tr>
<tr>
<td>AAP33LL</td>
<td>Employment Utilization Report</td>
<td>15\textsuperscript{th} of the month</td>
<td>20\textsuperscript{th} of the month</td>
</tr>
<tr>
<td>AAP35LL</td>
<td>Workforce Participation Plan</td>
<td>Preconstruction meeting</td>
<td>Within 1 week of Sponsor approval</td>
</tr>
<tr>
<td>FHWA 1391</td>
<td>Federal-aid Highway Construction Contractors Annual EEO Report</td>
<td>3\textsuperscript{rd} Friday in Aug.</td>
<td>4\textsuperscript{th} Friday in Aug.</td>
</tr>
<tr>
<td>USDOT Uniform Report of DBE Commitments/Awards and Payments</td>
<td>3\textsuperscript{rd} week in Oct. and April</td>
<td>4\textsuperscript{th} week in Oct. and April</td>
<td></td>
</tr>
</tbody>
</table>

15.4.8.1 **Equal Employment Opportunity (EEO) Monitoring and Reporting**

The AAP33LL is to be submitted as follows:
- 1 report for the contractor;
- 1 report for each subcontractor who worked during the reporting period;
The FHWA 1391 is required for all federal aid contracts for which work was performed during the last full pay period in July. The Sponsor is to verify the AAP33LL against the annotated payrolls for the reporting period.

The FHWA 1391 is to be submitted as follows:
- 1 report for the contractor;
- 1 report for each subcontractor who worked during the reporting period;
- and 1 composite report.

The Sponsor is to verify the FHWA 1391 against the annotated payrolls for the reporting period. A listing of contractors and subcontractors that did not work during the reporting period can be provided to the RLPL in lieu of the FHWA 1391.

15.4.8.2 Disadvantaged Business Enterprise (DBE) Monitoring and Reporting

Significant revisions to DBE utilization that were approved as part of the recommendation for award must be submitted by the Sponsor to the RLPL for approval. This includes: adding DBE firms; removal/substitution of DBE firms; significant reduction of quantities or agreed payment amounts to existing DBE firms; and, significant increases of quantities or agreed payment amounts to existing DBE firms. Revised AAP19LL forms and revised/new AAP20LL/CONR89LL forms must always be submitted jointly. AAP20LL/CONR89LL forms must always be co-signed and co-dated by the DBE and approved by the signature of the Sponsor. Work should not be performed until the AAP20LL/CONR89LL is approved. New suppliers or changes to existing suppliers must have an AAP 22LL. New trucking firms or changes to existing trucking firms must have an AAP23LL. The amounts and descriptions on the AAP19LL, the AAP20LL/CONR89LL, the AAP22LL, and the AAP23LL must all agree. The Sponsor must ensure that the work scheduled to be completed by a DBE is completed by that firm, and not by the contractor, another subcontractor, or their affiliates. If a DBE performs additional work beyond the value shown in the original schedule, the additional participation must be reported and credited. DBE attainments are tracked based on payments to the subcontractor not through item bid prices, which may differ from the amount paid to a subcontractor. The Sponsor must submit to the RLPL on a monthly basis Form AAP21LL Contractor Report of Contract Payments, which covers the previous month. If payments are not current, the prime contractor must note on form AAP21LL. (Form AAP21LL was previously named AAP89LL.)

When a contract is awarded with commitments less than the contract goal(s) based on Good Faith Efforts (GFE) (see Chapter 14), the contractor must continue those efforts until the goal is met or exceeded. The Sponsor should review the contractor’s efforts periodically, typically before the beginning of a new construction season, and when significant new items of work are added to the contract. If significant changes to DBE certification or availability have occurred, the review should not replicate the pre-award GFE review, but be based on current documentation. The sponsor must submit all periodic GFE reviews to the RLPL with a recommendation for concurrence.

