



# Staying Alive:

## A Survival Guide to 1273 Field Compliance

# AGENDA

Day One – Wednesday – January 17, 2018

<b>Registration</b>	<i>All</i>	<i>800a – 900a</i>
<b>Leadership Welcome</b>	<i>Victoria Smith, FDOT Nick Finch, FHWA</i>	<i>900a – 930a</i>
<b>Announcements &amp; Groovy Ice Breaker</b>	<i>Losa Smith, FHWA Pam Todd, FHWA</i>	<i>930a – 1000a</i>
<b>Section I, General</b>	<i>Carey Shepherd, FHWA</i>	<i>1000a – 1030a</i>
<b>Section II, Title VI</b>	<i>Jaqueline Paramore, FDOT</i>	<i>1030a – 1100a</i>
<b>Section II &amp; III EEO and Non-Segregation</b>	<i>Sandy Talbert-Jackson, FHWA</i>	<i>1100a – 1200p</i>
<b>Pizza Party Lunch &amp; 1970's Threads Contest</b>	<i>All</i>	<i>1200p – 100p</i>
<b>Section II, EEO and OJT &amp; Diversity Recruitment</b>	<i>Jacqueline Brown, FDOT Jill Cappadoro, QCA</i>	<i>100p – 200p</i>
<b>Section II, Subcontracting, DBE and Reporting</b>	<i>Tracy Duval, FHWA Terry Watson, FDOT</i>	<i>200p – 300p</i>
<b>Sections IV &amp; V, DBRA &amp; CWHSSA</b>	<i>Roy Richardson, USDOL</i>	<i>300p – 400p</i>

Day Two – Thursday – January 18, 2018

<b>Sign-in</b>	<i>All</i>	<i>830a – 900a</i>
<b>Sections VIII and X, Crime &amp; Punishment</b>	<i>Santos Ramirez, Jr</i>	<i>900a – 1000a</i>
<b>Sections VI, VII, IX &amp; XI, Kitchen Sink</b>	<i>Marvin Williams</i>	<i>1000a – 1100a</i>
<b>Burning Questions &amp; Discussion</b>	<i>All</i>	<i>1100a – 1200p</i>



U.S. Department of Transportation  
Federal Highway Administration





# Staying Alive:

## *A Survival Guide to 1273 Field Compliance*

### *Our Technical Experts*



**Marvin L. Williams – FHWA 1273 Sections VI, VII, IX and XI**

**FHWA Florida Division**

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**850-553-2241**

Since February 2007, Marvin L. Williams has been serving as the Major Projects Engineer in the Federal Highway Administration, Florida Division Office. Prior to this assignment, Marvin served for 6 years as an Urban Transportation Engineer where he led field operations on a Major Project, the Tampa Interstate Study. Marvin has held engineering, planning, design and maintenance positions within FHWA. He joined FHWA in 1988 as a Civil Engineer in Eastern Federal Lands Division, Arlington, VA, where he oversaw the roadway rehabilitation of the Lincoln Memorial Bridge. From 1985-1987, Marvin gained valuable engineer experience as a Civil Engineer in the United States Peace Corps as a Rural Water Deliver Engineer in the Yemen Arabic Republic. Marvin also earned a bachelor's degree in Civil Engineering Technology from Florida A&M University in 1984 and served in the United States Army from 1976-1979.



**William Richardson – FHWA 1273 Sections IV and V, DBRA & CWHSSA**

**US Dept of Labor, Wage and Hour**

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**904-366-0317**

William 'Roy' Richardson began his career as a Federal Investigator with the US Department of Labor's Wage and Hour Division enforcing the provisions of the SCA/Davis-Bacon/PCA, Fair Labor Standards Act, Family and Medical Leave Act, Employee Polygraph Protection Act, Consumer Credit Protection Act, Migrant and Seasonal Agricultural Protection Act and the H1-B, H2-A and H2-B guestworker visa program. His compliance efforts have been recognized with the Task Force Impact Award (2011), Special Congressional Recognition (2015), Secretary of Labor's Exceptional Achievement Award (2016 & 2017) and the Administrator's MOU Collaboration Award (2017). Currently, he serves as an Outreach and Planning Specialist and works to provide compliance assistance by helping increase knowledge of the laws that the Wage and Hour Division administers.



**Jacqueline Brown – *FDOT Compliance with FHWA 1273 Section II, EEO and OJT***

**FDOT District One**  
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**863-519-2757**

Jackie Brown is a native of Havana, Florida and veteran of both the U.S. Army and Army Reserve, where she worked in law enforcement, claims investigation and personnel management. She attended Tallahassee Community College and Florida State University while employed by the Florida Board of Regents before coming to Florida Department of Transportation in what is now the Equal Opportunity Office and the General Counsel's Office. Jackie was recruited from that office by the District Secretary of District One and gained additional experience hosting DBE Opportunity Workshops as the Economic Parity/DBE/MBE Coordinator before starting her career as one of the District Construction Compliance Specialists. She was eventually promoted to her current position as the District Construction Compliance Manager. Jackie has been a loyal employee of the State of Florida for over 30 years and enjoys working in her church.



**Carey Lee Shepherd – *FHWA 1273 Section I, General Provisions***

**FHWA Florida Division**  
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Carey is the Civil Rights Officer for Federal Highway Administration (FHWA) Florida Division. He provides oversight of and technical assistance to the Florida Department of Transportation (FDOT) in eight programs, including special outreach initiatives. Carey is a graduate of Florida State University and Mississippi College of Law. He has worked for FHWA since 2008 and has over twenty years of experience in Federal Civil Rights legal oversight, enforcement and litigation.



**Jacqueline Paramore – *FDOT Compliance with FHWA 1273 Section II, Title VI***

**FDOT Central Office**  
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**850-414-4753**

Jackie is the State Title VI Coordinator for the Florida Department of Transportation. In that capacity, she serves as the agency's lead in ensuring all FDOT programs and activities align with the requirements of Title VI of the Civil Rights Act of 1964 and other Federal and State nondiscrimination authorities. She is an Attorney with expertise and experience in Employment Law, and has worked in Affirmative Action programs to increase female representation in S.T.E.M. programs at Florida colleges and universities. Jackie is a graduate of both Florida A&M University and Florida State University College of Law.



**Jill Cappadoro – Diversity and OJT Recruitment Resources for Contractors**

**Quest Corporation of America (QCA)**

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**813-299-3613**

Jill Cappadoro is a vice president with Quest Corporation of America, QCA, where she serves as project manager and liaison for the Florida Department of Transportation's Construction Careers Consultant contract. She leads QCA's team in supporting the FDOT On-the-Job Training Program, providing assistance to unemployed adults and graduating high school students to secure jobs with prime contractors. Jill is an active member of ACE Mentor Program, as well as supports the TRAC & Rides Educational Outreach and National Summer Transportation Institute initiatives to inspire students toward a career in architecture, construction and engineering. A graduate of the University of South Florida (Go Bulls!), Jill is focused on developing marketing and communications programs that position complex messages for community understanding and managing projects from concept through completion.



**Tracy Duval – FHWA 1273 Section II, Subcontracting, DBE and Records & Reports**

**FHWA Headquarters Office of Civil Rights**

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Tracy Duval manages the supportive service programs for FHWA, as well as provides support to the Civil Rights program managers in developing and implementing regulatory guidance, and assisting in the development of outreach materials and technical assistance tools. She previously worked in Civil Rights/Right-of-Way with Federal Highway Administration (FHWA) Florida Division as a DBE Program Analyst. Tracy is a graduate of Bethune-Cookman University and Brenau University.



**Stefan Kulakowski – FDOT Host and FHWA 1273 Burning Questions**

**FDOT Central Office, Equal Opportunity Office**

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**850-414-4742**

Stefan Kulakowski serves as the State Contract Compliance Administrator in the Equal Opportunity Office of the Florida Department of Transportation. It is in this role that Mr. Kulakowski is primarily responsible for oversight and administration of the procedures which govern Equal Opportunity Contract Compliance in each district. Mr. Kulakowski works closely with District staff to implement a sound and consistent program. Mr. Kulakowski has 24 years' experience working with the State of Florida



**Terry Watson – FDOT Compliance with FHWA 1273 Section II, DBE Reporting**

**FDOT Central Office, Equal Opportunity office**

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**850-414-4763**

Terry V. Watson (Terry) serves as the State DBE Program Coordinator in the Equal Opportunity Office of the Florida Department of Transportation. In this role Mr. Watson is responsible for utilizing the Disadvantaged Business Enterprise (DBE) Program to ensure the Department and the construction industry achieve the states federal DBE goal. He also promotes and monitors adherence of the Departments DBE Program by prime contractors and consultants that perform Roadway & Bridge work throughout the state. Terry serves on the Florida Institute of Consulting Engineers (FICE) DBE subcommittee of the FICE Transportation Committee as well as works closely with the Florida Transportation Builders Association (FTBA) regarding DBE utilization by its members.



**Sandy Talbert-Jackson – FHWA 1273 Sections II and III, EEO & Non-segregated Facilities**

**FHWA Resource Center**

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This is Soul Sister Sandy TJ who is a member of the famous singing group of the FHWA Office of Technical Service - Resource Center's Civil Rights Technical Service Team in Baltimore, Maryland. As a Civil Rights Specialist with harmony and soul, she provides technical assistance, guidance, and training on a variety of Civil Rights program areas such as State Internal Equal Employment Opportunity (EEO), Affirmative Action, and Contractor Compliance to the FHWA Division Offices, State Transportation Agencies, Local Government Agencies, and other transportation customers nationwide. Prior to joining the FHWA family, Soulful Sandy was a "groovy" Compliance Officer for the Department of Labor, Office of Federal Contract Compliance Program (OFCCP) in Region 3 Baltimore District Office.

Not only does Sandy have soul, but she is also a talented National Highway Institute (NHI) Certified Instructor and recognized as a national expert in the areas of Equal Employment Opportunity, Nondiscrimination, and Affirmative Action Programs. She is also a member of the Society for Human Resource Management.



**Santos Ramirez, Jr – FHWA 1273 Sections VIII and X, Crime and Punishment**

**US DOT Office of Inspector General**

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Santos is a Special Agent with the U.S. Department of Transportation, Office of Inspector General (USDOT/OIG) in Sunrise, Florida. He's served in this capacity since 2000, originally in the New York Field Office. Santos is responsible for investigation of transportation-related matters, including contracts and grant fraud, qui tam, aviation and hazardous materials safety. Santos is also a veteran of the U.S. Air Force, retiring after 23 years of service.

<b>General and Administrative</b>	
What is the force and effect of the Contract Compliance Manual?	The <a href="#">FDOT Contract Compliance Manual</a> is the only approved source for information on FHWA 1273 civil rights oversight on federally-assisted contracts. FDOT Manuals have the effect of law for which sanctions or other corrective action may be sought in the event of noncompliance. FDOT and FHWA ask that Districts and contractors refrain from ad hoc interpretation of FHWA 1273 and related regulations, referring first to the Manual for official guidance. The Equal Opportunity Office (EOO) is maintaining a list of required updates and clarifications where the Manual is silent or unclear. Contact the Statewide Contract Compliance Administrator to report any concerns or issues with the Manual.
Must FHWA 1273 be included in Purchase Orders, Lease Agreements, etc.?	FHWA 1273 is not physically incorporated in Purchase Orders, Lease Agreements and Service/Supply Agreements. The General provisions of 1273 state, <i>"The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider."</i> Thus, the applicable provisions pertain, even in the absence of the physical document.
How do I determine which CEI firms are responsible for 1273 oversight in each district or on particular projects?	Because some Districts have in-house compliance staff, while others have district-wide and/or project specific consultant contracts for oversight, there is no convenient method for posting and maintaining this information. The Equal Opportunity Office (EOO) recommends contacting the District Contract Compliance Manager (DCCM) to identify active oversight staffing. DCCM contact information for each district is located on the <a href="#">EOO Contract Compliance</a> webpage.
How do I determine whether a contractor or subcontractor is ineligible to work on federally-assisted projects?	<p><a href="http://www.sam.gov">www.sam.gov</a> is now the Federal government's official source for information on firm suspension, debarment and exclusion. The online search feature makes verifying eligibility of contractors and subcontracts simple and fast. Compliance staff on federal-assisted projects, whether FDOT or LAP, should take a few moments to check eligibility of the contractor and subcontractors, using the Certification of Sublet as a tool. However, everyone is responsible for ensuring eligibility as part of compliance duties, FHWA, FDOT, districts, local agencies, contractors, etc.</p> <p>There are two additional state sources for suspended/debarred vendors:</p> <p>State of Florida suspensions:  <a href="http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information">http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information</a></p> <p>FDOT suspensions:  <a href="http://www.fdot.gov/construction/legal/NewSuspension.shtm">http://www.fdot.gov/construction/legal/NewSuspension.shtm</a></p> <p>The links to all three of these resources are provided on the <a href="#">Construction Office Webpage</a>.</p>
How often must	Neither FHWA nor FDOT require regular eligibility checks. Rather, ensuring eligibility

<p>I check the eligibility of contractors and subcontractors on my project?</p>	<p>before approving new or updated Certifications of Sublet should be sufficient to show due diligence. From time to time, a firm will be suspended or debarred while active on a federally-assisted project. FHWA forwards the lists of these firms to the FDOT State Construction, Equal Opportunity and Program Management Offices, who further distribute them to the districts and local agencies. In the event you discover an ineligible firm during the performance of the contract, simply advise the District Contract Compliance Manager (DCCM) or District LAP Administrator. Working with FHWA and Central Office, they will provide instructions on how to proceed.</p>
<p>What is a digital signature? And which contract compliance forms require a digital signature and which can still be hand signed?</p>	<p>A digital signature is a means of electronically executing a document. Digital signatures are generally ‘authenticated’ by an approved source and have password or other means of encryption/ protection. As such, they may take the place of notary or other certification of true signature. Digital signatures have same force and effect of a real or ‘wet’ signature, including the consequences for false statements. As the industry increasingly relies on paperless documentation, digital signatures will become more prevalent. Those doing business with FDOT are encouraged to obtain a digital signature through one of the approved sources. For more information, visit <a href="http://www.fdot.gov/construction/forms/ElectronicSubmit/DigitalCertificatesGuide.pdf">http://www.fdot.gov/construction/forms/ElectronicSubmit/DigitalCertificatesGuide.pdf</a> and stay aware of changing requirements. Use of digital signatures is an ongoing FDOT initiative and there is presently no definitive list of eligible forms. FHWA prefers digital signatures and is pleased to accept any/all documents in this format. Currently, FDOT has no LAP specifications for digital signatures and agencies may have differing requirements.</p>
<p>What are the signature requirements for compliance forms (CUF, OJT, etc.) and how is Central Office ensuring consistency among the districts?</p>	<p>FHWA approved the <a href="#">Contractor Compliance Manual</a> as an acceptable method of overseeing FHWA 1273 and related civil rights requirements on federal-aid construction projects. This specifically includes but is not limited to the forms FDOT promulgates to track OJT, DBE, EEO and Wage compliance. Forms that require but do not contain appropriate signatures – i.e., of the District Contract Compliance Manager (DCCM) and Project Administrator (PA), are not consistent with the Manual. FDOT Quality Assurance Reviews (QARs) and FHWA Project Accountability Reviews (PARs) examine project documents to ensure they are accurate, complete and reviewed/signed by the correct official(s). Both agencies have committed to consistency among the districts in execution of FDOT compliance documents.</p>
<p>When and how often will the Contract Compliance Manual be updated?</p>	<p>As part of FHWA’s approval of the <a href="#">Contract Compliance Manual</a>, FDOT committed to maintain it as a ‘living document’ to be updated or corrected, as necessary. As with all FDOT Equal Opportunity Office (EEO) program documents, the Manual will receive at least biennial review and update, more frequently if required.</p> <p>EEO is currently in the process of updating the Manual. Please submit your comments, questions or suggestions to the Statewide Contract Compliance Administrator.</p>
<p><b>Equal Employment Opportunity</b></p>	
<p>Is there a standard template for</p>	<p>No. States and Local Agencies may develop and require specific logs or templates, but there is no national standard. The important thing is that the information (applicant flow, complaints) is collected and can be provided upon request by FHWA,</p>

applicant flow logs, contractor complaint logs, EEOC complaint logs?	FDOT or US DOL.
Must primes hold subcontractors to advertising to determine diversity recruitment?	Yes. Contractors on Federal or federally-assisted projects are held to a higher standard than other businesses – not just to nondiscrimination but also to affirmative action. Good faith efforts for diverse recruitment are a requirement of the contractor, including appropriate posting of open positions or to collect applications for future positions. It is the prime contractor’s right and responsibility to ensure compliance among its subcontractors.
What is a home office review and how are they part of the contract compliance program?	Home Office Reviews are contract compliance reviews of a contractor or subcontractor corporate, managerial, regional or ownership headquarters. They include all home office staff, including white collar, clerical and maintenance employees. DCCMs might choose to conduct a Home Office Review to determine EEO compliance for a number of reasons. Examples include but are not limited to: <ul style="list-style-type: none"> <li>• where the contractor or subcontractor project workforce is too small for effective analysis;</li> <li>• where a contractor or subcontractor’s work on the project is of too short or intermittent duration;</li> <li>• where the DCCM wants a broader, overall assessment of the contractor’s activities, unclear by examining only the project(s);</li> <li>• where there has been a complaint or other issue involving the contractor.</li> </ul> Do not undertake a Home Office Review if the office staff is less than 15 employees without written consent by FHWA. Further, when conducting a Home Office Review, the resulting report should only include the home office, not the project workforce.
Are contractors who work on federally-assisted projects subject to EEO provisions and FDOT/FHWA audits even when they are working on private or non-government contracts?	No. FHWA 1273 and related regulations are tied to the specific federally-assisted construction contract and not to the contractor generally. In addition, FHWA and FDOT lack the authority to request or review compliance documentation for projects not funded by either or both agencies. That said, firms with 15 or more employees are subject to EEO requirements under Title VII of the Civil Rights Act of 1964, as amended; Title I of the Americans with Disabilities Act of 1990, as amended; and the Equal Pay Act of 1963. In addition, those with 20 or more employees must comply with the Age Discrimination in Employment Act of 1967 (ADEA). For more information on employer responsibilities outside of federally-assisted contracting, visit <a href="#">EEOC’s employer webpage</a> .
How do I add, change or remove EEO officers on a particular project?	Complete the EEO Officer Notification Form ( <a href="#">275-021-13</a> ) and provide it to the Statewide Contract Compliance Administrator via the EEO. Currently this information is maintained in an Excel Spreadsheet that is accessible by FDOT compliance staff.
Does FDOT offer	Currently, no. FDOT does not have immediate plans to capture 1391s electronically.

