

Contract Compliance: What the Contractor Needs to Know



FHWA 1273

FDOT Compliance Implementation

- To take advantage of FHWA funding, the State of Florida must develop and enforce a construction contract compliance program in accordance with FHWA 1273

Florida's program is outlined in FDOT Procedure 275-020-005-b:
Construction Contract Compliance Manual



FHWA 1273 - Requirements for the State of Florida

Noncompliance could result in
FHWA removing federal funds
from:

- The Project
- The entire District
- The entire State of Florida!!!



Each District has a **District Contract Compliance Office (DCCO)** which monitors compliance to FHWA 1273 and ensures it is implemented on all Federally funded projects.

- District Contract Compliance Manager (DCCM)
- Resident Compliance Specialists (RCS)

The four core areas

- **EEO – Equal Employment Opportunity**
- **DBE – Disadvantaged Business Enterprise**
- **OJT – On the Job Training**
- **WAGES – Payrolls**

Governance

- DBE & Non-Discrimination:

49 CFR

- **Part 12:** Prohibits discrimination in the USDOT Federally assisted programs
- **Parts 23 & 26:** Regulates participation by DBEs in State Departments of Transportation programs
- **Part 26:** Authorizes FDOT to issue sanctions for the condition and state of noncompliance in the DBE Program

Governance

- On-The-Job Training (OJT):

23 CFR Part 230 Appendix B to Subpart A

- Applicable to all contractors/subs on federal projects
- State program determines the number of required trainees

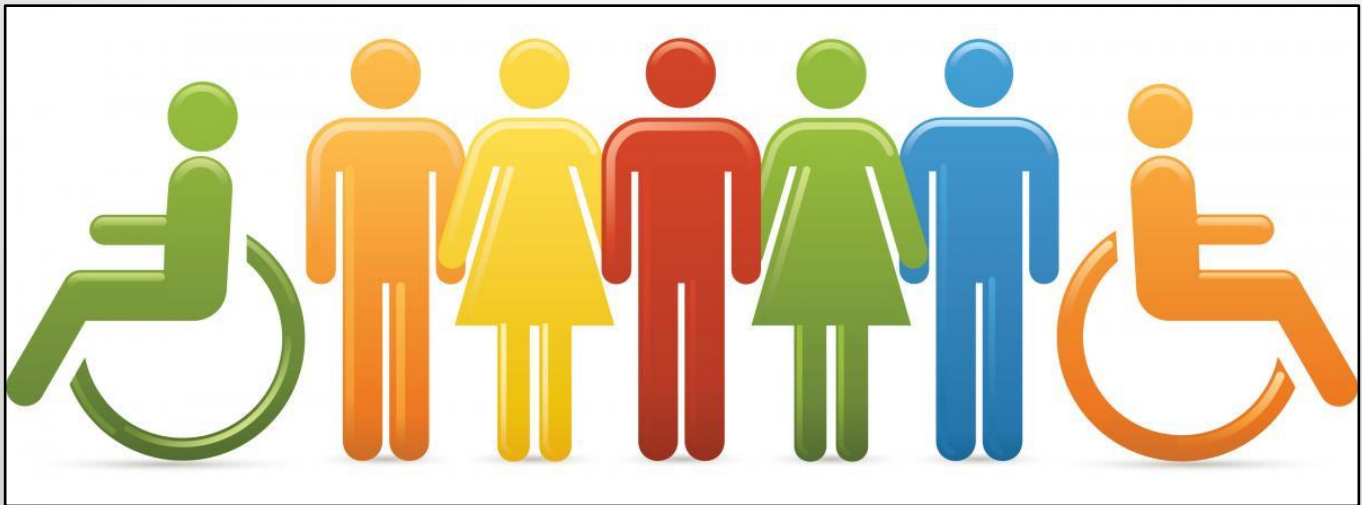
Governance

- WAGES:

*Davis-Bacon Act & Related Acts; 29 CFR
Parts 1, 3, and 5*

- Applicable to all contractors/subs on federal projects in excess of \$2,000
- Pay laborers/mechanics on a weekly basis
- Pay laborers/mechanics prevailing wage rates (+ fringes if applicable) in the correct classification
- Pay OT hours in excess of 40 hours/week
- *Copeland Act*

Equal Employment Opportunity (EEO)



Company EEO

- EEO/AA Plan
- EEO Officer (must be in FDOT directory)
- Supervisory and Personnel EEO Meetings
- Company-Wide EEO Reports (OJT projects)
- Contractor Recruitment Program
- Non-Segregated Facilities
- Analysis for
Nondiscrimination



Project EEO

- Jobsite Bulletin Board
- EEO Officer
- EEO Project Personnel Meetings
- Annual July EEO Report
- Training Assessments

All monitored by the Resident Compliance Specialist (RCS)

Job Site Bulletin Board

What must be on the board?