15.4.8.2.1 Commercially Useful Function

A Commercially Useful Function (CUF) occurs when a DBE is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising that work in accordance with normal industry practice. A DBE does
not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or if its role is limited to that of an extra participant through which funds are passed in order to obtain the appearance of DBE participation. In fact, such activities may constitute fraud.

Regardless of whether an arrangement between the contractor and the DBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, the contractor shall receive no credit toward the goal and may be required to backfill the participation. If a DBE is not fulfilling a commercially useful function, note the circumstances with supporting documentation and notify the RLPL immediately. Supporting documentation shall include, but not be limited to: payrolls; invoices; delivery tickets/slips; bills of lading; and, canceled checks.

15.4.8.2.2 Workforce

The DBE shall employ a work force (including administrative and clerical) separate and apart from that employed by the contractor, other subcontractors, or their affiliates. The routine transfer of work crews from another employer to the DBE is not allowed.

The Sponsor must check to ensure employees do not appear on both DBE and non-DBE firm payrolls. During wage rate interviews, employees should be asked for whom they work. Shirts, hats, etc. with company logos should match with the individual’s employer.

15.4.8.2.3 Supervision

All work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the contractor, other subcontractors, or their affiliates. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the work of the contract. Forepersons/Supervisors of other firms should not function as supervisors of the DBE’s workforce.

15.4.8.2.4 Equipment

The DBE subcontractor may supplement its equipment by renting or leasing additional equipment in accordance with customary industry practice; however, no more than 50% of the cost of the equipment required to perform the work of the subcontractor may be obtained from contractor, other subcontractors, or their affiliates. If the DBE obtains equipment from any of those sources, the DBE shall provide documentation demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include, but not be limited to: copies of the rental or leasing agreements; and, the names, addresses and terms quoted by the other sources of equipment. Removable magnetic signs on equipment may be an indication that the subcontractor is not using its own equipment.

15.4.9 Uncompleted Work Agreements

An Uncompleted Work Agreement (UWA) is an agreement made between the Sponsor and the contractor when the contract work has been substantially completed. The decision to execute an Uncompleted Work Agreement rests with the Sponsor. It is required that the Sponsor use the NYSDOT procedures when entering into an Uncompleted Work Agreement. (Refer to NYSDOT
Standard Specification Section 109.) The Sponsor should review the agreement for conformance to contract provisions and require sufficient funds to be withheld to ensure completion of the work. Sufficient funds is typically considered to be twice the total of the uncompleted items, plus funds for work zone traffic control, general overhead, etc., if not reflected in the item total. NYSDOT will not begin the project closeout process until the Uncompleted Work Agreement is closed out. The RLPL must be notified of all Uncompleted Work Agreements, regardless of project type.

15.4.10 Records Retention

Records must be retained by the Sponsor in accordance with current State and federal retention schedules. In general, federal regulations require the retention of all project records and source data on a particular construction project funded by FHWA for a minimum of 3 years after the date the State submits the final voucher for federal reimbursement. The date of the final voucher submitted by the State to the FHWA may occur after the final payment is made to the contractor. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken as per 49 CFR 49.53.

Because reimbursement of the federal portion of the contract amount is dependent upon the original verified documents, it is imperative that these documents are carefully maintained, recorded and then transferred to safe, adequate storage after the contract is completed. Record retention must be addressed in the Sponsor’s CMP, and requirements for the project must be clearly outlined.

For project segments on the State or National Highway System, records must be maintained for 10 years after submission by the State of the final voucher for the project to FHWA.

For project segments off the State or National Highway System, records must be maintained for a minimum of 3 years after submission by the State of the final voucher for the project to FHWA.

15.5 CONSTRUCTION MONITORING

The project Sponsor is responsible for providing adequate oversight and inspection of construction work to ensure compliance with contract plans and specifications, construction management plan and federal requirements. Documentation must be kept to satisfy possible future audits. Final inspection of the project is performed by the Sponsor.