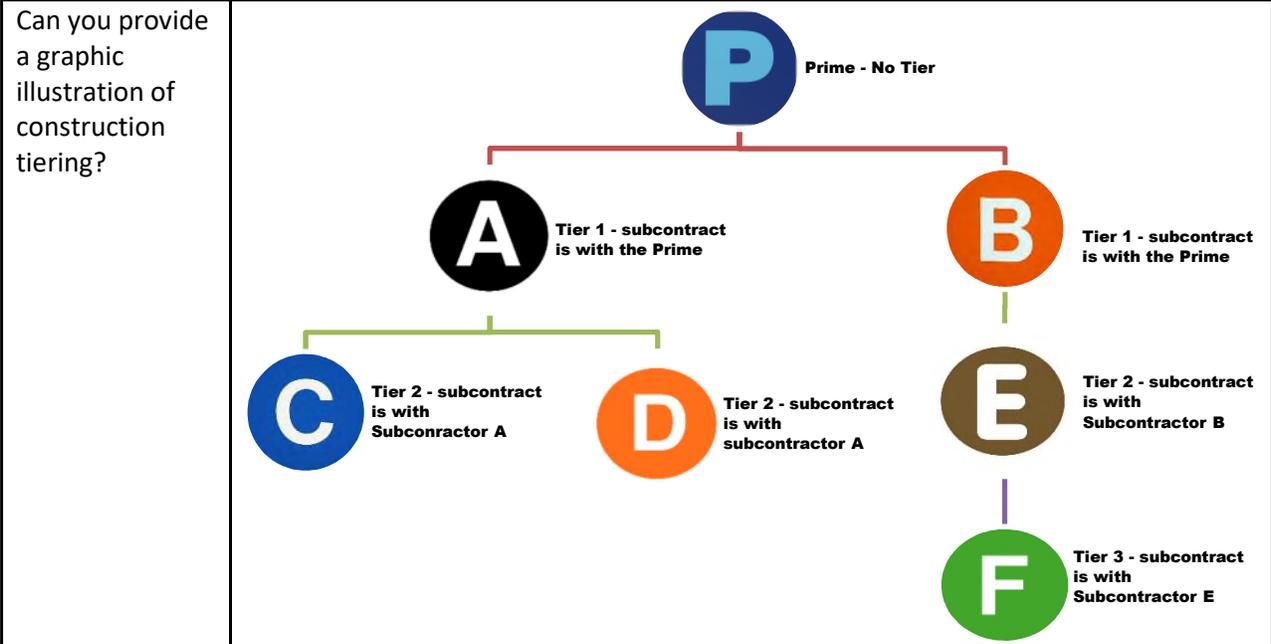
<p>an electronic service for entering 1391 (July Report) data?</p>	<p>FHWA electronically collects and reports the statewide rollup of FHWA 1391 (termed the FHWA 1392), but there are no immediate plans to extend this to contractor 1391s. However, some FDOT districts are advocating for developing or purchasing a statewide payroll system. Among the requirements of such a system would be the ability to run real-time July reports based upon payrolls and additional information provided for craft workers. If you support adoption of a standard electronic payroll system or if you have suggestions, please pass them on to the District Contract Compliance Managers (<a href="#">DCCMs</a>) who are in regular contact with the State Construction Office on this and other issues.</p>
<b>OJT</b>	
<p>Should LAP require FDOT OJT Specs on projects that are below the TSP threshold?</p>	<p>It depends. It is <i>never</i> wrong to include the FDOT Training Special Provisions (TSP) in LAP. Because TSP only apply to projects greater than 275 days and \$2 million dollars, they are simply inapplicable to projects under this threshold, whether or not the specifications are included. However, FDOT is precluded from requiring inclusion of specifications where they are inapplicable. That said, LAP agencies should never remove TSP specifications where project estimates are near the threshold and where higher bids may push the project into requiring OJT. It is easier to ignore inapplicable TSP than it is to add them later as a contract requirement.</p>
<p>Why is there no OJT classification for a craft pile driver – the worker who holds the pile in place while the leadsman handles the controls?</p>	<p>Over the years FDOT has approved upward of 70 OJT classifications. Despite this, FDOT makes some effort to ensure that classifications are wholistic and not subject to fragmentation that could impact or cast doubt on journeyman status. In this case, pile driving is a classification unto itself in which FDOT expects a journeyman to be proficient in both holding piles in place and operating the requisite controls. We are always seeking improvement to the OJT program. If you have suggestions or concerns, be sure to advise the Statewide Contract Compliance Administrator, who will coordinate responses or any program changes with the District Contract Compliance Managers (DCCMs) and State Construction Office.</p>
<p>Who is responsible for conducting OJT Training Evaluation Meeting</p>	<p>The District Contract Compliance Manager (DCCM) or his/her designee are responsible for conducting the OJT Training Evaluation Meeting.</p>
<b>Prevailing Wages and Payrolls</b>	
<p>To what extent is it necessary to verify owner/operators? Checking every owner listed on the certified payroll?</p>	<p>Verification is necessary because employees are treated differently with respect to OT pay and certified payrolls than are owners. However, the regulations (<a href="#">29 CFR 5.2(j)</a>) are not specific as to how verification takes place. For more information, see the <a href="#">Prevailing Wage Resource Book</a>, Chapter 9.</p>
<p>When is a casting yard</p>	<p>Site of work definitions are found at <a href="#">29 CFR 5.2(l)(2)</a> and <a href="#">5.2(l)(3)</a>. In short, for Davis Bacon purposes, a fabrication plant is considered ‘off site’ where its location and</p>

<p>truly off site and not subject to DBRA?</p>	<p>operation are without regard to a particular federally-assisted project or where the plant is owned/operated by a commercial material supplier and in existence before the opening of bids for a specific project, even if it will be exclusively used for the project. The Contract Work Hours and Safety Standards Act (CWHSSA) has no site of work limitations. For more information, see the <a href="#">Prevailing Wage Resource Book</a>, Chapter 9 and/or Chapter 15 of the <a href="#">US DOL Field Operations Handbook (FOH)</a>.</p>
<p>When DOL provides written instruction on DBRA application to a project, is that considered binding? What if the state or FHWA disagrees?</p>	<p>Yes. The US DOL Wage &amp; Hour Division administers and enforces the prevailing wage requirements of the Davis Bacon Act, the Service Contract Act and other Labor Standards Statutes applicable to Federal and federally-assisted contracts for construction and for the provision of goods and services. DOL understands that project circumstances differ and that not all guidance adequately addresses particular situations. Therefore, it offers an <a href="#">extensive library</a> of administrative interpretations, opinion letters and Field Assistance Bulletins. Where these resources are insufficient, DOL offers <a href="#">custom opinion letters</a> of how a particular law applies in specific circumstances. While DOL resources are open to everyone, to ensure consistency and broad sharing of information, FDOT asks that requests for opinion letters from Districts and the FHWA Division be coordinated by the State Wage Officer, located in the State Construction Office.</p>
<p>Does DOL offer online training resources, particularly for calculating fringe benefits? Also, how can I learn more about live training events sponsored by US DOL locally and nationally?</p>	<p>DOL offers numerous resources for training, technical assistance and program/project interpretive guidance – all conveniently located on the <a href="#">Wage &amp; Hour Division</a> website. In addition, the quick links section of the <a href="#">Government Contracts Compliance Assistance</a> page contains information on upcoming prevailing wage seminars and webinars. Finally, stay aware of emerging issues and important news by subscribing to the <a href="#">US DOL list serve</a>, which includes a regular <a href="#">newsletter</a>.</p>
<p>Is it permissible to require on payrolls and request from workers the last 4 numbers of the social security number? Often payrolls will have very common names or will drop one or more hyphenated names. This makes it difficult</p>	<p>Yes. The <a href="#">instructions for completing WH-347</a> are clear that use of these identifiers is an acceptable method for verifying worker identity and wage accuracy.</p>

to ensure you are matching the correct wages to the right person.	
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<b>DBE</b>	
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Are joint checks issued by the Prime and a DBE considered a red flag for Commercially Useful Function (CUF)?	Yes. Contractors wishing to use joint checks with one or more DBE firms must request permission from the District Contract Compliance Manager (DCCM) in writing. FDOT recognizes that joint checks are a necessary tool for increasing the capacity of DBEs and other small businesses. At the same time, however, joint checks can indicate a lack of control by the DBE of its work on the project. The DCCM will review the request to use joint checks, ensuring that it does not impact the DBE’s responsibility to estimate, order, receive and install materials, as applicable. FHWA and/or FDOT will require removal of DBE credit in any instance where the DCCM has not given express approval for use of joint checks. For more information, see the 7-24.5(7) of the <a href="#">FDOT Standard Specifications</a> or page 25 of the <a href="#">DBE Program Plan</a> .
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Why does the EOC system (or ARRF accounts) require re-registration every year?	The <a href="#">FDOT OIT Manual</a> requires all accounts be recertified annually. Recertification is the process by which the users’ access to specific technology resources are validated and updated. This both part of quality assurance and to maintain the integrity of FDOT systems for users. FDOT contacts users by email in anticipation of account expiration and provides the necessary paperwork.
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Does Prompt Payment only apply to DBEs?	No. US DOT regulations at <a href="#">49 CFR 26.29</a> require prompt payment and retainage return for all subcontractors no later than 30 days from the date payment is made to the Prime. In 2016, US DOT issued additional direction requiring State Departments of Transportation (State DOTs) and other Recipients to develop processes for determining prompt payment compliance. For more information, visit the <a href="#">Official Questions and Answers (Q&amp;As)</a> . In the FDOT program, compliance staff must use the
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	<p>Equal Opportunity Compliance (EOC) system, Certifications of Disbursement and other appropriate means for determining prompt payment to DBEs. Further, <a href="#">FDOT Construction Bulletin 03-17</a> requires that Comprehensive Contract Compliance Reviews (CCCRs) include an audit of the contractor’s previous two (2) Certifications of Disbursements (Form 700-010-38) to ensure prompt payment of all subcontractors, regardless of tier.</p>
<p>What is retainage and how do I determine that it is returned promptly?</p>	<p>Retainage is a de minimis percentage of the contract amount held pending satisfactory completion of work. Pursuant to 49 CFR 26.29(b)(2), FDOT declines hold retainage but allows prime contractors to do so, as long as they return retainage within 30 days of satisfactory completion of the subcontract work. US DOT interpretation holds that once a prime has made the final payment to the subcontractor, it must return any retainage within 30 days. For more information, visit the US DOT <a href="#">Official Questions and Answers (Q&amp;As)</a>.</p>
<p>How often must EOC be updated to reflect anticipated DBE use and/or DBE payments?</p>	<p>The Equal Opportunity Compliance (EOC) system is an electronic method of collecting, approving, tracking and reporting DBE commitments and payments. Though race neutral, FDOT is required to show a method of reconciliation of credit to payments, often termed ‘running tally’ in race conscious programs. Contractors must update commitments in EOC any time there is a change in DBE use, whether a DBE addition, deletion or variance in commitment amount. In addition, contractors must also timely and regularly enter payments made to DBEs. Entries in EOC should be made at least monthly. It is not acceptable to delay entries (particularly of payments) until the project is closed or at final acceptance. Doing so is considered noncompliant and could be subject to sanctions or other more serious corrective action. FDOT offers both technical support and training assistance for use of the EOC system. Visit the <a href="#">EOC webpage</a> for more information.</p>
<p>What is a bidder opportunity list and is this a contract compliance issue?</p>	<p>Pursuant to <a href="#">49 CFR 26.11(c)</a> all State DOTs must collect and maintain a list of those bidding on its contracts, whether prime or sub; State or LAP; winning or not. The more comprehensive the list, the more accurate and ‘narrowly tailored’ the DBE goals for projects and programs. Even though FDOT operates a race neutral program, accurate bidder information helps identify availability percentages for specific geographical regions and types of work. It is also essential in setting an accurate and effective triennial DBE goal consistent with constitutional requirements (see <a href="#">Adarand Constructors v. Pena</a>, 515 US 200 (1995)).</p> <p>Compliance staff are not expected to ensure entry of Bidder Opportunity List (BOL) information from non-winning bidders, something that should occur before the preconstruction conference. However, prime contractors who fail to enter into EOC for BOL information for itself and its subs are noncompliant with DBE reporting requirements and should be directed by compliance staff to enter the BOL. More information is available in <a href="#">EOC Help</a> or Section 2.4 of the <a href="#">Contract Compliance Manual</a>.</p>
<p>How is bidder opportunity list information entered into EOC for LAP?</p>	<p>BOL information is entered using the LAP Agreement number. The number always starts with a G and has 4 or 5 following digits. For example: ‘G1234’</p> <p>Note, EOC only accepts bid opportunity information within 90 days of the execution of the LAP Agreement. If the agency does not advertise their project within the timeframe, the system will close and they will need to collect paper forms.</p>

	Local agencies who advertise professional services phases prior to the execution of their LAP Agreement will not be able to enter the information in EOC. They must collect the information via paper form.
How do I determine CUF on DBE contracts for furnish and install?	Pursuant to <a href="#">49 CFR 26.55</a> , DBE credit includes the entire amount of the contract that is performed by the DBE's own forces. This specifically includes the costs of supplies and materials obtained by the DBE for work on the contract. If the DBE's contract calls for furnishing as well as installing, then there must be some evidence that the DBE actually estimated, ordered, purchased and received the materials to be installed. Compliance specialists should work with their Project Administrators to verify Commercially Useful Function (CUF) in this aspect of DBE performance. Purchase orders, invoices, bills of lading, cancelled checks and other similar documents are useful in validating CUF for furnishing materials.
How do I determine CUF when the DBE is a regular dealer, bulk supplier or manufacturer?	Pursuant to <a href="#">49 CFR 26.55(e)</a> , DBE manufacturers are entitled to 100% of the cost of materials or supplies toward DBE goals, providing they operate/maintain an establishment that produces the contracted products. DBE regular dealers receive 60% of the costs of materials or supplies toward DBE goals where they operate/maintain a facility where the goods are bought, stocked and regularly sold. This can be difficult to determine for dealers in bulk materials such as liquid asphalt or petroleum products. In those cases, the DBE must own or have long-term leases on the distribution equipment for the bulk material. Compliance staff should contact EOO with questions or concerns about Commercially Useful Function (CUF) on suppliers and manufacturers. There are circumstances in which EOO may allow variations, given appropriate documentation. See Section 2.7.8 and 2.7.9 of the <a href="#">Contract Compliance Manual</a> for more information.
What if the contractor refuses to submit proof of prompt payment upon request?	Pursuant to <a href="#">49 CFR 26.109(c)</a> , <i>"all participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment)."</i>

# Staying Alive: FHWA 1273 Field Compliance

## I. General

By: Carey Shepherd, Pam Todd & Losa  
Smith



U.S. Department  
of Transportation  
**Federal Highway  
Administration**



# What is FHWA 1273?



- ☺ Compilation of required contracts provisions
- ☺ Dates to 1975, revised several times
- ☺ Revision in 1993 added EEO Contract Compliance (23 CFR 230 Subpart A)
- ☺ Current version is 2012 though FHWA has completed preparation of another revision
- ☺ An intended 'one stop shop' for all federal requirements on FHWA-aid highway construction contracts

# 1273 Important Points



1. Physical Incorporation
2. Throughout All Contract Tiers
3. Modifications Forbidden

# FHWA 1273 is Critical to Civil Rights Compliance

Especially here in Florida!



- ⊕ 1273 used as the *foundation* for FDOT's contract compliance program and the manual
- ⊕ 1273 gives both FDOT and FHWA the ability to enforce civil rights as a matter of contract law
- ⊕ 1273 breaks down applicability so inclusion is ok, even when not necessary

# To Include or Not to Include 1273

<b>Include</b>	<b>Exclude</b>
FDOT Administered FHWA-aid Construction Contracts and Subcontracts	FHWA-aid ER Contracts for Debris Removal
LAP Administered FHWA-aid Construction Contracts and Subcontracts	Purchase Orders, Rental Agreements, Agreements for Supplies and Other Services
FHWA-aid Design-Build Contracts and Subcontracts	Design Build Subcontracts for Design or Other Professional Services
FHWA-aid Emergency Relief Contracts	

# Inclusion and Application Are Not the Same



“The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.”