- (6) FDOT required posters
- (3) USDOL required posters
- Wage Decision (*ALL pages clearly displayed*)
- Additional Wage Classifications
- EEO Officers (*Prime and ALL subs over \$10,000*)



Job Site Bulletin Board

Where must the board be located?

- In a prominent, safe, maintained accessible site within the limits of the project

Job Site Bulletin Board

When must the board be installed?

- On or before workers first appear at the project (usually Begin Work date)
- During the life of the project

When can the board be removed?

- At Final Acceptance - when workers are no longer on the project

Disadvantaged Business Enterprise (DBE)



DBE - Definition

Disadvantaged Business Enterprise (DBE): A for-profit small business concern (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Disadvantaged Business Enterprise (DBE)

- FDOT has a race-neutral DBE Program, which means FDOT believes the overall goal can be achieved through the normal competitive procurement process
- The current statewide goal for Florida is 10.65%



DBE Forms

- **Bid Blank (Form #375-020-17)** - states the DBE availability goal assigned to the contract. The DBE availability goal is the DBE percentage that the Department believes can be realistically achieved on the project based on the number of DBEs associated with the scopes of work that will be performed on the project
- **Bidders Opportunity List** – list that is entered into the EOC (Equal Opportunity Compliance) system by **ALL** bidders which lists all companies that were solicited or submitted quotes to work on the project



Commercially Useful Function (CUF)

- *Only the value of the work actually performed by the DBE's workforce is counted as DBE participation*
- A DBE firm performs a CUF when it is responsible for execution of a distinct element of the work with its own workforce and it carries out its responsibilities by actually performing, managing and supervising the work involved
- A CUF will be performed during the first 30% of the contract being performed with the DBE's own workforce.
- The observation will be conducted, the review performed by the RCS and submitted to the DCCM when 30% has been verified by payments in EOC.
- The 30% requirement does not apply to DBE Trucking. Trucker Observations are performed once/month for the first three months for DBE truckers to verify CUF.

Commercially Useful Function (CUF)

275-021-18
EQUAL OPPORTUNITY OFFICE
10/21

- **New CUF Form implemented October 2021**
- **Validates that DBE provided materials, sold materials (60% credit) or manufactured or supplied materials (100% credit)**
- **Assist your RCS with obtaining documentation to answer CUF questions about materials**