The NYSDOT Region is responsible for providing administrative and technical guidance when requested, verifying compliance with applicable federal and State requirements, assisting in dispute resolution, and monitoring project progress. The RLPL should be invited to attend the final inspection and may make periodic inspections during the construction phase to better gauge project progress.

The Construction Quality Assurance Checklist (see Appendix 15-16) is a useful tool for Sponsors and a required quality assurance document for the NYSDOT Regional staff to expeditiously complete the tasks of tracking project elements and phases, cost and schedule, construction monitoring and scheduling, material quality assurance testing, project documentation, change orders, DBE/EEO goals, wage rate compliance and pay estimate review. NYSDOT RLPLs are required to use the checklist. It is also recommended that Sponsors use the checklist in preparation for NYSDOT quality assurance visits. All formal reviews must be appended to the CMP and added to NYSDOT’s project records.
15.5.1 **Financial Integrity Review and Evaluation (FIRE)**

The Financial Integrity Review and Evaluation (FIRE) is a FHWA financial oversight and review program which establishes a systematic process for identification and prioritization of program area risks and development of strategies for risk mitigation. Each FHWA Division Office is required to perform FIRE investigations annually during the federal fiscal year (October 1 through September 30).

In support of the FIRE program, the FHWA Area Engineers conduct a minimum of one FIRE Review on one federal aid project per Region per fiscal year. Typically, they conduct more than the minimum number of reviews. This process includes activities for evaluating and testing the controls which are related to the financial aspects of construction contractor payments. The process should include any aspect of the project involving preparation of the project estimate, approval and payment of estimates, processing of change orders, and the completion, final acceptance of the work, and submission of all required documentation. Sponsor should follow this manual to avoid disallowances and minimize risk of losing federal funds in a FIRE investigation.

A list of FIRE Interview Questions and a FIRE Review Checklist for Locally Administered Projects can be found on NYSDOT’s website. A standard inspection report (Form FHWA 1446A,) is used by FHWA to report their findings.

15.5.2 **Federal Aid Ineligibility Notice (FAIN)**

The Federal Aid Ineligibility Notification (FAIN) Form FHWA-1367 is a document issued by the FHWA. The FAIN identifies items which FHWA has determined to be ineligible for federal aid reimbursement. The reasons for ineligibility are described in the FAIN. Ineligible items cannot be claimed unless corrective action has been taken and approved by FHWA. In most instances FAINs are issued by FHWA only after the State has exhausted all of their appeals and FHWA has made a final determination that costs are ineligible. (See Chapter 3)

15.5.3 **Bridge Inspection Scheduling**

For bridge construction, reconstruction, or rehabilitation projects, the Sponsor must notify the RLPL and the NYSDOT Regional Structures Engineer of the date of official bridge closure and the anticipated date the bridge will be open to highway traffic a minimum of 30 days prior to the opening so the biennial bridge inspection can be scheduled. For staged construction, this may include opening a portion of the structure to highway traffic.

Within 60 days of any publically-owned bridge being fully opened to highway traffic, or of contract final acceptance, whichever occurs first, the structure must be inspected by NYSDOT.

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15.6 CONSTRUCTION CLOSEOUT

15.6.1 Final Inspection

When construction is complete, the Sponsor is responsible for:

- Formally accepting construction of the project.
- Closing all agreements with contractor(s), utility companies, railroads, consultants, etc.
- Notifying NYSDOT of project acceptance.

Final inspection must be conducted by the Sponsor. The Sponsor must notify and schedule a final site visit with the RLPL when the project is ready for final inspection. The RLPL will arrange for a NYSDOT construction representative to attend the final inspection, if necessary.

In general, final inspection should involve:
- Determination that work was completed in accordance with the contract documents.
- Identification of any deficiencies which need to be corrected.
- Determination if there is excess property acquired which can be surplused.
- Submission to the RLPL of as-built plans for highway projects involving NYSDOT facilities.
- Submission to the RLPL of as-built plans and a load rating report for bridge projects, as well as a copy of the formal request for an inspection.