# When 1273 should be there . . . but isn't



- ⊕ Remain calm
- ⊕ Active contracts and subcontracts can be cured with a change order or supplemental agreement
- ⊕ Closed contracts or subcontracts probably can't
- ⊕ 1273 is a compendium of requirements but isn't the original legal source. FDOT and FHWA can compel compliance if need be, even in the absence of the 1273

# Dig These Other General Provisions



- ☮ 1273 applies to all work performed under the contract
- ☮ FDOT and/or FHWA can withhold payments, terminate contracts and even seek suspension/debarment for noncompliance
- ☮ No convict labor on FHWA-aid highway construction projects (23 CFR 635.117(a))

# Pending 1273 Revisions as of 2016

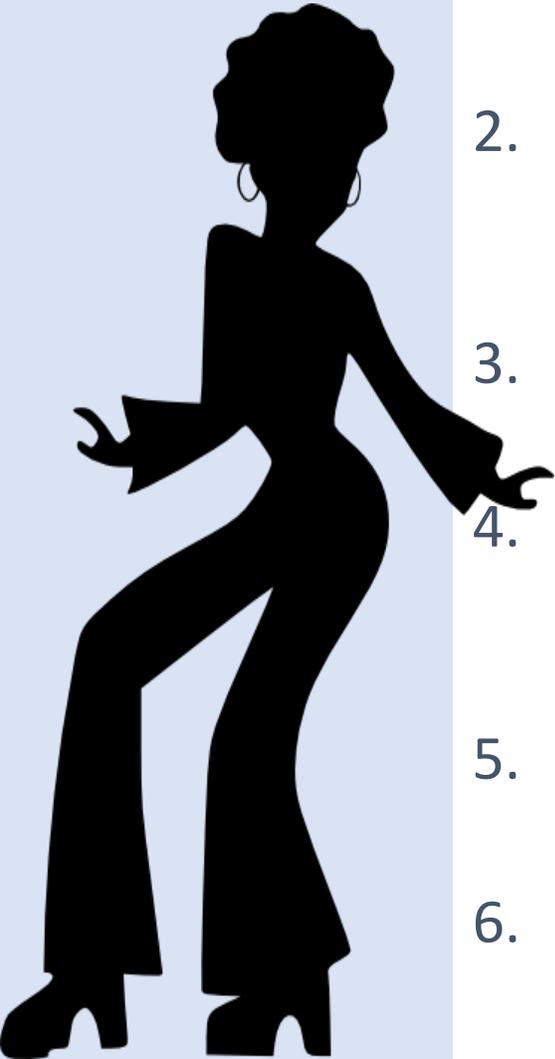
- Sex becomes sex, sexual orientation and sexual identity
- Assurances refer to both DBE and to Title VI Appendices
- Defines projects to be treated as if Federal-aid highways (ferry boats, border infrastructure, etc). See 23 USC 133(i).
- Makes the System for Award Management (SAM) the go-to for suspension/debarment information
- Certification that companies convicted of federal tax delinquency or felony are not awarded contracts
- Requires US owned, operated vessels for oceanic transport of cargo in any way federally funded



Groovy Gert, a hip compliance cat needs your help . . .

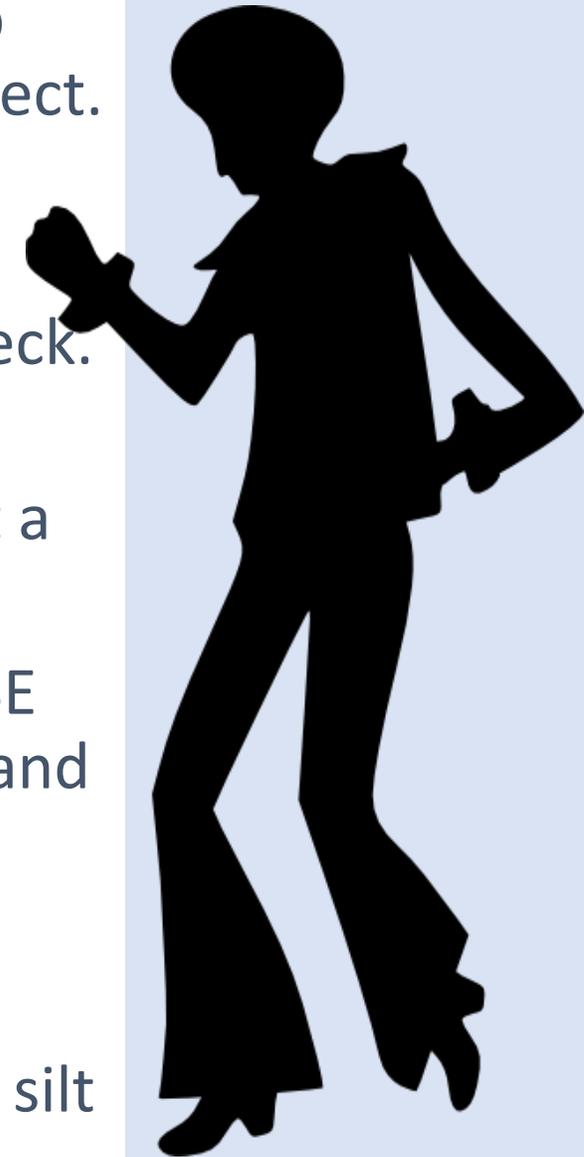


In each of the following scenarios, help Gert decide if she should require inclusion of FHWA 1273



1. Dy-no-mite Engineering hires an architecture firm to develop dynamic lighting concepts as part of an FHWA-aid, FDOT-administered design build contract. What will Gert say?
2. Gert gets an urgent call for help. FDOT has issued an FHWA-aid Emergency Relief contract to reconstruct revetment due to erosion on US 98 after landfall of a hurricane.
3. FDOT has decided to use state funds for an asphalt resurfacing project on I-95. The DCE asks Gert if 1273 should still be included.
4. Dolphin Spew, a LAP agency, forgot to require 1273 inclusion on its LAP project. They tell Gert that it's okay because it is just a recreational trail project.
5. Good Nite John Boy, LLC, a design-build firm executes contracts for clearing/grubbing and silt fencing while design is still at 80%.
6. Disco Inferno is a 5th tier subcontractor hired to install pressure gauges on a highway fire suppression system. The cost of the contract is just under \$5,000.00. The DCE says the subcontract is too small to include 1273.

1. Mad Max Contractors hires a PR firm to visit area schools and job fairs to promote the FDOT OJT program on a large FHWA-aid project. They ask Gert if 1273 is required
2. Gert learns that Bitchen Rebar, a Subcontractor on an FHWA-aid project leased two man-lifts to tie rebar on an overpass bridge deck. No 1273 included. Is that okay?
3. Dolphin Spew contracts with a small firm to install landscaping at a roundabout. The total cost is \$9,200.00.
4. Happy Days, a Prime purchases safety vests and gloves from a DBE supplier. The Prime PM, Potsie makes the supplier include 1273 and the DBE complains to Gert.
5. As part of an NEPA environmental commitment, Prime hires Charlie's Angels to create a wetland mitigation area several miles away from the project site. Scope includes earthwork, drainage, silt fencing, planting, pumping, etc.





# Staying Alive: FHWA 1273 Field Compliance

Section II. Nondiscrimination  
under Title VI  
By: Jackie Paramore



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

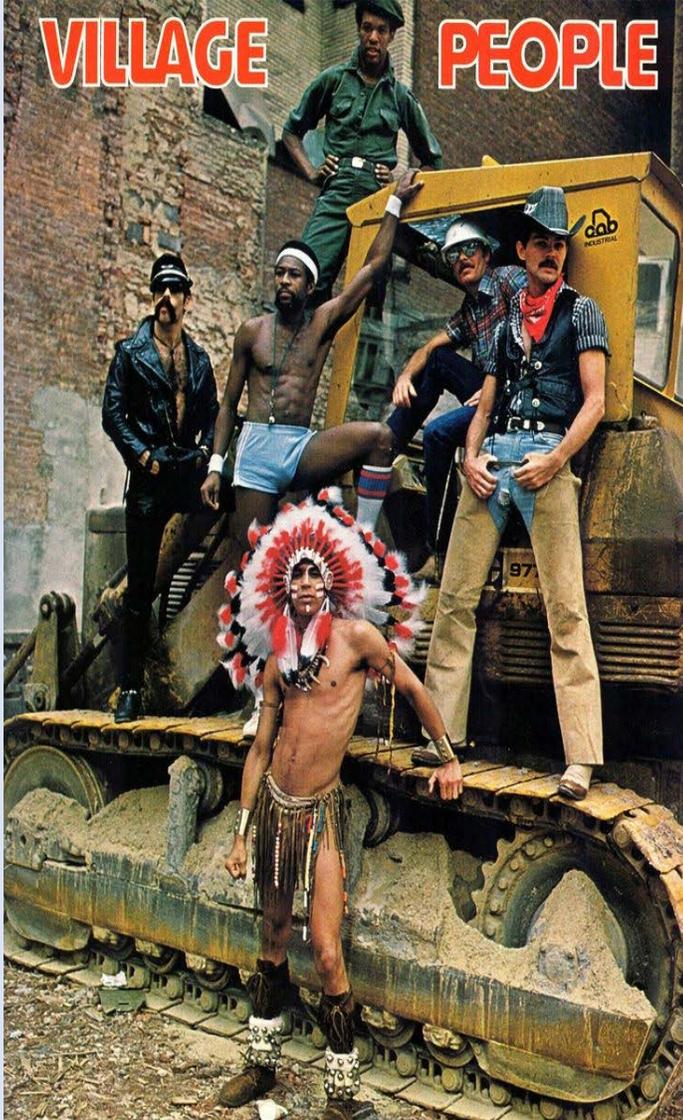


# What is Title VI?



- ☺ Law that prohibits Federal-aid recipients from discriminating based on race, color or national origin
- ☺ Often erroneously quoted 'as amended' but it has been clarified to include age and disability
- ☺ Regulatory authority is at 23 CFR 200; 49 CFR 21, 49 CFR 27 (disability) and 28 CFR 35 (disability)
- ☺ For FDOT, Title VI requirements travel with FHWA-assistance to LAP, MPOs, Universities and other recipients.

# Does 1273 Include Title VI?



☺ Yes! Title VI applies to construction contracts as noted in Section II, second paragraph

☺ HOWEVER, contractor requirements differ from those of public agency recipients

# US DOT 1050.2A



- ⓪ FDOT signs a Title VI and related authorities Assurance every three years
- ⓪ FDOT requires sub-recipients like LAP agencies to sign an identical document
- ⓪ Assurances are eligibility requirements that include contract clauses that must be included in any legal instrument 'subject to the Act'
- ⓪ These clauses cover the services and activities of contractors on USDOT-assisted projects

# A Brief Look at the Contract Clauses



*“During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:*



- ☮ To comply with all nondiscrimination acts & regulations
- ☮ To not discriminate in contracting or employment in contract performance
- ☮ To advise subcontractors, suppliers and others of nondiscrimination requirements
- ☮ To provide compliance documentation upon request by FHWA and/or FDOT
- ☮ To recognize that FHWA and/or FDOT will take sanctions for noncompliance
- ☮ To include each of these clauses in all subsequent legal instruments

AND  
FINE PRINT

**Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



# Title VI Compliance Responsibilities

- ⓪ As a matter of law, FDOT must ensure that the clauses from these appendices are in all prime contracts, State and LAP
- ⓪ As a practical matter, compliance staff must be vigilant, not just of actual Title VI complaints, but of the appearance of impropriety
- ⓪ Here are a few of Foxy's examples of Title VI issues in construction:





1. Prime contractor does not contract with women owned/operated firms
2. Project staging or parking areas are in minority areas only
3. Contractor fails to require nondiscrimination clauses in lower tier contracts
4. Contractor imposes 'English-only' policies among firms/employees on construction site
5. DCCM orders a compliance review of a contractor because of a public complaint that project workers are 'all Mexican'
6. Prime rejects an otherwise satisfactory low-bid because the bidding subcontractor has previously filed discrimination complaints
7. Project management allows preferential access to project sites or borrow pits, etc to nonminority subcontractors

# What should you do if you suspect Title VI issues?

- ☺ Remain calm
- ☺ You need do nothing more than advise the District Title VI Coordinator, who will take it from there
- ☺ If you can't identify the Title VI Coordinator, contact me
- ☺ Don't worry whether you are right or wrong – We'd much rather eliminate a potential issue than hear about it via litigation





# Origins of Equal Employment Opportunity



**On the Highway to Nondiscrimination, President Lyndon Johnson signed the Civil Rights Act on July 2, 1964 creating the independent commission we refer to as the EEOC.**

# Evolution of Equal Employment Opportunity



FHWA Part II: Nondiscrimination

Section 1: Equal Employment Opportunity

☮ A Period of Change and Reassessment

☮ New Laws, New Strategies

# Equal Employment Opportunity as described in FHWA-1273

*In a Nutshell*

**The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.**

**Keep Tripping on the 70's**

# Expansion of Equal Employment Opportunity

**I**   
**90s**

☮ **29 CFR 1625-1627 – Age**

☮ **28 CFR 35/42 USC 12101 – Disability**

# Equal Employment Opportunity

## FHWA-1273 II. Nondiscrimination



**Contractors must establish and implement a company policy and procedure containing specified minimum commitments pertaining to nondiscrimination, equal employment opportunity and affirmative action.**

**They must also designate an EEO Officer.**

# Analysis for Nondiscrimination ***BY CONTRACTORS***



☮ Evaluate

☮ Analyze routinely

☮ Confirm

☮ Ensure

# Analysis for Nondiscrimination

## *Recommended Analytical Techniques*



- ☺ Supervisory EEO/AA Meetings and Training
- ☺ Review and Monitoring of recruitment activities
- ☺ Applicant flow
- ☺ Selection for interviews
- ☺ Promotions and pay actions
- ☺ Work Assignments
- ☺ Terminations, Demotions, Disciplinary Actions
- ☺ Retaliation
- ☺ **Written Documentation**

# EEO Demographic Data

Contractor  
Demographic  
Calculations  
Company-wide  
or Project  
Level by EEO  
Category  
Minorities and  
Females

## Some Data Tools for Contractor Compliance Reviews:

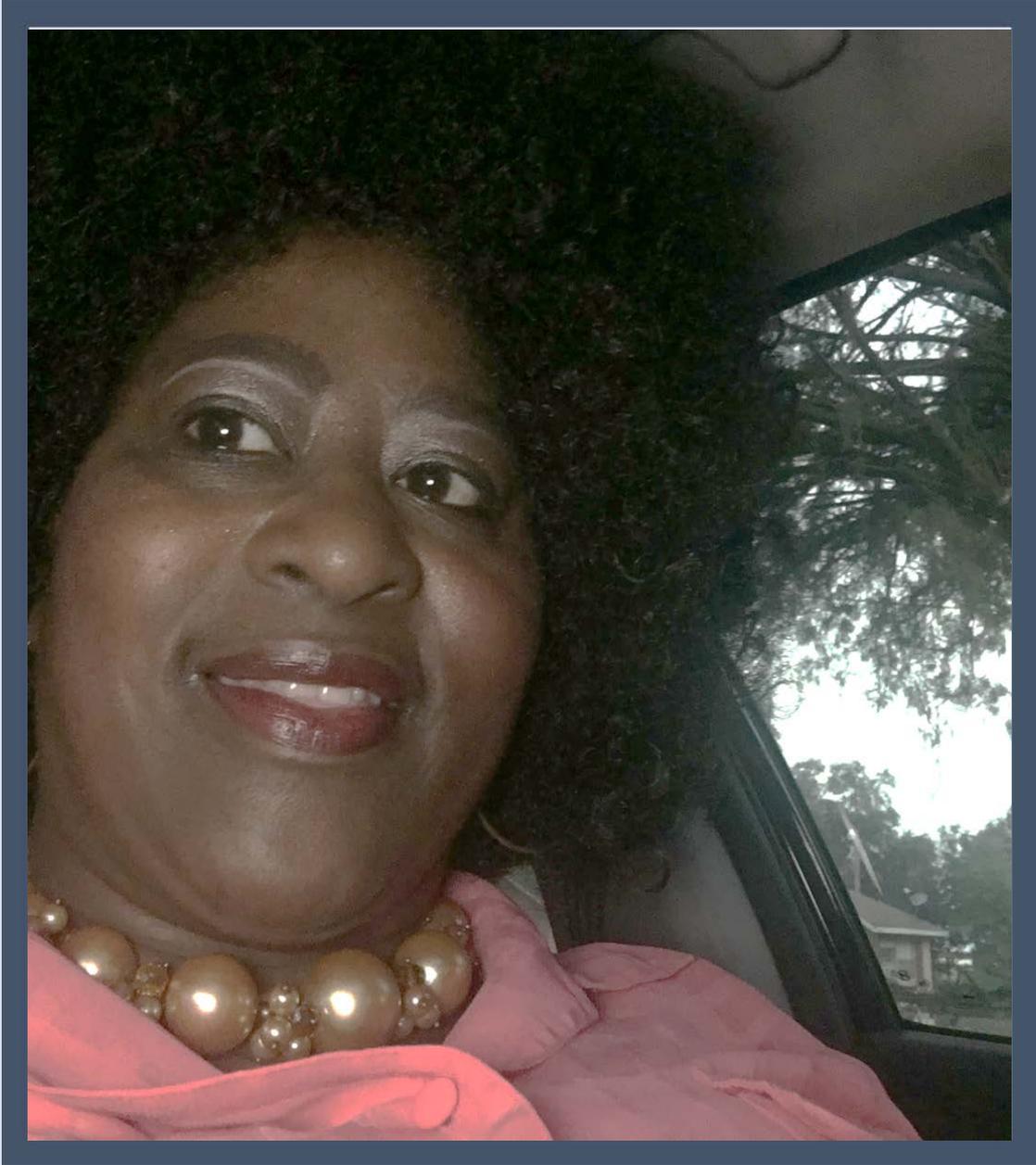
- ☯ Census 2000 EEO Data Tool  
(<https://www.census.gov/eo2000/index.html>)
- ☯ Census 2010 EEO Tabulation  
(<https://www.dot.state.al.us/cboweb/pdf/dbe/Contractor%20Compliance%20Census%20Guide%20and%20Parity%20Analysis.pdf>)
- ☯ American Community Survey Employment Tables  
(<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#acsST>)
- ☯ US EEOC Employment Statistics  
(<https://www.eeoc.gov/eeoc/statistics/employment/index.cfm>)



# EEO Practical Exercise

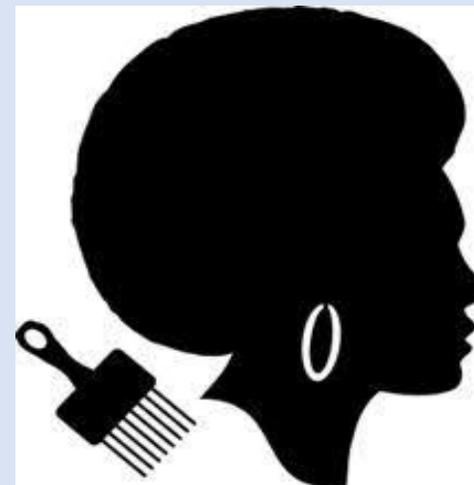


- ☮ Contractors Report their Workforce on EEO Reports
- ☮ Companywide and Project EEO Report Calculations
- ☮ Calculating Minority Utilization using EEO Reports and certified payroll
- ☮ How can we use this data to compare to the Demographics in the area of the project work?