SECTION 2: DBE IDENTIFICATION										
1. DBE Firm Name		2. DBE begin date		3. NAICS Code		4. Work Type				
5. DBE Functioning as		Subcontractor to prime <input type="checkbox"/> Lower Tier Subcontractor <input type="checkbox"/>		6. Contracted to whom		Supplier/Regular Dealer <input type="checkbox"/>		Manufacturer <input type="checkbox"/>		
7. Type of arrangement		Furnish & Install <input type="checkbox"/> Labor Only <input type="checkbox"/>		8. Attachments		Daily Work Report		<input type="checkbox"/>		
9. DBE Contract amount		10. DBE Commitment		11. DBE CUF = 30% Commitment		12. DBE Payments		Certification of Sublet & Schedule 'A' <input type="checkbox"/>		
				\$0.00				DBE Profile <input type="checkbox"/>		
SECTION 3: SUBCONTRACTOR										
1. Date Observed		2. Observer's Name (first & last)								
YES	NO	NIA	A. MANAGEMENT				YES	NO	NIA	B. PERFORMANCE
			1. It appears the DBE firm controls/supervises work performed by the DBE firm's workers/foremen.							1. Did the DBE firm subcontract any portion of the work to another contractor?
			2. At least one (1) worker was asked if DBE Manager/Foreman controls/supervises the DBE's work.							2. If '1' is 'yes', was the original commitment reduced accordingly?
YES	NO	NIA	C. WORKFORCE				YES	NO	NIA	D. EQUIPMENT
			1. Did the Resident Compliance Specialist (RCS) recognize any of the DBE firm's employees as appearing on payrolls of other contractors?							1. DBE firm appears to be using their own equipment.
			2. Does the information on the Daily Work Reports (DWR) appear consistent with the information on the DBE's payroll?				If no, identify which piece(s) of equipment:			
			3. Is the person who signs the DBE's certified payrolls an employee of the DBE and not the prime or hiring contractor?							2. Is all equipment being operated by DBE firm's employees?
YES	NO	NIA	E. MATERIALS							
			1. Was the material shipped to the DBE?			<input type="checkbox"/>	Documentation reviewed/attached	<input type="checkbox"/>	Other verification (explain):	
			2. Was the material purchased from a source other than the prime or any affiliate of the prime?			<input type="checkbox"/>	Documentation reviewed/attached	<input type="checkbox"/>	Other verification (explain):	
			3. Was the material billed to the DBE/DBE Owner/representative?			<input type="checkbox"/>	Documentation reviewed/attached	<input type="checkbox"/>	Other verification (explain):	
			4. Did the DBE firm pay for the material?			<input type="checkbox"/>	Documentation reviewed/attached	<input type="checkbox"/>	Other verification (explain):	
3. Comments										
None <input type="checkbox"/>										
SECTION 4: MANUFACTURERS and REGULAR DEALERS										
YES	NO	NIA	A. MANUFACTURERS							
			1. Were the products the type and quantity as described/listed? If 'no' re-evaluate eligible DBE participation before proceeding.			<input type="checkbox"/>	Documentation reviewed/attached	<input type="checkbox"/>	Other verification (explain):	
			2. Were the products manufactured at a facility maintained or operated by the DBE? If 'no', DBE is not acting as a manufacturer.			<input type="checkbox"/>	Documentation reviewed/attached	<input type="checkbox"/>	Other verification (explain):	
YES	NO	NIA	B. REGULAR DEALERS							
			1. Were the products the type and quantity as described/listed? If 'no' re-evaluate eligible DBE participation before proceeding.			<input type="checkbox"/>	Documentation reviewed/attached	<input type="checkbox"/>	Other verification (explain):	
			2. Did the DBE Dealer own/have physical possession of the products prior to delivery?			<input type="checkbox"/>	In-stock inventory	<input type="checkbox"/>	Other verification (explain):	
			3. For Bulk Supply, the DBE firm.			<input type="checkbox"/>	Maintains a warehouse for the supplies	<input type="checkbox"/>	Operates a long-term lease for housing/delivering supplies	
SECTION 5: CUF DETERMINATION										
Based upon the observations and review of relevant supporting documentation, I recommend the Department certify commercial useful function (CUF).							<input type="checkbox"/>	NO more investigation required		
							<input type="checkbox"/>	YES		
1. Date:		Completed by (print)		2. Name		4. Signature				
				3. Title		5. Comment				
				Resident Compliance Specialist (RCS)						
Based upon the observations reported and review of relevant supporting documentation, FDOT certifies the monitoring of DBE participation for compliance consistent with 49 CFR 26.87 and the commitments/payments have been accurately counted and are reflected in the FDOT reporting system in accordance with 49 CFR 26.65 and the approved FDOT DBE Program Plan.										
6. Date:		Reviewed by (print)		7. Name		9. Signature				
				8. Title		10. Comment				
				District Contract Compliance Manager or Designee						

DBE Commitment-EOC

- Purpose is to assist the Department in tracking and reporting the planned DBE utilization
- Submitted into the EOC prior to the Pre-Construction Meeting
- Revisions must be entered into the EOC system

FDOT EQUAL OPPORTUNITY COMPLIANCE **EOC**

FDOT Disclaimer

By logging on to a FDOT system, you acknowledge your responsibility to comply with all laws, rules, directives, policies, and procedures related to the use and security of information technology resources. Unauthorized use is strictly prohibited. You are hereby on notice that you should have no expectation of privacy as to your use of Department information technology resources as all data is potentially subject to Florida's public records law.