15.6.1.1 Project Segments on the State or National Highway System

For project segments on the State or National Highway System, the RLPL or other Regional representative must participate in the final inspection.

15.6.1.2 Project Segments off the State or National Highway System

For project segments off the State or National Highway System, the RLPL or other Regional representative may participate in the final inspection depending on contract type, size, frequency and timeliness of previous visits. The RLPL must make a final site visit before the close out of the State-local agreement can be completed.

15.6.2 Construction Contract Closeout

The Sponsor is responsible for the closeout of the contract between the Sponsor and the contractor, using its own procedures to ensure the necessary documentation is collected as described in the Sponsor’s CMP and for verifying all outstanding issues are resolved. Items which should be included are:

1) Acceptance of work by the Sponsor.
2) Agreement between the Sponsor and Contractor concerning final contract items and quantities.
3) Form CONR 193 Material Certification.\(^{18}\)
4) Final signed Form AAP33LL Employment Utilization Report.
5) Final co-signed and co-notarized Form AAP21LL Contractor Report of Contract Payments.
6) Confirmation that all change orders and extensions of time were processed.
7) Releases for any Uncompleted Work Agreements.

The State-Local Agreement must be closed out in accordance with the guidance in Chapter 17 Local Project Close-outs.

15.7 REFERENCES

Title 23 Code of Federal Regulations (CFR) is the source for general FHWA requirements. Specific guidance for construction and construction inspection is found in parts 635 and 637.\(^{19}\)

NYSDOT MANUALS

**Manual of Uniform Record Keeping (MURK)**\(^{20}\)

This document provides policy, procedure and forms for use with the NYSDOT Standard Specifications. The parts are:

    MURK 1A  **Contract Administration Manual (CAM)**
    Corresponds to Section 100 (General Conditions) of the NYS Standard Specifications;
    MURK 1B  **Construction Inspection Manual (CIM)**
    Corresponds to Sections 200-699 (Technical) of the NYS Standard Specifications; and,
    MURK 2A  **Materials Inspection Manual (MIM)**
    Corresponds to Section 700 (Materials testing and acceptance procedures) of the NYS Standard Specifications.

**NYS Standard Specifications**\(^{21}\)

The NYSDOT Standard Specifications is a body of directions and requirements for commonly used items of construction for bridge and highway work.

**NYS Steel Construction Manual (SCM)**\(^{22}\)

This document provides the details of various steel construction and acceptance procedures.

**NYS Prestressed Concrete Construction Manual (PCCM)**\(^{23}\)

This document provides the details of various pre-cast concrete construction and acceptance procedures.

**Geotechnical Construction Manuals**\(^{24}\)


\(^{19}\) [www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm](http://www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm)


\(^{22}\) [www.nysdot.gov/divisions/engineering/structures/manuals/scm](http://www.nysdot.gov/divisions/engineering/structures/manuals/scm)

\(^{23}\) [www.nysdot.gov/divisions/engineering/structures/manuals/pccm](http://www.nysdot.gov/divisions/engineering/structures/manuals/pccm)
The NYSDOT Geotechnical Engineering Bureau maintains several documents which provide the details of various geotechnical testing, construction and acceptance procedures. 

**FEDERAL LAWS & REGULATIONS**

23 USC 101  
23 USC 113  
23 USC 5323  
23 CFR 633  
23 CFR 635  
23 CFR 637  
49 CFR 26  
49 CFR 49  
49 CFR 661  
Title VI, Civil Rights Act of 1964

**STATE LAWS & REGULATIONS**

NYS General Business Law, Article 7  
NYS Finance Law, Article 9, Section 139-f & 146  
NYS General Municipal Law, Section 106(b)  
NYS Labor Law, Section 220