Your Groovy Presenter

JACKIE  
BROWN





# Staying Alive: FHWA 1273 Field Compliance

## 1273 Section II (9-11), Subcontracting, DBE & Reporting

By: Tracy Duval and Terry Watson



U.S. Department  
of Transportation  
**Federal Highway  
Administration**





U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# 1273 Section II

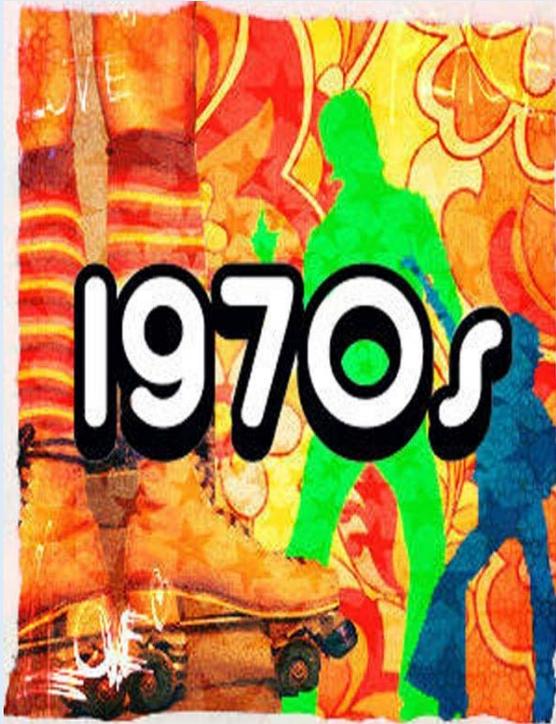
## Subsections 9 -11

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9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment
10. Assurance Required by 49 CFR 26.13(b)
11. Records and Reports

# 9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment



The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

# 9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment

## *The Implications*



1. 'All necessary steps' includes participation in the DBE program.
2. Race Neutral means that contract goals are not employed. IT DOES NOT MEAN the program is voluntary.
3. A DBE is a DBE – it is a violation of Section 9 to seek particular DBEs based on race, ethnicity or gender.
4. While the prime is responsible for compliance by subs and suppliers, EEO among all project firms is the law.

# 10. Assurance Required by 49 CFR 26.13(b)



- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
- b. *The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.*

# 10. Assurance Required by 49 CFR 26.13(b)

## *The Implications*



1. This Assurance is now part of the 1273 (since 2012)
2. It is very important because it authorizes sanctions for failure to comply
3. Even in a race neutral environment, reporting bidders opportunity list information, DBE commitments and DBE/Non-DBEs payments are required
4. Failure to adhere to these and other requirements can result in:
  - Withholding progress payments
  - Levying sanctions/damages
  - Suspension Debarment

# 11. Records and Reports

The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.



- a. The records kept by the contractor shall document the following:
  - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
  - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
  - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

# 11. Records and Reports



**b. The contractors and subcontractors will submit an annual report (Form FHWA-1391) to the contracting agency (i.e. FDOT)**

- Indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work.
- The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July.
- If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.
- The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

# Implications of Section 11: FHWA 1391 Report At-A-Glance

## Federal-Aid Highway Contractors Annual EEO Report (1391)

FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT																						
COMPANY NAME, CITY, STATE:				3. PROJECT NUMBER:				4. DOLLAR AMOUNT OF CONTRACT:				5. PROJECT LOCATION: (County and State)										
<small>Form is required by law and regulation 23 U.S.C. 140a and 23 CFR Part 230. The OMB control number for this collection is 2125-0019 expiring in March, 2016.</small>																						
6. WORKFORCE ON FEDERAL-AID AND CONSTRUCTION SITE(S) DURING LAST FULL PAY PERIOD ENDING IN JULY 20__ (INSERT YEAR)																						
JOB CATEGORIES	TABLE A																TABLE B					
	TOTAL EMPLOYED		TOTAL RACIAL/ ETHNIC MINORITY		BLACK or AFRICAN AMERICAN		HISPANIC OR LATINO		AMERICAN INDIAN OR ALASKA NATIVE		ASIAN		NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		TWO OR MORE RACES		WHITE		APPRENTICES		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS	0	0	0	0																		
SUPERVISORS	0	0	0	0																		
FOREMEN/WOMEN	0	0	0	0																		
CLERICAL	0	0	0	0																		
EQUIPMENT OPERATORS	0	0	0	0																		
MECHANICS	0	0	0	0																		
TRUCK DRIVERS	0	0	0	0																		
IRONWORKERS	0	0	0	0																		
CARPENTERS	0	0	0	0																		
CEMENT MASONS	0	0	0	0																		
ELECTRICIANS	0	0	0	0																		
PIPEFITTER/PLUMBERS	0	0	0	0																		
PAINTERS	0	0	0	0																		
LABORERS-SEMI SKILLED	0	0	0	0																		
LABORERS-UNSKILLED	0	0	0	0																		
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TABLE C (Table B data by racial s																						
APPRENTICES	0	0	0	0																		
OJT TRAINEES	0	0	0	0																		
8. PREPARED BY: (Signature and Title of Contractors Representative)									9. DATE				10. REVIEWED BY:									

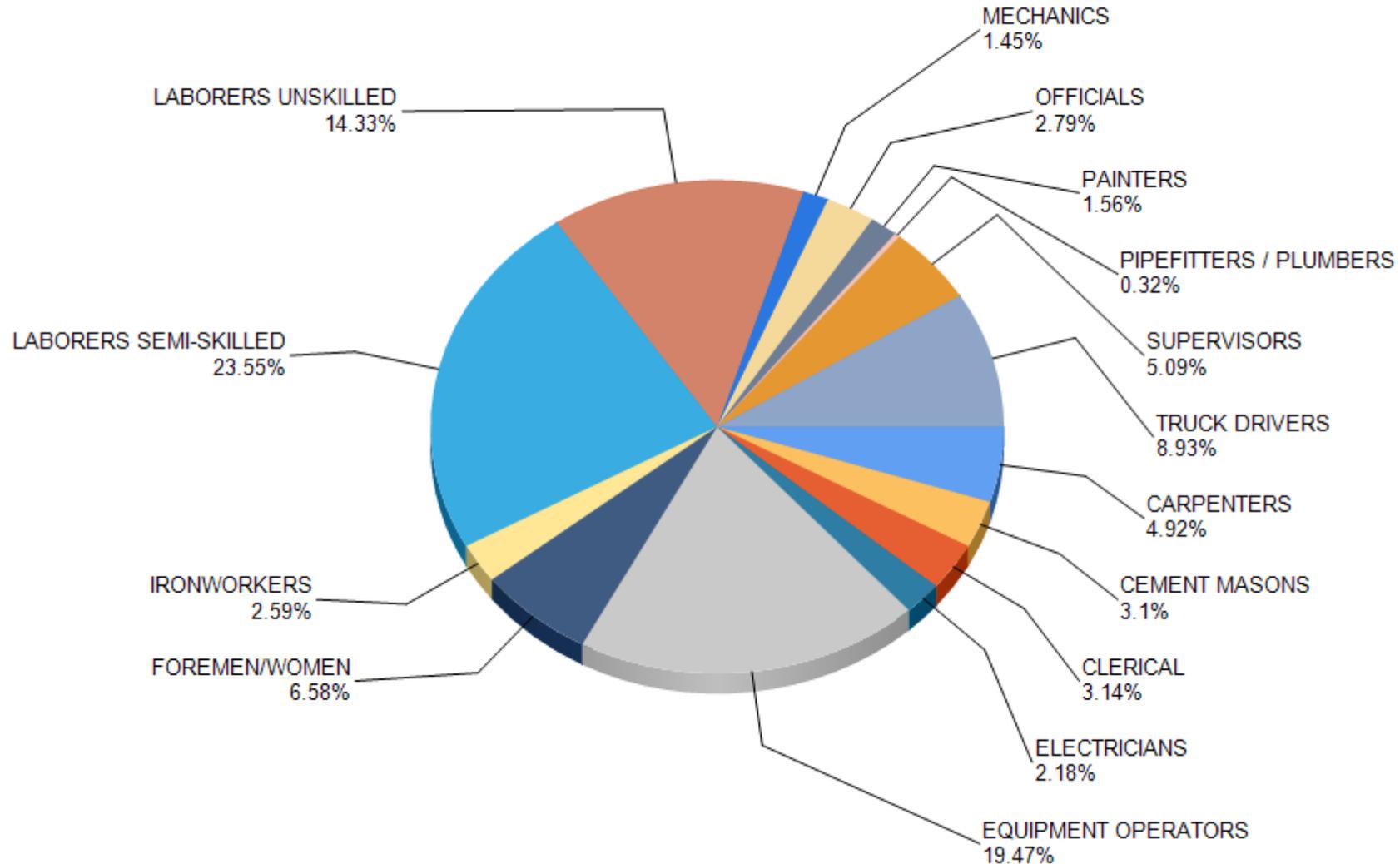
Form FHWA-1391 (Rev. 09-13)

PREVIOUS EDITIONS ARE OBSOLETE

To be completed by each contractor and each subcontractor subject to this part for every month of July during which work is performed and submitted to the State DOT. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month.

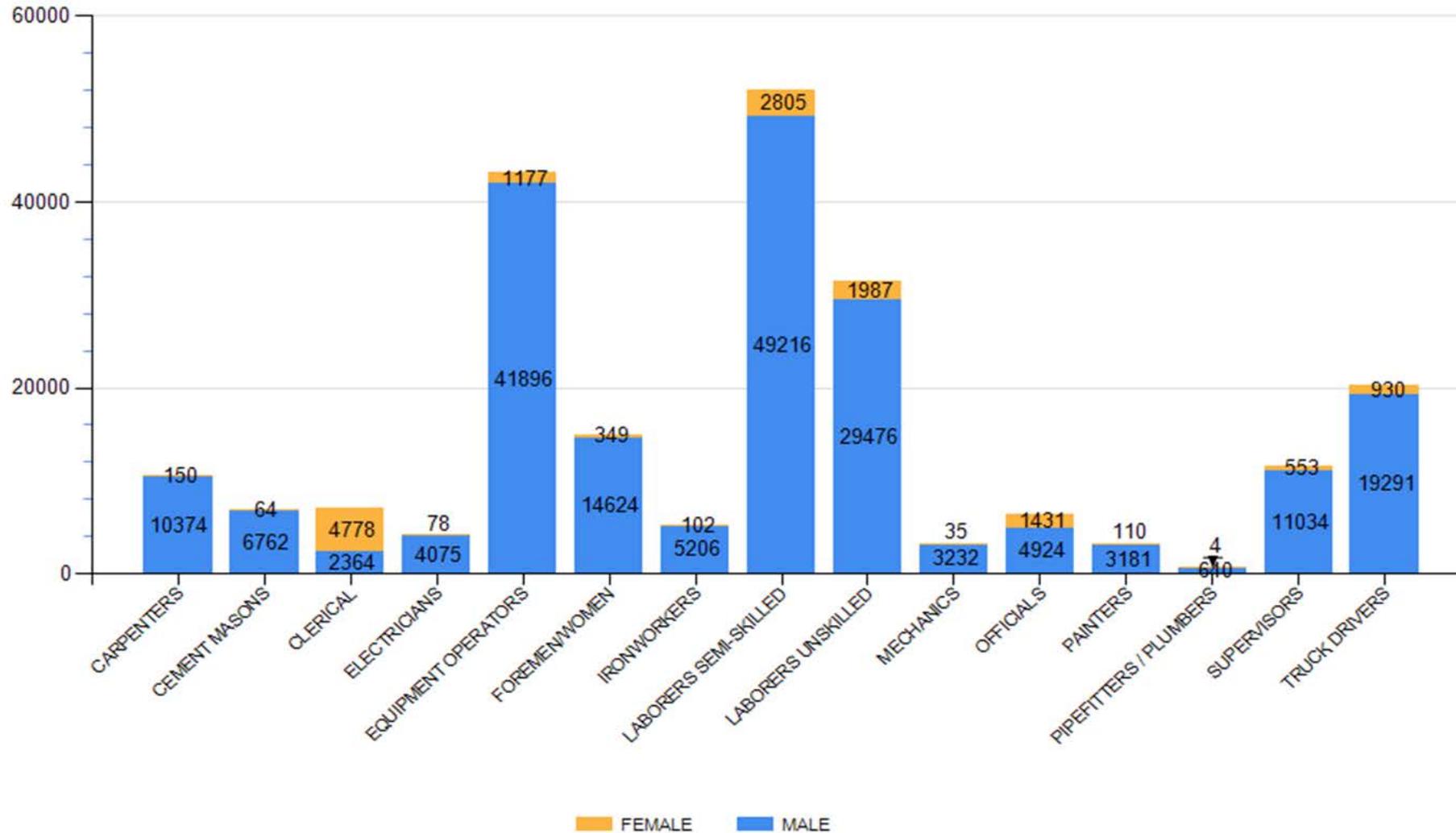
# FY17 At-A-Glance

Breakdown of Job Categories by Percentages



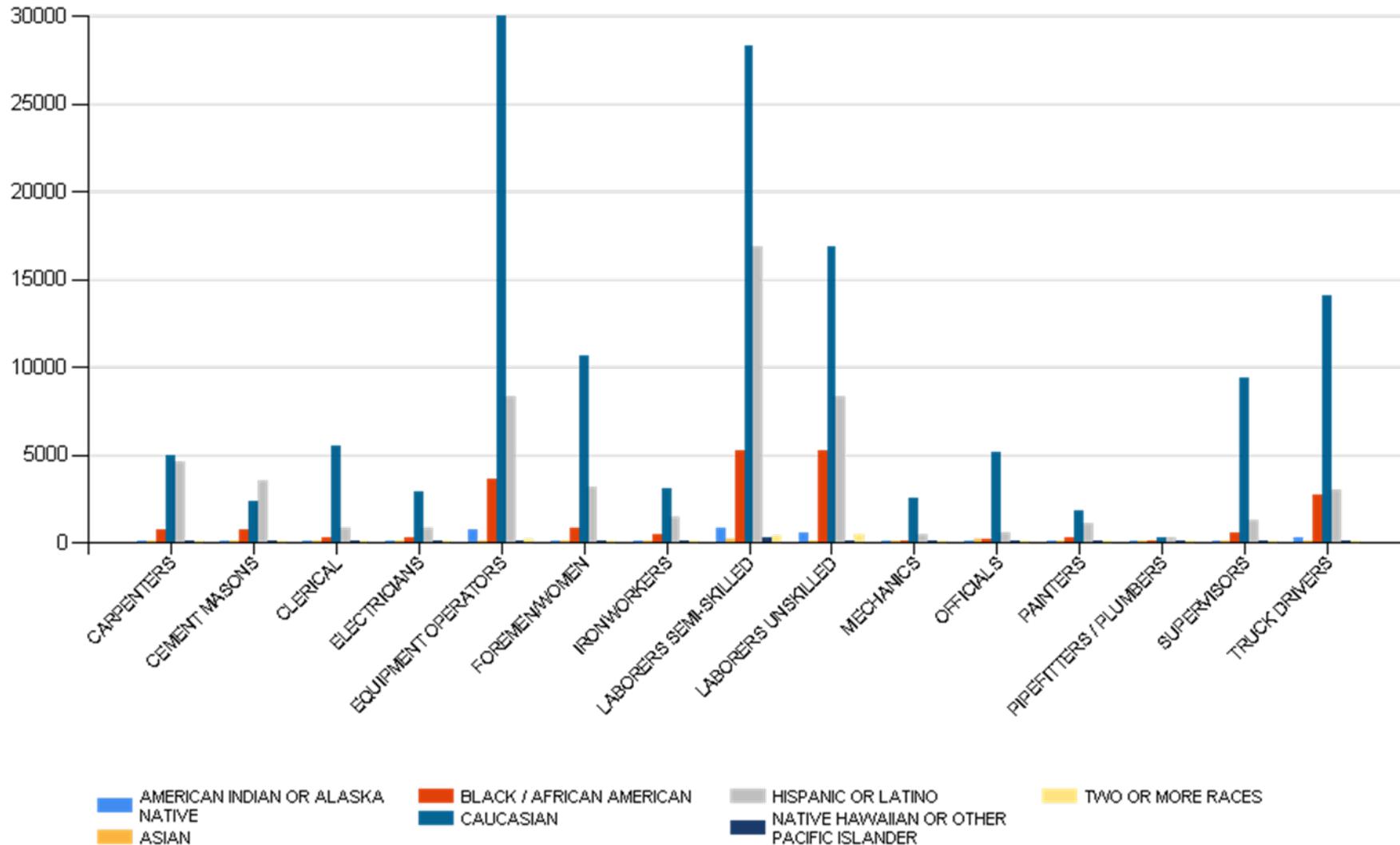
# FY17 At-A-Glance

Breakdown of Job Categories by Male / Female (excluding Apprentices / OJT Trainees)



# FY17 At-A-Glance

Breakdown of Job Categories by Racial / Ethnic Minority (excluding Apprentices / OJT Trainees)



# Sections 9, 10 and 11: Critical Concerns

## **Prompt Payment and Retainage Return:**

- Signed Certifications are insufficient

## **Data Quality in the DBE Program:**

- Reconciliation of commitments to payments
- Compliance with bidder's list entries
- Timely reporting
- Annually updated and accurate DBE Program Plan

## **Diversity in Construction Workforce:**

- Using 1391/92 and EEO Reports as tools to identify risk and make compliance decisions
- Achieving racial, ethnic and gender parity – not just in job classes but in pay



# Your National FHWA Office of Civil Rights DBE/Contractor Compliance Team



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**Tracy Duval**

Program Analyst

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# DBE Reporting in EOC – the Equal Opportunity Compliance System



- Ⓜ Web based application designed with a tab layout
- Ⓜ Replaced Bizweb **payment reporting** section, launched **October 3, 2012**
- Ⓜ Replaced the **ADBEPs** forms(Anticipated DBE Participation forms 275-030-11A)
- Ⓜ Replaced the Bidders Opportunity form(form 275-030-11)

[Home](#)

[Subcontractor Contacts](#)

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Sub  
Payments

Reports



# EOC Terminology



**DBE**



**NAICS CODE/SPECIALTY CODE**



**DBE COMMITMENT**



**SUB AGREEMENT**



**TIER**



**MBE**



**RETAINAGE**

**DBE:**

Disadvantaged Business Enterprise as certified by member agencies in the Florida Unified Certification Program.

