

is available to the STA through the Division Offices. (The current electronic version of form FHWA-1273 is dated March 10, 1994.) Copies of the current versions of the Form FHWA-1273 and Form FHWA-1273A are included in the Appendix (see pp. A-5 to A-14).

Modification. STAs are not permitted to modify the provisions of Form FHWA-1273. Minor additions covering State requirements may be included in a separate supplemental specification, provided that they do not conflict with State or Federal laws and regulations and do not change the intent of the required contract provisions.

The following are brief summaries of the provisions in each of the sections of the Form FHWA-1273.

1. General

This section sets forth the general provisions of the Form FHWA-1273.

Section 1.1. The Form FHWA-1273 provisions apply to all work performed on the contract including work performed by subcontract.

Section 1.2. The Form FHWA-1273 provisions are required to be physically incorporated into each subcontract and subsequent lower tier subcontracts and shall not be incorporated by reference. The prime contractor is responsible for compliance with the Form FHWA-1273 requirements by all subcontractors and lower tier subcontractors.

Section 1.3. Failure to comply with the Required Contract Provisions may be considered as grounds for contract termination.

Section 1.4. Furthermore, failure to incorporate the Form FHWA-1273 into all subcontracts or failure to comply with the requirements of Section IV, Payment of Predetermined Minimum Wage, and Section V, Statements and Payrolls, may be considered as grounds for debarment under 29 CFR 5.12.

Section 1.5. Since the payment of a predetermined minimum wage and the submission of payrolls are requirements of DOL programs, disputes pertaining to these provisions (Sections IV and V) shall be resolved in accordance with DOL procedures.

Section 1.6. This Section sets forth general requirements pertaining to labor and employment as contained in 23 CFR 635.117.

a. Use of Local Hiring Preferences

References:

- 23 USC 112
- 23 CFR 635.117(b)
- Headquarters memorandum - "Local Hiring Preferences," April 20, 1994.

Applicability:

Applies to all Federal-aid highway construction projects.

Guidance:

The STAs may not include a provision that requires a contractor to give any preference in hiring on a Federal-aid project. Furthermore when an STA or local public agency has a policy that requires or creates a preference for local hiring, the contracting agency may not require or encourage a contractor to comply with this policy on Federal-aid projects (even if the hiring requirement is not included in the contract itself).

While the STAs (or local governments) are precluded from enacting such preference requirements on Federal-aid projects, this requirement does not apply to the Federal Government. Therefore, Federal hiring preference requirements, such as, EEO/Affirmative Action, Appalachian Preference, and Indian Preference are not in conflict with this policy.

Some states and local public agencies have implemented policies which encourage or mandate the use of local employment or local contracting. In such cases, Federal-aid contracts (including invitations for bids or request-for-proposal documents) should contain specific provisions which state that such preferences are not applicable to contracts funded by FHWA. Compliance with local preference provisions will not be a condition of responsiveness in the consideration of bids or a condition of responsibility prior to the award of contract.

b. Use of Convict Labor

References:

- 23 U.S.C. 114(b)
- 23 CFR 635.117