



Expires – Upon Issuance of LPP

Updated Form FHWA-1273 REVISED NOVEMBER 2022

I. BACKGROUND

Form FHWA-1273, “Required Contract Provisions Federal-Aid Construction Contracts” has been updated, and final notice of availability has been published in the Federal Register on July 5, 2022. The updated Form FHWA-1273 dated July 5, 2022, is accessible on FHWA’s Construction Program Guide website at:

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>. A section-by-section summary of the changes to the form is available at:

https://www.fhwa.dot.gov/construction/cqit/fhwa1273_changes220705.pdf

II. POLICY

The updated Form FHWA-1273 (revised July 5, 2022) must be physically incorporated in all Federal-aid construction projects that have bid opening or responses to solicitations due on or after September 6, 2022.

Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23, United States Code, as required in 23 CFR 633.102(b). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts. The requirement to use the updated Form FHWA-1273 does not apply to existing contracts or projects with bids or responses to bids due prior to September 6, 2022. LPAs may begin using the updated Form FHWA-1273 (revised July 5, 2022) immediately at their option.

III. PROCEDURE

Local Assistance Procedures Manual (LAPM) Exhibit 12-G: Required Federal-aid Contract Language is updated to include the new Form FHWA-1273. Local Public Agencies (LPAs) must use the updated Exhibit 12-G as outlined in the Policy Section.

IV. APPLICABILITY/IMPACTS

The Office Bulletin applies to all Federal-aid construction projects. LPAs must utilize the revised Exhibit 12-G with the updated Form FHWA-1273 (revised July 5, 2022) for all Federal-aid construction contracts that have bid opening or responses to solicitations due on September 6, 2022, or later. LPAs are required to revise their existing PS&E package if it includes the older version of Form FHWA-1273 for bids or responses to solicitations due on or after September 6, 2022.



Chapter / Exhibit	Description of Changes that supersede current publications
<p>LAPM Chapter 12 Section 12.8: Federal Contract Requirements</p> <p>The noted sub-sections have been revised to agree with the revised language to Form FHWA-1273.</p>	<p>Modifications of Form FHWA-1273 by Special Provision The revised Form FHWA-1273 included significant changes to the applicability of Davis-Bacon and Related Acts. Under the revised 1273, projects located outside the federal-aid system may be treated as federal-aid, if applicable laws require them to be treated as located in the federal-aid system. Applicability of Davis-Bacon is no longer exclusively based on location but based on location and funding sources.</p> <p>Use of Local Hiring Preference Though this topic is not discussed in Form FHWA-1273, this section has been updated since the Infrastructure Investment and Jobs Act (IIJA) allows local agencies to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project.</p> <p>Cargo Preference Act Requirements These clauses are now included in the Form FHWA-1273 July 5, 2022 revision</p>
<p>Exhibit 12-G Required Federal-aid Contract Language</p>	<p>Section 14 Cargo-Preference Act Removed</p>
<p>Exhibit 12-D PS&E Checklist</p>	<p>Cargo-Preference Act Removed from XII. Federal Requirements</p>
<p>Exhibit 12-E PS&E Checklist Instructions Section XII. Federal Requirements</p>	<p>Added clarification for when projects are treated as federal-aid even if they are not located on a federal-aid highway based on updated Davis-Bacon language.</p>

Recommended: Original signature on file
Kitae Nam, Policy Liaison

November 1, 2022
Date

Approved: Original signature on file
Tanzeeba Kishwar, Chief
Office of Guidance and Oversight

November 1, 2022
Date

- Attachments:
- Attachment 1 – LAPM Exhibit 12-G: Required Federal-aid Contract Language (rev. November 2022)
 - Attachment 2 – LAPM Exhibit 12-D: PS&E Checklist
 - Attachment 3 – LAPM Exhibit 12-E: PS&E Checklist Instructions
 - Attachment 4 – LAPM Chapter 12, Section 12.8

Chapter 12 **Plans, Specifications & Estimate**

OFFICE BULLETIN #22-05R

12.8 Federal Contract Requirements

Modifications of Form FHWA-1273 by Special Provision

Sections IV (Davis-Bacon and Related Act Provisions) and Section VI (Subletting or Assigning the Contract) of Form FHWA-1273 may not be applicable to some projects. If the project is exempted from either of these two provisions, it must be specified elsewhere in the contract by special provision that it does not apply.

Form FHWA-1273 includes significant changes to the applicability of Davis-Bacon and Related Acts which states that where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C.117, and National Highway Freight Program projects funded under 23 U.S.C.167.

Use of Local Hiring Preference

~~The LPA must not include contract provisions that require preferences to hire locally on any federal-aid contract. The contract provisions included in Form FHWA-1273 also require that the contractor not discriminate against labor from any other State. Any contract that includes provisions that require a contractor to give any preference in hiring (with the exception of Native Americans living on or near a reservation on eligible projects) shall make the contract ineligible for federal reimbursement.~~

The Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Law (BIL) allows LPAs to implement geographic or economic hiring preference (including local hiring preferences) relating to the use of labor on federal-aid construction projects.

LPAs may now include local hiring preference specifications in federal-aid contracts. The LPA must ensure the establishment and implementation of a hiring preference complies with all federal, State, and local laws, policies, and procedures. FHWA review and approval is not required.

Local hiring preferences should not be confused with project labor agreements (PLAs). Local hiring preferences may be implemented through contract specifications, without the use of a PLA. While local hiring preferences may be added to a PLA, doing so will trigger FHWA review and approval. This will add up to four to six months to the process.

More information regarding use of local hiring preference can be found at:

<https://www.federalregister.gov/documents/2022/02/11/2022-02974/enhancing-highway-workforce-development-opportunities-contracting-initiative>.

Cargo Preference Act Requirements

All federally-funded construction contracts must comply with the requirements of the Cargo Preference Act of 1954 and the implementing regulations in 46 CFR 381. Form FHWA-1273 includes the required Cargo Preference clauses.

~~LPAs must insert a contract clause referencing and requiring compliance with the requirements of the Cargo Preference Act of 1954 and the implementing regulations in 46 CFR 381 into all federally funded construction contracts. Until relevant provisions are added to Form FHWA-1273, the Use of United States — flag vessels clause provided in Exhibit 12-G must be included (either directly or by reference) in federally funded construction contracts.~~