**NAICS code/ Specialty code:**

Type of work in which a **DBE** firm has been certified and is able to perform and can get **DBE credit**.

**DBE Commitment:**

Dollars that a **DBE** is anticipated to earn on the contract for work in areas for which they are **certified** and will perform with their own workforce and equipment.

**Sub Agreement:**

In EOC, this is where the Prime will initially setup up both DBEs and non-DBEs (MBEs) before reporting DBE Commitments or DBE/MBE Sub payments. If prime is DBE, this is where prime is setup as sub.

**Tier:**

Level at which the Sub is hired to perform.

**MBE:**

Minority Business Enterprise as certified by the State of Florida.

**Retainage:**

Amount withheld from Sub.



# EOC Critical Concerns for Contractors/Consultants

✌ Report Bidders Opportunity List information

**DBE GOAL SETTING**

✌ Report your DBE Participation/DBE Commitments

**DBE LETTER GRADES**

✌ Report your DBE/MBE Payments each month



# DBE Critical Concerns for Contractors/Consultants

- ✌ Prompt Payment within 30 days of receiving progress payment
- ✌ Retainage Return within 30 days that sub finishes its subcontract work
- ✌ Accurately and honestly complete the Certification of Disbursement
- ✌ Be prepared for Compliance Specialists or DCCM to verify



# DBE Critical Concerns for Contractors/Consultants

- ✌ Demonstrate and Document Commercially Useful Function
- ✌ Suppliers must negotiate, order and provide materials – otherwise no credit
- ✌ Accurately and honestly complete the Certification of Disbursement
- ✌ Be prepared for Compliance Specialists or DCCM to verify

If you have *any* technical problems or questions, please contact the EOO help desk at [EOOHelp@dot.state.fl.us](mailto:EOOHelp@dot.state.fl.us)



- ☪ Victoria Smith, Manager EOO  
(850) 414-4746
- ☪ Michael Klump, Manager Civil Rights Program  
(850) 414-4764
- ☪ Nonhlanhla (Noshasha) Chikoti-Sibanda, DBE Analyst, EOC System – (850) 414-4754
- ☪ Terry V. Watson, State DBE Program Coordinator  
(850) 414-4763



# Staying Alive: FHWA 1273 Field Compliance

## II. OJT and Contractor Internal OJT Programs

By: FDOT DDCM, Jackie Brown



# On-the-Job Training

**23 C.F.R. 230**

***Policies, Procedures, and Guides***



- ✎ Federal Aid Highway Construction Projects
- ✎ Voluntary OJT on State Funded Projects
- ✎ Contractor Internal Training Programs

# FHWA-1273

## II. Nondiscrimination

### 6. *Training and Promotion*



- ✌️ The contractor locates, qualifies, and increases the skills of minorities and women
- ✌️ Applicants and current employees
- ✌️ Development of employees to full journey level status

# Contractor's Work Force



- ✌️ The contractor's equal employment opportunity affirmative action program
- ✌️ Distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications

# The Big Advisement

## *Employees and Applicants*



- 🕊️ Available Training Programs
- 🕊️ Requirements
- 🕊️ Trainee means a person who received on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA

# Contractor's Periodic Review

## *FDOT and Internal Training*

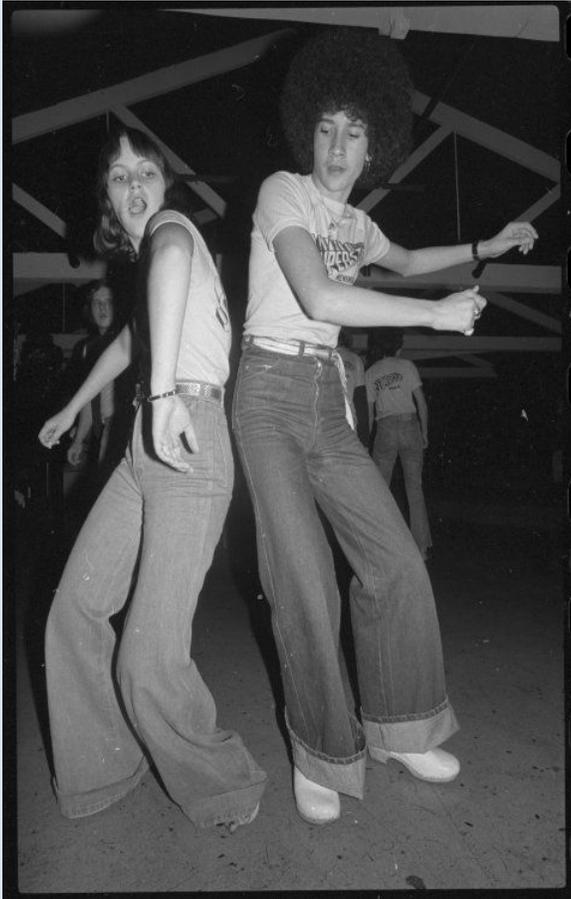


- ✌️ Trainee means a person who is or has received on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA
- ✌️ Training and Promotion Potential
- ✌️ Superseded by FDOT Special Provision

# FDOT Training Special Provision

*Chapter 5: On the Job Training*

*Section 5.1*



✌️ Guidelines

✌️ Selecting Projects and Determining the number of Trainees

✌️ Availability of Trainees

✌️ Duration of the Contract

✌️ Dollar Value of the Contract

# FDOT Training Special Provision

## *Chapter 5: On the Job Training*

### *Section 5.2*

#### *Training Evaluation Meeting*



🕊️ Announcement

🕊️ Agenda

🕊️ Workforce Review

🕊️ OJT Training and the Project Work Schedule

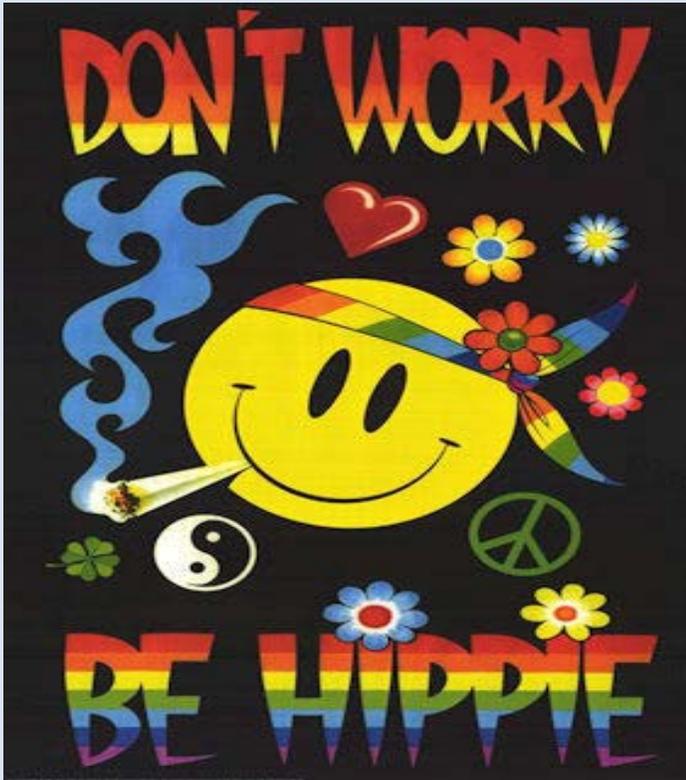
🕊️ Meeting Minutes

# FDOT Training Special Provision

## *Chapter 5: On the Job Training*

### *Section 5.3*

#### *On-the-Job Training Schedule*



🕊️ Objective

🕊️ Prior Employment

🕊️ Project Work Schedule & the OJT Schedule

🕊️ Revisions

# FDOT Training Special Provision

## *Chapter 5: On the Job Training*

### *Section 5.4*

#### *Trainee Personnel Actions*



✌️ Enrollments

✌️ Graduation

✌️ Transfers

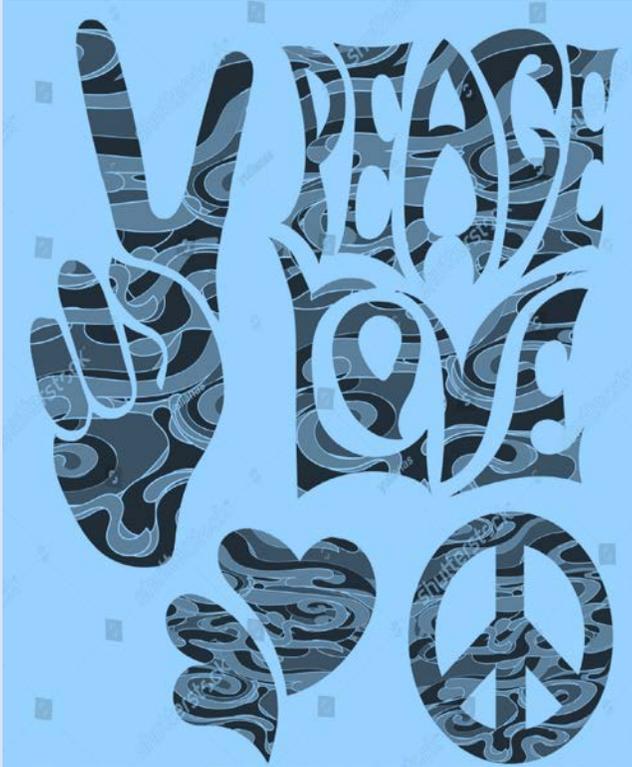
✌️ Terminations

# FDOT Training Special Provision

## *Chapter 5: On the Job Training*

### *Section 5.5*

#### *Training Proficiencies*



- 🍷 Proficiency Library
- 🍷 Proficiency Record – The Statement
- 🍷 Proficiency Observation Eligibility

# FDOT Training Special Provision

## *Chapter 5: On the Job Training*

### *Section 5.6*

### *Monthly Time Reports*



✌️ Specific to the Training Classification

✌️ Contractor Completes & Submits to Compliance Specialist

✌️ Due the 10<sup>th</sup> of Each Month

# FDOT Training Special Provision

## *Chapter 5: On the Job Training*

### *Section 5.7*

#### *Voluntary OJT and Banking*



- ✌️ Projects where Requirement has been met
- ✌️ State Funded Projects – Certified Payroll
- ✌️ Initiated by the Contractor
- ✌️ Banking Certificate – 3 years to redeem

# That's OJT, Cats



Got It??!!

*By Your Girl* - Jackie Brown

# Transportation Transformation

## Recruitment & Workforce Development in a \$10 Billion Transportation Work Program

A Survival Guide to 1273  
Field Compliance Training  
January 2018

U.S. Department of Transportation  
Federal Highway Administration  
Florida Department of Transportation

# Program Principal - Jill Cappadono

- QCA Vice President
- Industry Partner Liaison
- 25 years multi-modal marketing & communication
- Participates in
  - FDOT Construction Career Days (Statewide)
  - Architecture Construction Engineering Mentor Program
  - Florida Transportation Builders Association
  - Florida Public Transportation Association
  - Florida Airports Council





# TRANSPORTATION WORKFORCE DEVELOPMENT

The Federal Highway Administration (FHWA) as directed by the United States Code of Federal Regulations (USC), Title 23 requires all state highway agencies to establish and utilize On-the-Job Training (OJT) on federally funded construction projects.

# Why this is important...

Transportation Infrastructure Construction  
is a CATALYST for Economic OPPORTUNITY

**DIVERSITY**

**+**

**ECONOMIC  
OPPORTUNITY**



# Why Workforce Development ?



The image shows a collage of various news and social media snippets. The most prominent is a Tampa Bay Times article titled "Trigaux: Where did all the construction workers go? Florida builders can't find them" by Robert Trigaux, dated Friday, August 28, 2015. The article discusses the difficulty of finding skilled construction workers in Florida due to rising demand. It mentions that Florida added 4,800 construction jobs in July, more than any other state, and that in the past 12 months, Florida's gain of 26,500 jobs is significant. A photo shows construction workers on a site. A Facebook post by Robert Trigaux, Times Business Columnist, is also visible, dated Friday, September 4, 2015, with 2K likes. Other snippets include a "Tampa Bay Times" logo, "WINNER OF 12 PULITZER PRIZES", and various news categories like "HOME", "MY EDITION", "NEWS", "POLITICS", "SPORTS", "THINGS TO DO", "VIDEO", "OPINION".

# **CONSTRUCTION CAREERS PROGRAM GOAL**

**QCA is committed to supporting the On-the-Job Training Program by providing assistance to unemployed adults and graduating high school students to secure jobs with prime contractors**

# ONBOARD 4 JOBS

**JOBS IN ROAD CONSTRUCTION**



**ROADS TO JOBS**  
Life Skills for Construction Careers

These programs demonstrate the commitment made by FHWA and FDOT to our industry and are important initiatives for ensuring a diverse workforce in the transportation sector

# REFLECTING OUR NATION'S DIVERSITY

Meeting the demands of the transportation industry requires developing a workforce that represents our nation's diversity



# INSPIRING CONSTRUCTION CAREERS



# FOCUSED ON EXCEEDING FDOT'S PERFORMANCE EXPECTATIONS

- At least 1,000 students will be added to the recruitment list database
- At least 5% will be enrolled in or contacted about On-the-Job-Training positions



# PERFORMANCE EXPECTATIONS



- Job opportunities will be provided for 100 unemployed minorities and female adults
- A minimum of 20% of these job candidates will be female

# TARGETED APPROACH TO OUTREACH

**QUICK SURVEY!**  
**~WIN INSTANT PRIZE~**



1. Scan QR Code
2. Take Survey
3. Show completed survey at green table during lunch



**GET PAY'VD**

The Perfect Job. The Popularity. The Paycheck.

[OnBoard4Jobs.com](http://OnBoard4Jobs.com)

866 ON-BOARD | [OnBoard4Jobs@CCAUSA.com](mailto:OnBoard4Jobs@CCAUSA.com) | [twitter/OnBoard4Jobs](https://twitter.com/OnBoard4Jobs) | [facebook/OnBoard4Jobs](https://facebook.com/OnBoard4Jobs)  
(866.862.6273)



# OUTREACH TO STUDENTS



# DEMONSTRATED INTEREST



# PUBLIC INFORMATION LEARNING LAB



# HANDS ON EXPERIENCE



# OUTREACH TO CONTRACTORS

## Prime Contractors and Consultants

- Meet with and communicate regularly with contractors
  - Identify major projects
  - Identify specific needs for workers
- Identify OJT requirements



# OUTREACH TO ADULTS

## We Need Workers!

### Construction Jobs Available

# GET PAY'VD

## HELP WANTED

**LEARN MORE ABOUT JOBS IN THE ROADWAY CONSTRUCTION INDUSTRY**  
 Wednesday, December 10th, 2014  
 5 p.m. to 8 p.m.

**Town & Country Regional Public Library**  
 First Floor  
 7606 Paula Drive  
 Tampa, FL 33615

*se habla español*

**OnBoard4Jobs.com**  
 OnBoard4Jobs@QCAusa.com | 866 ON-BOARD (866.662.6273)

**THE PROGRAM**  
 The Florida Department of Transportation (FDOT) has a new initiative to help contractors recruit capable workers for roadway construction jobs. This includes hiring workers who qualify for the On-the-Job Training programs.

This Construction Careers Program connects workers to contractors and helps increase minority and female workers on federal and state funded road building contracts. The program also provides opportunities to unemployed adults including veterans and high school graduates to secure jobs with our industry's leading contractors.

**IT'S FREE**  
 This program is for you and is provided at no charge to job candidates and participating contractors. Contact us today!

**QCA FDOT**

Photos from **Connecting Workers with Contractors through the Construction Careers Program** in Timeline Photos

**Hispanic Services Council**  
 December 2 · 🌐

Like · Comment · Share

Write a comment...  
 Press Enter to post.

Suggested Groups See All

**East Orlando Online Garage Sale**  
 1,198 members  
 + Join

Sponsored Create Ad

**PayPal - Sign Up for Free**  
 paypal.com  
 Simplify Your Checkout. Pay at millions of sites with just a single login.

# RECRUITMENT EVENTS

Participate in job fairs statewide to grow database of workforce candidates



# HISPANIC SERVICES COUNCIL and MUNICIPAL HOUSING AUTHORITIES



# HOST INDUSTRY SPECIFIC RECRUITMENT

## Career Fairs -

Connecting workforce directly with hiring contractors



# HELPING WOMEN ENVISION THEMSELVES IN THE TRANSPORTATION CONSTRUCTION INDUSTRY



# FOCUS ON PARTNERSHIPS

## Transportation Transformation



# The Heart of the Industry

On behalf of the entire QCA organization,  
thank you for allowing us to serve  
as Florida's Construction Career Consultant





# Staying Alive: FHWA 1273 Field Compliance

1273 Sections II (1-8) and III  
EEO & NonSegregation

By: Sandy Talbert-Jackson



U.S. Department  
of Transportation  
**Federal Highway  
Administration**



# First Thing First – Why 1273?

*23 CFR 230, Subpart A, Required Contract Provisions*



To ensure that contractors and subcontractors performing work on Federal-aid highway contracts comply with the Equal Employment Opportunity (*EEO*) and Affirmative Action (*AA*) requirements set forth in their **construction contracts**.