Account Information

For more information about EOC
[Help](#)

[I do not have a User Id](#) [Change Password](#)

User ID:

Password:

[Login](#)

FDOT Office of Information Systems **MyFlorida.com**

Florida Department of Transportation, Office of Information Systems
Report EOC questions to EOCHelp@dot.state.fl.us or call 850-414-4747
Report Technical Problems to [Email Service Desk](#) or call 1-866-955-4357(HELP)
[Internet Privacy Policy, Disclaimers & Credits](#)

DBE Payments-EOC

- Contractors are required to pay and enter the payments made to DBEs monthly into the Equal Opportunity Compliance System (EOC)
- DBE payments entered into the EOC will be totaled to determine the DBE's final participation percentage (utilization)

What can you do as Project Oversight to help achieve our DBE statewide goals?

- Know and discuss your DBE availability goal on your contracts
- Before your Pre-Construction Meeting and Progress Meetings, talk with your RCS/DBE Specialist to see if there are any concerns with the Prime Contractor meeting their DBE commitment
- Make DBE an item on your agenda

What can you do as Project Oversight to help achieve our DBE statewide goals? (cont.)

- If you see any subcontractors/trucking companies that have the potential to become DBE certified, contact the EOO office - Terry Watson.
- Communicate with your contractors regarding their efforts to utilize DBEs before the project begins and throughout the life of the project
- Records of good faith efforts are required to be kept and can be requested at any time by FDOT
- Remind contractors to keep EOC data updated

Contracts – Sublets – Rental Agreements

- Compliance refers to sublets to determine what type of work is performed; complete CUF [contract amount; type of work; if a Partial (Labor Only) or Full (Furnish & Install); whether a DBE has subcontracted work; etc.]
- Contracts – Audited to ensure FHWA 1273 is included properly
- Rental Agreements vs Sublets

Incentive for Achieving DBE Goal

If the contractor meets or exceeds the DBE percentage for their contract and records the payments to all DBEs into EOC on a monthly basis, they will earn bonus points on the final CPPR.



On the Job Training (OJT)



OJT Criteria

When is OJT required?

- Construction dollar amount is equal to or above \$2 million **AND**
- Contract time is 275 calendar days or more



Training Evaluation Meeting - TEM

- Meeting is coordinated by the RCS
- Occurs prior to the first day of work

Required attendees:

- Prime Contractor's Project Manager
- Project Administrator
- RCS
- DCCM

I'm Attending!



Recommended attendees:

- Prime Contractor's EEO Officer
- Subcontractors' Project Manager and/or staff who will enroll trainees

Training Evaluation Meeting – TEM (cont.)

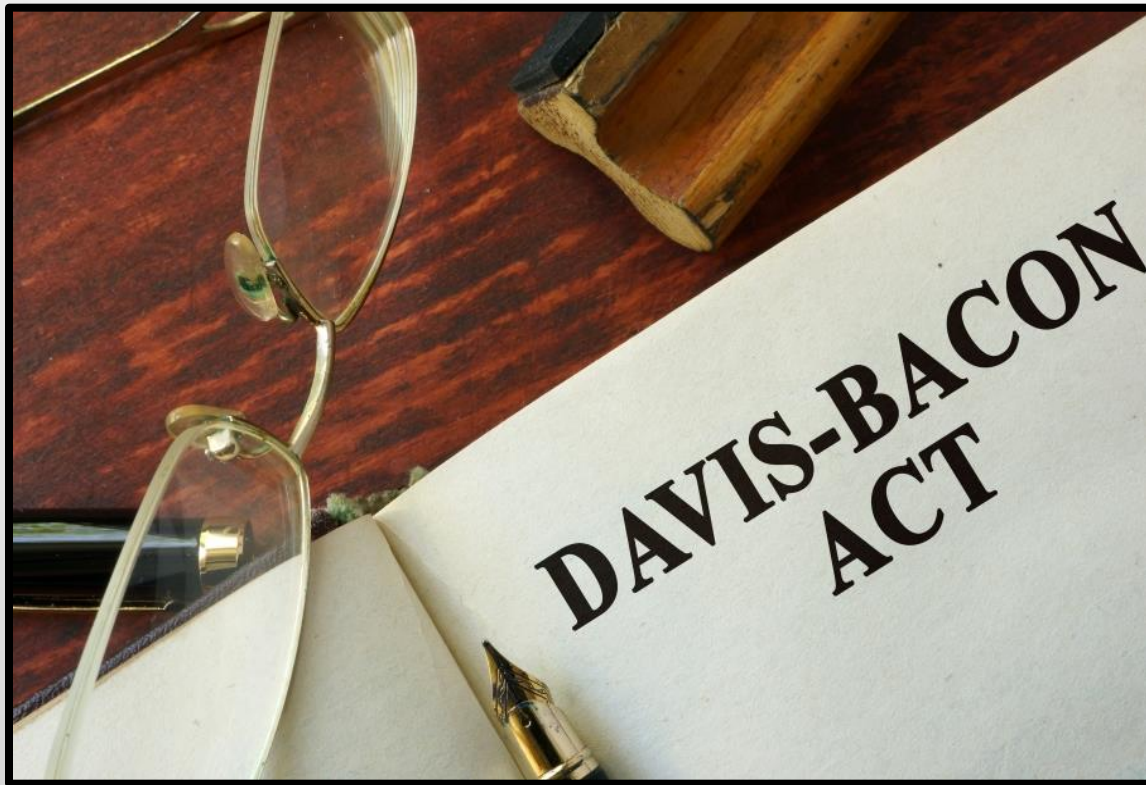
OJT Required Actions / Forms:

- Training Evaluation Meeting
- Discuss OJT Schedules – including the ability to move crews from project to project
- Trainee Enrollments
- Proficiencies
- Trainee Interviews
- Monthly Time Reports (MTRs)
- Graduations
- Transfers / Terminations



Wages

(Contractor and Subcontractor Payrolls)



Submittal of Payrolls

- All contractors on a project are required to pay their employees no less than weekly.
- Weekly Certified Payrolls are due to the RCS 7 calendar days after the contractor's regular payment date.

MAY						
SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Labor Interviews

Employee Interview Report –

(FDOT Form No. 700-010-63)

- Used to monitor payments made on Federal Aid construction projects in accordance with FHWA 1273
- Provides for monitoring of:
 - ✓ Proper classification
 - ✓ Wage payment
 - ✓ Knowledge of EEO Officer and bulletin board

Labor Interviews (cont.)

Required Minimum Number of Monthly Interviews

- Table 6.4.3 - based on the original contract amount
- Conducted on a random basis
- Cross section of active contractors and different demographics of workers
- ALL workers are subject to an interview (except for surveyors, supervisors, QA/QC testing, etc.)

Labor Interviews (cont.)

Performed for whom?

- Employees of both prime and subcontractors

Performed by whom?

- RCS and Inspectors

RCS responsibility?

- Ensure appropriate number of interviews were conducted
- Review interview data for compliance

Timeframe?

- Submit to RCS within 5 business days of completion

Labor Interviews (cont.)



Interviews are **CONFIDENTIAL!**

- No other employees or supervisors within listening distance
- Do not send interviews to the contractor when you have a discrepancy

What can you do as Project Oversight to assist in the Labor Interview process?

- Emphasize to inspection staff the importance of interviews
- Respond promptly to any discrepancy questions
- Timely submittal

Preconstruction Conference

- Assurance of Prompt Payment- The 30-day time period for payment is required at every tier (49 CFR 26.29 (a)). A contract provision must exist in every contract that requires contractors and subcontractors to pay for satisfactory performance of their contract (completion and acceptance) no later than 30 days from their receipt of payment.

Know Your District Contacts for Compliance

District Construction Compliance Managers –

D4- Sharon Singh Hagyan ; D6- Stanley Ford

Resident Compliance Specialist –

Assigned per Project

It's easy to reach us anytime.

**WE'RE HERE
FOR YOU.**

LET US KNOW HOW WE CAN HELP.

Important Links

- **FDOT Equal Opportunity Office**
 - <https://www.fdot.gov/equalopportunity/default.shtml>
- **FDOT EEO Construction Contract Compliance Manual**
 - [Contract Compliance Manual \(fdot.gov\)](#)
- **FDOT State Construction Office**
 - <https://www.fdot.gov/construction/>
- **FDOT District 4 and 6 Projects Website**

Q & A