# Who Says 1273 is Required?

## *Contractor Compliance Program Authorities*



- Federal Aid Highway Act of 1968  
*(Section 22(a))*
- State Equal Employment Opportunity Assurances
- 23 U.S.C. §140 - Nondiscrimination
- 23 CFR Part 230 *(Subparts A and D)*
- Contract Provisions *(Form FHWA 1273)*

# There is More!

*Federal-Aid Highway Act of 1968 Section 22(a)*

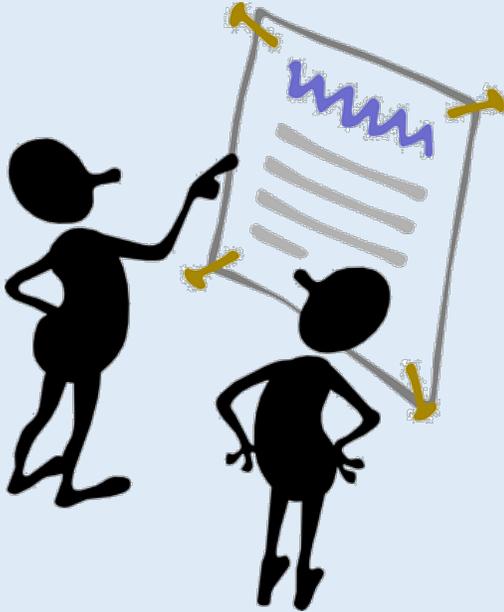
*{23 U.S.C. 140(a)}*



- As a condition for receipt of federal funds
- Assures that employment in connection with construction projects are provided absent discrimination
- Enforce EEO Contract Provisions

# What Else?

## *FHWA Regulations - 23 CFR 230 - Subparts*



- Subpart A – EEO on Federal and Federal-Aid Construction Contracts *(including Supportive Services)*
- Subpart D – Construction Contract EEO Compliance Procedures

# FHWA Regulations

## 23 CFR 230, Subpart A

### *Requires*



- EEO on Federal and Federal-Aid construction contracts and supportive services
- All contracts and subcontracts of \$10,000 or more except material supplying contracts
- Incorporation of special contract provisions (*Appendix A and B*)

# 23 CFR 230 –Subpart A



## ***FHWA Contract Provisions***

- Training Special Provisions - (*Appendix B*)
- Indian Employment Preference
- Specific EEO Responsibilities - (*Appendix A*)

## **FHWA-1273**

- ❖ Contractor/Subcontractor's nondiscrimination and affirmative action responsibilities
- ❖ Employment Preference - Appalachian Contracts Only
- ❖ Department of Labor - Davis Bacon Requirements
- ❖ Nonsegregated Facilities

# Solid Gold - GFE

*Demonstrate Good Faith Efforts (GFEs) to achieve EEO*



- Actions to ensure nondiscrimination in employment opportunities;
- Actions taken to recruit minorities and women; and
- Actions Taken to Retain Minorities and Women.

# Let's Dance: Who is on the Disco Floor?

## *Featuring!*



- State Department of Transportation
  - *Ensure contractors comply with contractual requirements to include EEO provisions*
- Contractor and Subcontractor
  - *Meet requirements of required contract provision (FHWA 1273)*
  - *Take affirmative action to assure EO, including a demonstration of good faith efforts to meet contractual obligations*
- Federal Highway Administration
  - *Stewardship and Oversight responsibilities*

# Let's Dance (cont): FHWA-1273



- Section II (Nondiscrimination) related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.
- The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

# Let's Dance (cont): FHWA-1273



- ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS
- This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

# FHWA - 1273

## *Section II – Nondiscrimination Provisions*



- EEO Policy Statement
- EEO Officer
- Dissemination of Policy;
- Recruitment
- Personnel Actions;
- Training and Promotion;
- Unions
- Selection of Subcontractors, Procurement of Materials and Leasing of Equipment
- Records and Reports



U.S. Department  
of Transportation

**Federal Highway  
Administration**



# What Are the Nondiscrimination Provisions?

*Equal Employment Opportunity & Equal Opportunity*

The provisions (EEO/EO) are adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

# Nondiscrimination Provisions - 1

## *#1 Equal Employment Opportunity*



- Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations.
- In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

# Nondiscrimination Provisions – 1 (cont):

## *#1a. and #1b. Equal Employment Opportunity*



- The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
- Accept an EEO Policy Statement as its operating policy.

# Nondiscrimination Provisions – 1 (cont):

## *#1a. and #1b. Equal Employment Opportunity*



- The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
- Accept an EEO Policy Statement as its operating policy.

# Nondiscrimination Provisions – 1 (cont):

## ***#1b. Equal Employment Opportunity***



*"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."*

# Nondiscrimination Provisions - 2

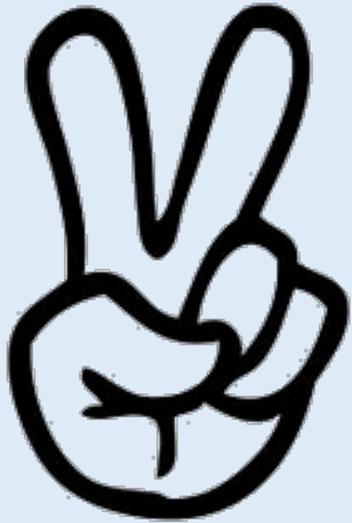
## *#2 EEO Officer*



- The contractor will designate EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program;
- Who must be assigned adequate authority and responsibility to do so; and
- Made known to the Contracting Officers.

# Nondiscrimination Provisions - 3

## *#3 Dissemination of Policy*



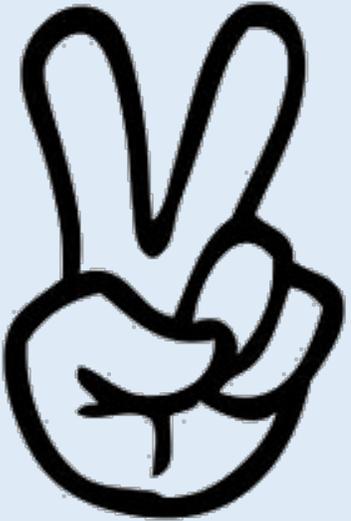
- All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment

# Nondiscrimination Provisions – 3 (cont)

## *#3 Dissemination of Policy*

- To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- 3a. Periodic meetings of supervisory and personnel office employees;
- 3b. All new supervisory or personnel office employees will be given a thorough indoctrination of major aspects of the contractor's EEO obligations by the EEO Officer.
- 3c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- 3d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- 3e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.



# Nondiscrimination Provisions - 4

***#4 Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer."***



4a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women.

4b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions.

4c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

# Nondiscrimination Provisions - 5

*#5 Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type.*



## The following procedures shall be followed:

- 5a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- 5b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- 5c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination.
- 5d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time.

# Nondiscrimination Provisions - 6

## *#6 Training and Promotion*

6a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees.

6b. Consistent with the contractor's workforce requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs.

6c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

6d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.



# Nondiscrimination Provisions -7

***#7 Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women.***

7a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

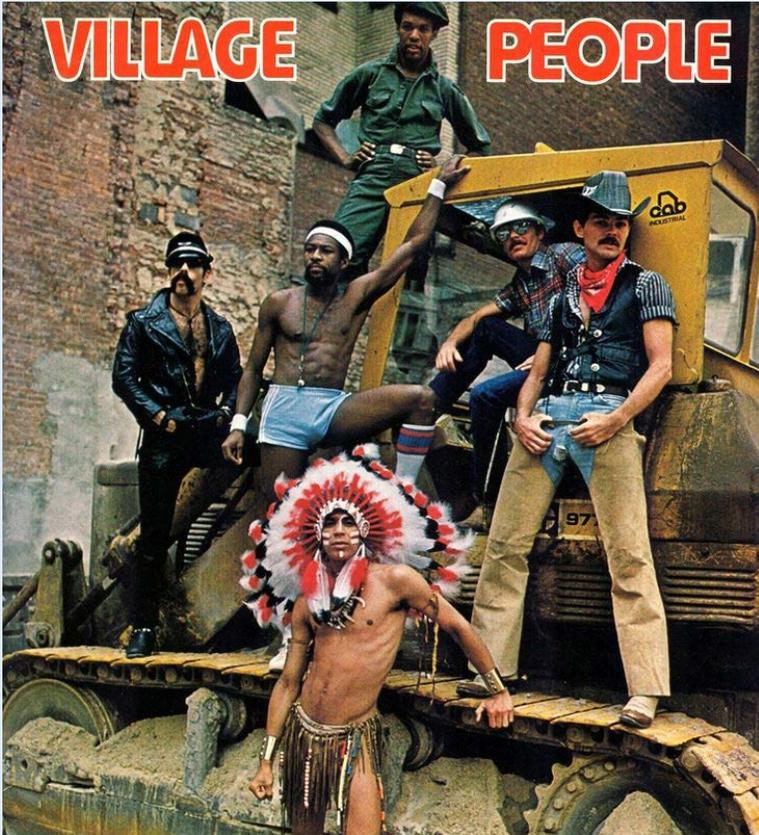
7b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

7c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union.

7d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies.

# Nondiscrimination Provisions - 8

## *#8 Reasonable Accommodation for Applicants / Employees with Disabilities*



- The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established.
- Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

# Nondiscrimination Provisions - 9

*#9 Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.*



9a. The contractor shall notify all potential subcontractors and suppliers and lessors of its EEO obligations under this contract.

9b. The contractor will use good faith efforts to ensure subcontractor compliance with its EEO obligations.

# Nondiscrimination Provisions – 10

## *#10 Assurance Required by 49 CFR 26.13(b)*

10a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

10b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts.

10b. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

# Nondiscrimination Provisions - 11

***#11 Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements.***

Such records shall be retained for a **period of three years** following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

## **11a. The records kept by the contractor shall document the following:**

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;



# Nondiscrimination Provisions – 11 (cont)

***#11 Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements.***



11b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work.

This information is to be reported on Form FHWA-1391.

# FHWA 1273

***Section III: Non-segregated Facilities - This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.***



- The contractor must ensure that employee facilities provided on the project are not segregated on the basis of race, color, religion, sex, or national origin.
- Privacy between the sexes through the provision of single user or single sex facilities for restrooms, dressing rooms, or sleeping facilities is the only exception.

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## 1273 Group Line Dance Exercise

Take a look at the following issues or concerns and jot down, on your Groovy Pad, which area of the 1273 Nondiscrimination Provision would you reference to the contractor as a result of compliance review.



# Thank You!



**Sandy Talbert-Jackson**  
**FHWA Resource Center**  
**Civil Rights Technical Service Team**

**[sandy.talbert-jackson@dot.gov](mailto:sandy.talbert-jackson@dot.gov)**

**<http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/index.cfm>**



# Staying Alive: FHWA 1273 Field Compliance

## 1273 Sections IV and V, DBRA/CWHSSA

By: Roy Richardson



U.S. Department  
of Transportation  
**Federal Highway  
Administration**





# Davis-Bacon Compliance Principles

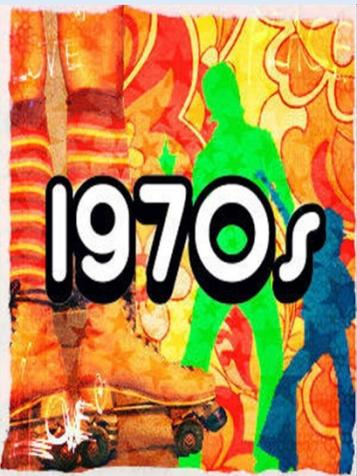


# DBA/DBRA

## Compliance Principles

- Laborers and mechanics
- Site of the work
- Truck drivers
- Apprentices Trainees  
& Helpers

- Area Practice
- Fringe Benefits
- Federal contracts: PCA  
interaction with DBA
- Computing overtime pay



# Laborers and Mechanics

- Workers whose duties are manual or physical in nature
- Includes apprentices, trainees, and helpers
- For CWHSSA, includes watchmen and guards

# Laborers and Mechanics

⊕ Does not include:

- Timekeepers, inspectors, architects, engineers
- Bona fide executive, administrative, and professional employees as defined under FLSA

⊕ Working foremen are generally non-exempt

- must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt



# Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly upon the site of the work”
- A three-part definition applies to determine the scope of the term “site of the work”

# Site of the Work Definition #1

## **DBA applies only to workers on the “site of the work”**

- The physical place or places where the construction called for in the contract will remain after work has been completed; and,
- Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract

# Site of the Work Definition #2

**“Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they are:**

- Located adjacent or virtually adjacent to the “site of the work” described in paragraph 1 and
- Dedicated exclusively or nearly so to the performance of the contract or project
- Except if they are excluded – see next slide

# Site of the Work Definition #3

## **“Site of the work” does not include a contractor’s or subcontractor’s**

- permanent home office, branch locations, fabrication plants, tool yards, etc.,
- whose location and continuance in operation are determined without regard to a particular covered project.

# Definition #3 (Cont'd.)

## Also not included in the “site of the work” are:

- Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials
  - Before the opening of bids for a project, and
  - Not located on the actual site of the work
- Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract



# Truck Drivers

**Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:**

- Spent driving on the “site of the work,” and
- Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than *de minimis*

# Truck Drivers

## **Truck drivers are also covered when:**

- Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
- Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain

# Truck Drivers

Truck drivers are not covered in the following instances:

- Material delivery truck drivers while off the “site of the work”
- Truck drivers of a contractor or subcontractor traveling between a commercial facility and the Davis-Bacon job when they are off the “site of the work”
- Truck drivers whose time spent on the “site of the work” is *de minimis* for pick-up or drop off

# Truck Drivers Owner-Operators

- ✌ DOL has an enforcement position with respect to *bona fide* owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator”.
- ✌ This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.



# Apprentices

- Persons individually registered in a bona fide apprenticeship program registered with DOL or a DOL approved State apprenticeship agency
- Include individuals in their first 90 days of probationary employment as an apprentice
- DOL regulations: 29 CFR 5.2(n)(1) and 5.5(a)(4)(i)



# Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program that has been approved in advance by DOL's Employment Training Administration (ETA)
- DOL regulations: 29 CFR 5.2(n)(2) and 5.5(a)(4)(ii)

# Apprentices and Trainees

- Are laborers and mechanics, but are not listed on the WD
- Permitted to be used on covered projects and paid less than the journeyman rate when:
  - Individually registered in an approved apprenticeship or training program
  - Paid the percentage of hourly rate required by the apprenticeship or training program

# Apprentices and Trainees

- Paid the FB's specified in the approved program, or the full amount of FB's listed on the WD, if the program is silent; and,
- Within the allowable ratio specified in the approved program for the number of apprentices or trainees to journeymen



# Helpers

- May be employed if:
  - Duties are clearly defined and distinct from other classifications on the WD
  - An established prevailing practice in the area,
  - Not employed in an informal training program
- May be added to WD if all above conditions are met; no WD class performs the work



# Area Practice Surveys

- ☺ Used to determine proper classification of workers on Davis-Bacon projects
- ☺ Limited Area Practice survey is acceptable when the prevailing practice is clear based upon preliminary data
- ☺ Full Area Practice Survey is necessary when preliminary data indicate varied classification practices



# Wages & Fringe Benefits

**DBA: the term “wages” or “prevailing wages” includes:**

- The basic hourly rate (BHR)
- Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program
- The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met

# Fringe Benefits

- Under DBA, FB's are a component “prevailing wage”
- The WD obligation may be satisfied by:
  - Paying the BHR and FB in cash
  - Contributing payments to a bona fide plan
  - Any combination of the two

# Fringe Benefits

- Must be paid weekly for all hours worked
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA)

# Fringe Benefit Example

<b>BHR</b>	<b>\$10.00</b>
<b>FB</b>	<b>\$ 1.00</b>
<hr/>	
<b>Total prevailing wage</b>	<b>\$11.00</b>

**The contractor may comply by paying:**

- \$11.00 in cash wages
- \$10.00 in cash wages plus \$1.00 for FB
- \$ 9.00 in cash wages plus \$2.00 for FB

# Examples of Fringe Benefits

- Life Insurance
- Health Insurance
- Pension

- Vacation
- Holiday
- Sick Leave

# Funded Fringe Benefit Plans

- **Contractors may take credit (without prior approval from DOL) for bona fide FB fund contributions made to third-party trustees or insurers that:**
  - Are *irrevocably* paid; and,
  - Are made regularly, not less often than *quarterly*
- **Credit is for payments made for individual workers eligible to participate in the plan, program, or fund**

# Unfunded Fringe Benefit Plans

**Costs for an “unfunded” FB plan count towards WD obligation if specific following are met:**

- Costs reasonably anticipated to provide bona fide FB
- Pursuant to an enforceable commitment
- Carried out under a financially responsible plan
- Has been communicated in writing to affected workers

## Discharging DB Prevailing Wage Obligation

**If WD requires a prevailing wage of \$14.50 (\$12.00 BHR plus \$2.50 in FB's), the contractor can comply by paying:**

- \$14.50 in cash wages; or
- \$12.00 plus \$2.50 in bona fide FB; or
- \$11.00 plus \$3.50 in bona fide FBs

# Computing Overtime Hours (CWHSSA Earnings)

**An employee worked 44 hours as electrician,  
where WD BHR is \$12.00 plus \$2.50 in FB's:**

44 hours	X	\$ 2.50	= \$110.00	FB's
44 hours	X	\$12.00	= \$528.00	BHR
4 hours	X	\$12.00/2	= \$ 24.00	OT
			<hr/>	
			<b>\$662.00</b>	



## Overtime Computation where Employee Employed at Two Rates

**During a workweek an employee works 20 hours as an Electrician at \$12.00 BHR plus \$2.50 in FB's and as a Painter for 24 hours at \$10.00 BHR plus \$3.00 in FB's.**

The regular rate for determining the Overtime rate is:

$$20 \times \$12.00 = \$240.00 \text{ (as Electrician)}$$

$$24 \times \$10.00 = \underline{\$240.00} \text{ (as Painter)}$$

$$\$480.00/44 = \$10.91$$

**Overtime due:  $\$10.91 \times 1/2 \times 4 \text{ hours} = \$21.82$**



# Overtime Pay on Government Contracts

# Overtime Pay

Neither DBA nor SCA provide premium rates for overtime hours of work, but both recognize other Federal laws that do:

- **Contract Work Hours and Safety Standards Act (CWHSSA)** (40 U.S.C. §§ 327-332) applies to contracts in excess of \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that employ laborers, mechanics, guards, and watchmen.
- **Fair Labor Standards Act (FLSA)** (29 U.S.C. § 201, et seq.) applies more broadly, with over 130 million workers subject to coverage.



# Purpose of CWHSSA (40 U.S.C. 3701 *et seq.*)

- Enacted in 1962 - consolidated a number of “eight hour” laws that provided for overtime pay on federally financed contracts employing “laborers” and “mechanics”
- In 1986, the federal daily overtime requirement was repealed to require overtime pay only after 40 hours a week
- Both CWHSSA and FLSA now require overtime pay for work over 40 hours in a workweek

# Requirements of CWHSSA

- Requires overtime pay for laborers, mechanics, guards, and watchmen at a rate of one and a half times the basic rate of pay for hours worked in excess of 40 in a workweek on covered contracts.
- Liquidated damages can be assessed per day for each laborer, mechanic, guard, or watchman not paid proper overtime

# Coverage of CWHSSA

- Covers contracts over \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that require or involve the employment of laborers, mechanics, watchmen or guards on
  - DBA covered construction contracts
  - DBRA covered construction contracts; and
  - SCA covered service contracts
- Is self-executing (even if not stated in contract)
- Has no “site of the work” limitation

# Application of CWHSSA

CWHSSA applies to laborers, mechanics, guards and watchmen for the time spent on covered contract work only.

- Total up all the time each employee spent working on covered contracts – off-site as well as on-site on DBA/DBRA projects;
- Exclude all commercial, non-government, non-covered work.

# Application of CWHSSA

**CWHSSA requires the payment of time and one-half the “basic rate” of pay for all hours worked in excess of 40 hours in a week.**

- The basic rate of pay under CWHSSA is the straight time hourly rate, which will generally be the amount listed under the column “Rates” on the applicable wage determination.
- The “basic rate” cannot be less than the basic hourly rate required in an applicable wage determination, not including any required fringe benefit amount. See 29 C.F.R. § 5.24.
- However, if an employee is paid a regular rate above the basic hourly rate (excluding fringe benefits or cash payments in lieu of fringe benefits), that regular rate will be considered the basic rate.

# Application of CWHSSA

**Amounts paid to fulfill the fringe benefit portion of the prevailing wages listed in the applicable wage determination are excluded in computing overtime obligations under CWHSSA.**

- This exclusion applies to both cash payments made to comply with the fringe benefit portion of the prevailing wage requirement and contractor contributions to bona fide benefit plans made to comply with that requirement.



# Application of FLSA Overtime Pay

✌️ As a general standard, Section 7(a) of the FLSA, as amended, provides that an employer shall not employ any employee to work in excess of 40 hours in a workweek unless such employee receives compensation for his or her employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he or she is employed. 29 U.S.C. 207(a); *see also* 29 C.F.R. § 778.101.

# Application of FLSA Overtime Pay

✌ Unless specifically exempted from FLSA overtime pay requirements, an employee who performs work on both federally funded/federally assisted projects and commercial work in the same workweek must receive an overtime premium for hours worked in excess of 40 in the workweek. 29 C.F.R. § 778. (Note: 29 C.F.R. §§ 5.32 and 778.6 discuss dual application of Davis-Bacon and FLSA overtime requirements.)

# Overtime Pay is for Hours Worked

## **CWHSSA and FLSA requirements apply only to hours worked.**

- Non-work hours such as paid holidays and paid leave are not counted in computing overtime pay. Rules concerning “Hours Worked” are at 29 C.F.R. Part 785.



# Overtime Pay Computations on DBA/DBRA contracts

- The next three slides provide examples that reflect correct computations under CWHSSA or FLSA for an employee who worked 44 hours on a covered DBA/DBRA contract as an electrician, where the wage determination rate for an electrician is \$22.00 (basic hourly rate) plus \$5.00 in fringe benefits.
- The slides relate to different ways contractors may meet the DBA/DBRA and CWHSSA/FLSA requirements for hours worked over forty.

# Overtime Pay Computations – DBA/DBRA Example 1

**If the employer paid \$22.00 in cash wages and paid \$5.00 in fringe benefits, the electrician would receive:**

**44 hours x \$22.00 = \$ 968.00 for cash wages**

**44 hours x \$ 5.00 = \$ 220.00 in fringe benefits**

**4 hours x  $\frac{1}{2}$  x \$22.00 = \$ 44.00 for CWHSSA earnings**

**\$1232.00**

# Overtime Pay Computations - DBA/DBRA Example 2

**If the employer paid \$20.00 in cash wages and \$7.00 in fringe benefits:**

**44 hours x \$20.00 = \$ 880.00 for cash wages**

**44 hours x \$ 7.00 = \$ 308.00 in fringe benefits**

**4 hours x  $\frac{1}{2}$  x \$22.00 = \$ 44.00 in CWHSSA earnings**

**\$1232.00**

# Overtime Pay Computations – DBA/DBRA Example 3

**If the employer paid \$24.00 in cash wages and \$3.00 in fringe benefits:**

44 hours	x	\$22.00	=	\$ 968.00	for cash wages		
44 hours	x	\$ 2.00	=	\$ 88.00	cash in lieu of fringes		
44 hours	x	\$ 3.00	=	\$ 132.00	in fringe benefits		
4 hours	x	$\frac{1}{2}$	x	\$22.00	=	<u>\$ 44.00</u>	in CWHSSA earnings
				\$ 1232.00			



# Work in More than One Classification

**If in a single workweek an employee works in more than one classification for which different non-overtime rates of pay have been established, the overtime pay may be computed based on the weekly average rate (or “regular rate”):**

- the total straight time pay for work (at all such rates) during the week, divided by the total number of hours worked at all jobs worked in the workweek.
- *See 29 C.F.R. §§ 778.115.*

# Work in More than One Classification

- An employee who performs work in two or more classifications for which different straight time hourly rates are established may agree with his/her employer in advance of performing the work to be paid during overtime hours at a rate not less than one and one-half times the hourly non-overtime rate established for the type of work he/she will perform during such overtime hours.
- *See* 29 C.F.R. §§ 778.115 and 778.415-778.419.

# Work in More than One Classification

## Two Methods of Computation

**The next four slides illustrate the two methods for computing overtime pay under CWHSSA and/or FLSA for an individual who worked in different job classifications and at different rates of pay in the same work week.**

An employee is hired to perform work on a covered construction contract in two job classifications: painter and electrician.

- The wage determination rate for an electrician is \$12.00 (basic hourly rate) plus \$2.50 in fringe benefits.
- The wage determination rate for a painter is \$10.00 (basic hourly rate) plus \$3.00 in fringe benefits.

# Work in More than One Classification

## Two Methods of Computation (cont'd)

- The payroll shows that the worker performed painting and electrical duties as follows:

	S	M	T	W	T	F	S
Painter hours	10	10	10				
Electrician hours					10	8	

- The next two slides illustrate the two methods of computing the overtime pay.

## Work in More than One Classification Two Methods of Computation (cont'd)

**Method 1**: Computation of the overtime **premium** based on the weekly average “regular rate” for the work week.

Step 1: Determine the straight time wages due – excluding fringe benefits:

30 hours at the painter's rate of \$10.00	= \$300.00
18 hours at the electrician's rate of \$12.00	= <u>\$216.00</u>
Total straight time wages	= \$516.00

(continues onto next slide)

# Work in More than One Classification

## Two Methods of Computation (cont'd)

Step 2: Calculate the “regular rate”:

$$(\$516.00 / 48 \text{ hours worked}) = \$10.75 \text{ “regular rate”}$$

Step 3: Compute the overtime premium due:

$$\frac{1}{2} (\$10.75) \times 8 \text{ overtime hours worked} = \$43.00$$

- Note: If a worker’s regular rate of pay exceeds the basic hourly rate listed in the applicable wage determination, then the employee’s regular rate of pay must be used in computing the overtime pay premium for FLSA purposes.
- *See* 29 C.F.R. §§ 778.107-778.109.

## Work in More than One Classification Two Methods of Computation (cont'd)

**Method 2:** Computation of the overtime premium based on the “rate in effect” when the overtime hours were worked (if by established advance agreement, as described previously).

In this example the eight overtime hours occurred on a Saturday.

The overtime **premium** could be computed as follows:

$$\frac{1}{2} (\$12.00) \times 8 = \$48$$

- Note: In some cases, a question arises over whether a cash payment made to a laborer or mechanic is paid in lieu of a fringe benefit contribution or whether it is simply part of the individual’s normal basic hourly rate. In the latter situation, the cash payment is not excludable in computing the overtime pay obligation.



# Liquidated Damages

## CWHSSA

- ☮ Liquidated damages shall be computed in the sum of \$25 per calendar day on which an individual did not receive the required overtime compensation
- ☮ Liquidated damages are assessed by the contracting agency, but the contracting agency must seek the concurrence of the Administrator to reduce or entirely relieve the contractor of liquidated damages liability, per 29 CFR 5.8

## FLSA

- ☮ The statute provides that liquidated damages shall be assessed in an amount equal to the unpaid overtime compensation
- ☮ Liquidated damages are assessed by WHD

# Computing Liquidated Damages under CWHSSA

Are computed at \$25 per day per violation:

	S	M	T	W	T	F	S	Total
<b>Regular Time</b>	0	10	12	13	9	8	3	55

15 weekly hours of overtime were worked on 3 calendar days (Thursday, Friday, Saturday) without payment of overtime. Liquidated damages computed at **\$75**.



# Copeland “Anti-Kickback” Act (CA)

## **Purpose of the Copeland Act**

When the Copeland Act was passed in 1934, reports presented to the Senate Committee on Crime found that up to “25 percent of the money which is supposed to be paid for labor under the prevailing rates of wage is unlawfully, unjustly, and indecently returned to contractors, subcontractors, or officials on the job.”

# Purpose and Requirements of CA

- ⊕ Prohibits “kickback” of wages and back wages
- ⊕ Requires contractors on DBA/DBRA covered projects to submit weekly a “statement of compliance”
- ⊕ Regulates payroll deductions

# Legislation and Regulations

- 18 USC 874 - Kickbacks from public works employees
- 40 USC 3145 - Regulations governing contractors and subcontractors (refers to 18 USC 1001)
- 29 CFR Part 3 (Regulations)

## 18 USC 874 - Kickbacks

“Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.”

## 18 USC 874 - Kickbacks

- Requiring kickbacks is a felony, and under current federal crime provisions can entail a fine of up to \$250,000 for a person and \$500,000 for a corporation, as well as up to five years in jail.
- Depending upon the circumstances, requiring kickbacks can also potentially involve the commission of other felonies, such as false statements, mail or wire fraud, or obstruction of justice.

The  
BRADY BUNCH



# 40 USC 3145 – Certified Payrolls

- (a) In General.—The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.
- (b) Application.—Section 1001 of title 18 (False Statements) applies to the certified payroll.

# 40 USC 3145 – Certified Payrolls

The properly signed “Statement of Compliance” submitted or transmitted to the appropriate federal agency certifies that:

- The payroll for the payroll period contains the information required to be provided;
- The appropriate information is being maintained;
- Such information is correct and complete;
- Each laborer or mechanic has been paid the full weekly wages earned; and
- Each laborer or mechanic has been paid not less than the applicable wages, as specified in the applicable wage determination incorporated into the contract.

## 40 USC 3145 – Certified Payrolls

- Falsification of a certified payroll is a criminal violation that can result in a fine, up to 5 years in prison, or both. 18 U.S.C. § 874 & 1001.
- It can also be grounds for a lawsuit under the False Claims Act. 31 U.S.C. § 3730.

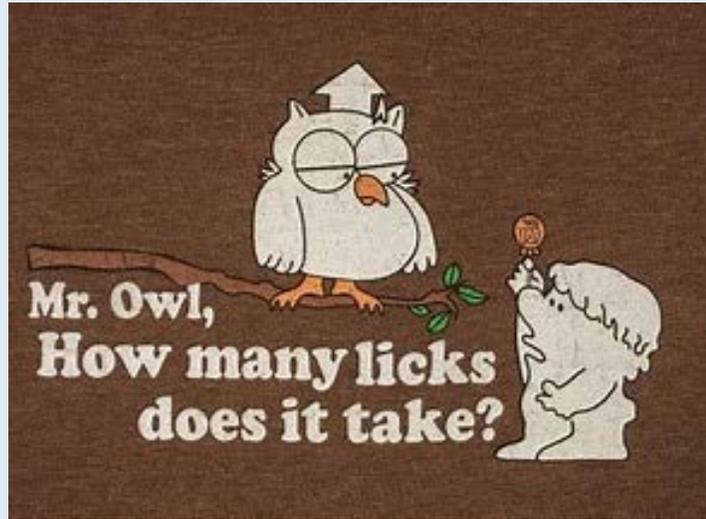
BEAUTY. BRAINS...AND A BADGE



GET CHRISTIE LOVE

# Copeland Act Violations

- As early as possible, the WHD should be notified of potential criminal violations such as the kickback of wages and the falsification of certified payroll records.
- If further investigation confirms the possibility of criminal violations, the WHD may refer potential criminal violations to the DOL Office of the Inspector General, the US Attorney's Office, and possibly the FBI.
- <https://www.justice.gov/usao-edwi/pr/new-berlin-contractor-agrees-plead-guilty-scheme-underpay-wages-will-pay-16-million>



# Deductions

- Regulations enacted under the authority of 40 USC 3145(a) also regulate the circumstances in which contractors may take deductions from payroll
- 29 CFR 3.5 describes when deductions may be made without prior approval from the Secretary, while 29 CFR 3.6 describes the circumstances in which the Secretary may grant approval for other types of deductions

## Permissible Deductions Without DOL Approval (29 CFR 3.5)

- Social security or federal or state income tax withholding
- *Bona fide* prepayment of wages
- Court ordered payments
- Fringe benefit plans with certain provisions
- Purchase of U.S. savings bonds
- Repayment of loans or purchase shares in a credit union

# Permissible Deductions (29 CFR 3.5)

- Deduction to pay regular union initiation fees and membership dues provided by a collective bargaining agreement (CBA)
- Authorized contribution to charitable organizations such as the Red Cross, United Way, etc.
- Deduction for “reasonable cost” of board, lodging, or other facilities meeting the requirements of section 3(m) of FLSA
- Deduction for safety equipment - if not prohibited by FLSA, or required by law for employer to furnish

## Deductions Requiring DOL Approval (29 CFR 3.6)

### **DOL may approve payroll deductions when:**

- Contractor makes no direct or indirect profit
- Deduction is not prohibited by law
- Deduction is voluntarily consented to in writing before work begins, or deduction is provided for under CBA terms
- Deduction serves the convenience and interest of employee

# Disclaimer

- This presentation is intended as general information only and does not carry the force of legal opinion.
- The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The *Federal Register* and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention



# Staying Alive: FHWA 1273 Field Compliance

- VI. Sublets/Assignments
- VII. Safety/Accident Prevention
- IX. Clean Air/Water
- XI. Lobbying Certification

By: Marvin Williams



U.S. Department  
of Transportation  
**Federal Highway  
Administration**



## VI. SUBLETTING OR ASSIGNING THE CONTRACT

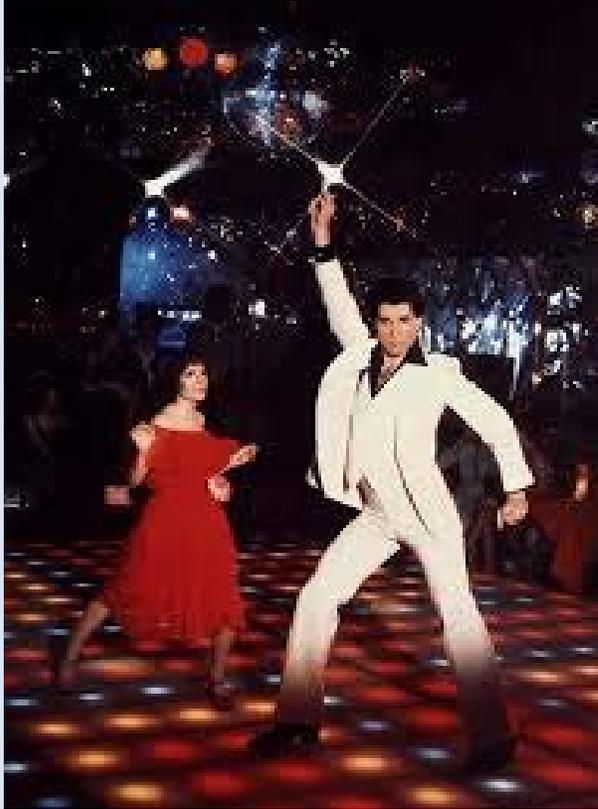
*This provision is applicable to all Federal-aid construction contracts on the National Highway System.*



- ⊕ Prime **must perform** at least 30% of the *total original contract price*
- ⊕ Does not apply to design-build projects
- ⊕ Deduct specialty items

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

*Perform work with its own organization*



- ⊕ Refers to workers employed or leased by the prime contractor,
- ⊕ equipment owned or rented by the prime contractor, with or without operators, but
- ⊕ does not include employees or equipment of a subcontract, agents of the prime contractor, or any other assignees.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

*Performing work with its own organization*



The term may include payments for the costs of hiring leased employees from an employee leasing firm:

- Ⓒ If the firm meets all relevant Federal and State regulatory requirements.
- Ⓒ If prime contractor meets all of the **following conditions:**

# VI. SUBLETTING OR ASSIGNING THE CONTRACT

## *Leased employees conditions*



- Prime contractor (PC) maintains control over the supervision of the day-to-day activities;
- PC remains responsible for the quality of the work;
- PC retains all power to accept or exclude individual employees from work; and
- **PC remains ultimately responsible for:**
  - **payment of predetermined minimum wages,**
  - **submission of payrolls,**
  - **statements of compliance and all other Federal regulatory requirements.**

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

### *Specialty items*



- Performed by subcontract and
- Deducted from the total original contract price
- Limited to work that requires highly specialized knowledge, abilities, or equipment and limited to minor components of the overall contract.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

### *Contract Amount*



Includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

# VI. SUBLETTING OR ASSIGNING THE CONTRACT

## *Contractor Staff*



- ⊕ Competent superintendent or supervisor,
- ⊕ that has full authority to direct performance of the work, and is
- ⊕ in charge of all construction operations, including its own organizational resources (supervision, management, and engineering services)

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

### *Sublet Exception*



No portion of the contract shall be sublet, assigned or otherwise disposed of **except:**

- ☮ Only with the written consent of the contracting officer, or authorized representative,
- ☮ written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

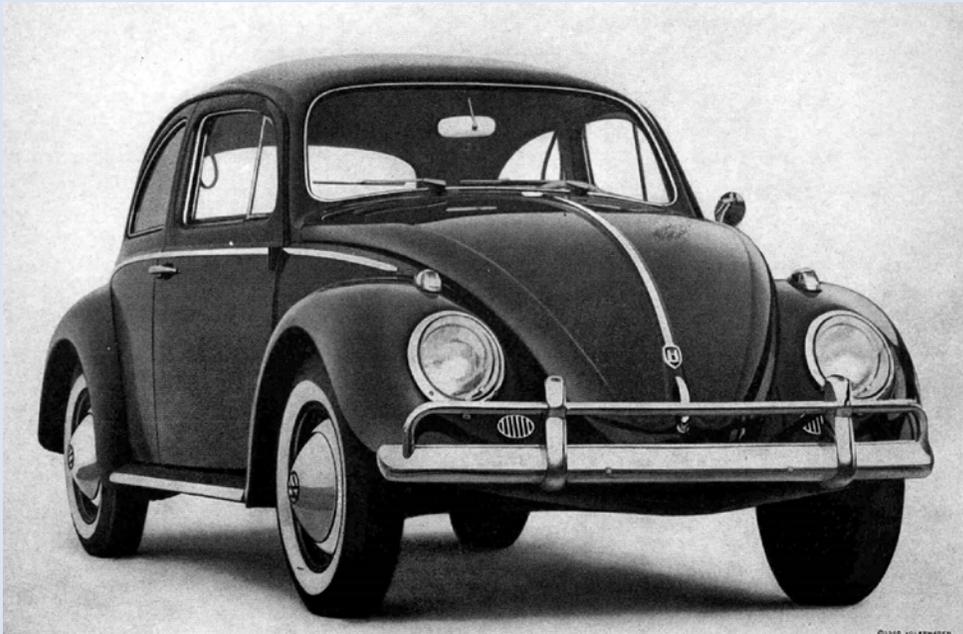
## VII. SAFETY: ACCIDENT PREVENTION

*This provision is applicable to all Federal-aid construction and to all related subcontract*



- ☮ The contractor shall comply with all applicable Federal, State, and local laws governing **safety, health, and sanitation.**
- ☮ The contractor shall provide all safeguards, safety devices and protective equipment.

# VII. Safety & Accident Prevention



☮ OSHA – administrative responsibility

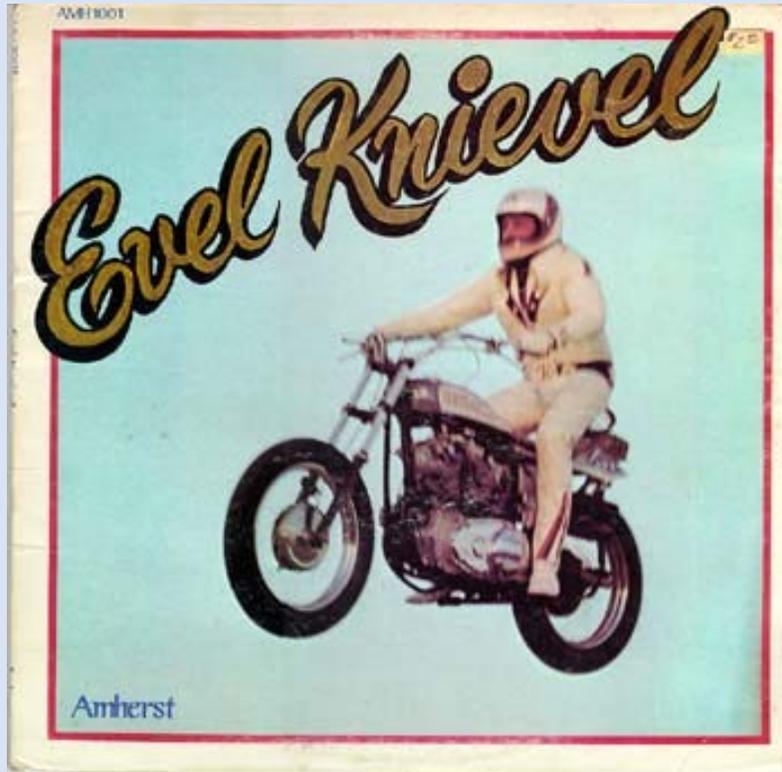
- 29 CFR 1910 (General)
- 29 CFR 1926 (Construction)

☮ FHWA required to ensure compliance

- 23 CFR 635
- STA shares enforcement responsibility

# VII. SAFETY: ACCIDENT PREVENTION

## *Unsanitary, Hazardous or Dangerous Conditions*



- Ⓜ The contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous conditions;
- Ⓜ As determined under construction safety and health standards (29 CFR 1926) promulgated by the **Secretary of Labor**, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

# VII. SAFETY & ACCIDENT PREVENTION

## *Construction Safety and Health Standards*

A decorative vertical strip on the left side of the slide, featuring a pattern of stylized flowers in various shades of green and yellow. The flowers have white centers and are arranged in a dense, overlapping pattern.

US DOL Secretary of Labor or authorized representative:

- ☮ Has the right of entry to any site of contract Performance, and
- ☮ Inspect or investigate compliance with the construction safety and health standards on that site of contract Performance

# VII. SAFETY & ACCIDENT PREVENTION

## *SAFETY DESIGN*



Traffic Control Design Handbook defines a “traffic control work zone “ as the distance between the first advance warning sign and the point beyond the work area where traffic is no longer affected. It was the trial court’s decision that there was ample evidence that the defendant failed to provide a proper traffic control work zone to adequately warn drivers of the existence of an excavation. Therefore the breach of that duty caused damage to the plaintiff.

A construction site that is not properly guarded will impose a liability.

# VII. SAFETY & ACCIDENT PREVENTION

## *SAFETY ISSUE*



Farrah is motoring her Cobra Mustang in the left lane of a high speed (50 mph), heavily traveled 4-lane road when the car directly in front of her moves into the right lane. Farrah finds herself confronted by a large excavation, guarded by a barricade, completely blocking the left lane. She is unable to stop, careening through the barricade and into the excavation. Her hair and car are destroyed. A construction site warning sign was posted within 500 feet and the only barricade prior to the excavation was located between 75-100 feet away.

*Did the highway agency adequately warn oncoming traffic of the construction site ahead?*

## IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

*This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.*



- ☺ All Fed-aid construction contracts & related subcontracts  $\geq$  \$100,000 (49 CFR 20)
- ☺ This provision ensures that no one associated with the performance of the contract is prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act
- ☺ Bid or award is considered the contractor's certification



## XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

*This provision is applicable to all Federal-aid construction contracts & related subcontracts  $\geq$  \$100,000 (49 CFR 20)*



With the submission of a bid or proposal, the bidder/proposer's certifies that no Federal appropriated funds have been paid to a person for the purpose of attempting to influence:

# XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

## *Influence and Impacts*



- ✌ Any member of Congress or a Federal employee in connection with any Federal grant, contract, loan or agreement.
- ✌ Applies to STAs, Local Agencies, and Contractors

# XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

## *Non-Federal Funds*

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence

✌️ Any member of Congress or a Federal employee in connection with any Federal grant, contract, loan or agreement,

the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying":

**DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB  
07/25/88-0

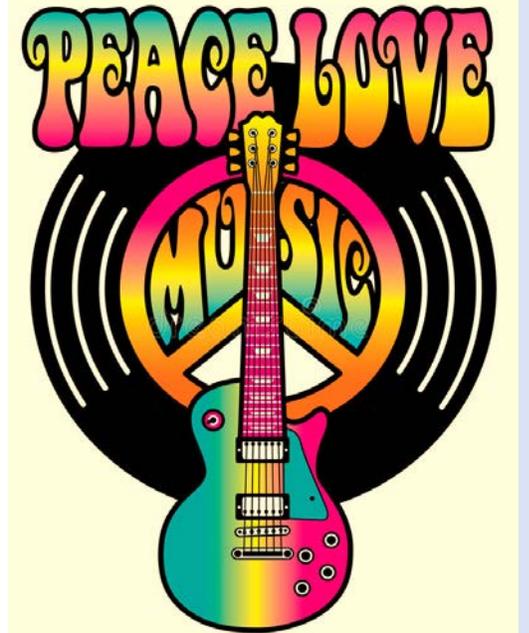
Complete this form to disclose lobbying activities pursuant to 21 U.S.C. 1202.  
(See reverse for public burden disclosure.)

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. Cooperative Agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. initial application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial filing  <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b>  Type: _____ Quarter: _____  Date of last report: _____</p>
<p><b>4. Name and Address of Reporting Entity:</b>  <input type="checkbox"/> Firm <input type="checkbox"/> Subordinate  Name: _____, if listed:   Congressional District, if known:</p>		<p><b>5. If Reporting Entity in No. 4 is Subordinate, Enter Name and Address of Firm:</b>    Congressional District, if known:</p>
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b>    CFDA Number, if applicable: _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b>  \$ _____</p>	
<p><b>10. a. Name and Address of Lobbying Entity</b>  (Individual, last name, first name, MI)    (each Continuation Sheet) SF-LLL-A, if necessary)</p>		<p><b>10. b. Individuals Performing Services</b> (including address of office)  (Use No. 10a)  (last name, first name, MI):</p>
<p><b>11. Amount of Payment (check all that apply):</b>  \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>		<p><b>11. Type of Payment (check all that apply):</b>  <input type="checkbox"/> a. retainer  <input type="checkbox"/> b. per diem fee  <input type="checkbox"/> c. consultant  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input type="checkbox"/> f. other, specify: _____</p>
<p><b>12. Form of Payment (check all that apply):</b>  <input type="checkbox"/> a. cash  <input type="checkbox"/> b. in kind, specify: value _____  value _____</p>		<p><b>13. Brief Description of Services Performed or to be Performed and Status of Service, including officials, employees, or Members contacted, for Payment indicated in Item 11.</b>           (each Continuation Sheet) SF-LLL-A, if necessary)</p>
<p><b>13. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p><b>14. Information revealed through this form is authorized by title 21 U.S.C. section 1202. This disclosure of lobbying activities is a material representation of fact upon which reliance may placed by the firm above when the transaction was made or entered into. This disclosure is required pursuant to 21 U.S.C. 1202. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$1,000 and not more than \$50,000 for each such failure.</b></p>		<p>Signature: _____  Print Name: _____  Title: _____  Telephone No.: _____ Date: _____</p>
<p><b>Federal Use Only:</b></p>		<p>Substitution for Legal Reproduction  Statistical Form - LLL</p>

## XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

### *Required Contract Language*

The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts



## XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.*

Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A logo on a black background featuring the text "I ♥ 70s" in white. The "I" is a tall, thin vertical bar. The heart symbol is a solid red heart. The "70s" is in a large, bold, sans-serif font, with a small "s" at the end.

## P.I.'s CONTACT INFORMATION



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e: [marvin.williams@dot.gov](mailto:marvin.williams@dot.gov)



# Staying Alive: FHWA 1273 Field Compliance

1273 Sections VIII & X  
Crime & Punishment

By: Santos Ramirez  
Special Agent, USDOT/OIG



U.S. Department  
of Transportation  
**Federal Highway  
Administration**





# OIG – Who We Are

## **The Office of Inspector General's Mission:**

- Conduct independent and objective audits, investigations, and inspections,
- prevent and detect fraud, waste, and abuse,
- promote economy, effectiveness, and efficiency,
- review pending legislation and regulation, and
- keep the agency head and Congress fully and currently informed.



# OIG & Partnership . . What is Your Role?

**Whether you are a modal partner, oversight agency/firm or an industry professional:**

- Ensure compliance with the terms of FHWA 1273
- Function as the project's **Eyes** and **Ears** to ensure project integrity, transparency and accountability
- Serve as a technical expert – Trust but **VERIFY, VERIFY, VERIFY**
- See something, say something



# The OIG: Investigative Priorities

- **Contract and Grant Fraud**
- Transportation Safety
  - Aviation
  - Motor Carrier
  - Hazardous Materials
- Employee Integrity

*Provisions of  
FHWA 1273  
would fall into  
this category*





## The OIG (Continued): Types of Investigations

- **Criminal** - *Criminal investigations under Title 18 of U.S. Code (USC)*
- **Civil** - *Civil false claim investigations and Qui-Tam investigations*
- **Anti-Trust** - *Sherman Act (15 USC 1)*
- **Administrative Actions** - *Suspension and Debarments*



# The OIG (Continued): Types of Crimes

- False Statements
- Corruption/Bribery
- Mail and Wire Fraud
- Racketeering
  - *A person who commits crimes such as extortion, bribery, and obstruction of justice in furtherance of illegal business activities.*
- DBE Fraud



# The OIG (Continued): What is fraud, anyway?

**Fraud is: Deliberate deception to secure an unfair gain; false statement; concealment of a material fact:**

- Intent to deceive
- Fraud Common Schemes
  - “Red Flag” Indicators
  - Case Examples
- Fraud “Triangle”



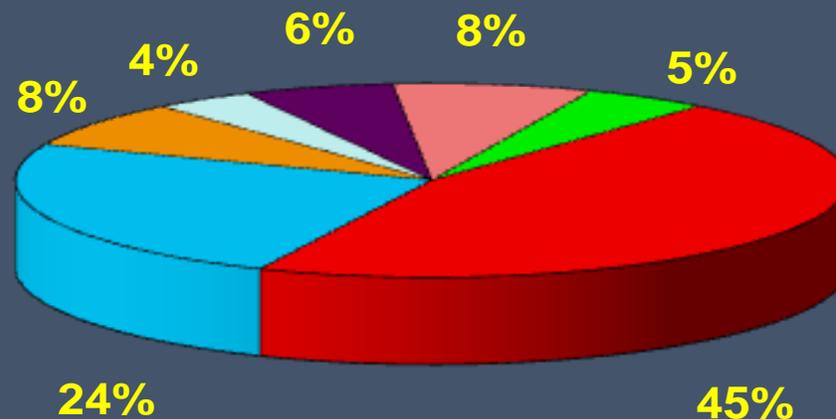
# The Fraud Triangle





# Percentage of Contract Fraud by Type

Only two of the 7 categories prohibited by **FHWA 1273**, but they represent **69%**!



- False Statements
- DBE
- Bidrigging
- Kickbacks
- Prevaling Wage
- Public Corruption
- Other



# Fraud in Pre and Post Award & Contract Performance

False DBE Application  
Bid Rigging  
False Test Results  
False Certifications  
Over Billing  
Inflating Costs

Defective Products  
Product Substitution  
Change Orders & SAs  
False Claims  
Claims for Contractor Errors



# Fraud in Pre and Post Award & Contract Performance (Continued): VULNERABILITIES

## Conflicts of Interest

- Unexplained or unusual favoritism or close socialization towards a particular contractor or consultant
- Company does not meet CUF, but falsely represented it does
- A contracting or oversight official misrepresents that he or she is impartial in business decisions when they have an undisclosed financial interest with a contractor
- Government official disclosing confidential bid information to a contractor or assisting the contractor in preparing the bid
- Acceptance of inappropriate gifts, travel or entertainment from a contractor
- Employee seeks employment with a current or prospective contractor or consultant



## Fraud in Pre and Post Award & Contract Performance (Continued): VULNERABILITIES

### **Life's circumstances and realities**

- o Financial issues
- o Personal conflicts
- o Professional conflicts



# Criminal Statutes

## Criminal Statutes Typically Used to Prosecute Fraud:

- 18 USC § 286 *False Claims*
- 18 USC § 287 *Conspiracy too Present False Claims*
- 18 USC § 371 *Conspiracy to Defraud the U.S.*
- 18 USC § 1001 *False Statements*
- 18 USC § 1020 *Highway Projects – False Statements*
- 18 USC § 1341 *Mail Fraud*
- 18 USC § 1343 *Wire Fraud*
- 18 USC § 1519 *Obstruction of Justice*



# False Statements

**A criminal act in accordance with two Federal criminal statute:**

Title 18 of the U.S. Code (18 USC) § 1001  
(Statements or Entries Generally):

*“...knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;(2) makes any materially false, fictitious, or fraudulent statement or representation; or(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry...”*



## False Statements (Continued)

### ○ 18 USC § 1020 (Highway Projects):

*“...knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-Aid Road Act ...”*



## False Statements (Continued)

- Penalties under both statutes include fines and/or imprisonment for no more than five years
- This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.
- *“To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project”*



# Fraud Scheme: BRIBERY

**A contractor misrepresents the cost of performing work by compensating a Government official for permitting contractor overcharges to increase contractor profit**

- Other Government inspectors at the job site notice a pattern of preferential contractor treatment
- Government official has a lifestyle that exceeds their salary
- Contract change orders lack sufficient justification
- Oversight officials have business relationships with contractor or their families



# Fraud Scheme: BID RIGGING & COLLUSION

**Contractors misrepresent that they are competing against each other when in fact they agree to cooperate on the winning bid to increase job profit**

- Unusual bid patterns: too close, too high, round numbers, or identical winning margins or percentages
- Different contractors making identical errors in contract bids
- Bid prices drop when a new bidder enters the competition
- Rotation of winning bidders by job, type of work, or geographical area
- Losing bidder submits identical line item bid amounts on nonstandard items or is hired as a subcontractor
- Joint venture bids by firms that usually bid alone



# Fraud Scheme: DBE FRAUD

**A contractor misrepresents who performs the contract work in order to increase job profit while appearing to be in compliance with contract goals for involvement of DBEs**

- DBE owner lacking background, expertise, or equipment to perform subcontract work
- Employees shuttling back and forth between prime contractor and DBE-owned business payrolls
- Business names on equipment and vehicles covered with paint or magnetic signs
- Orders and payment for necessary supplies made by individuals not employed by DBE-owned business



# Fraud Scheme: Materials Overcharging

**A contractor misrepresents how much construction material was actually used on the job and is paid for excess material**

- Discrepancies between contractor-provided documentation and observed data
- Refusal or inability to provide supporting documentation
- Truck weight tickets or plant production records with altered or missing information
- Files claims not supported by documentation



# Fraud Scheme: Product Substitution

**A contractor misrepresents the product used in order to reduce costs for construction materials**

- Any mismarking or mislabeling of products or materials
- Contractor restricts or avoids inspection of goods or services upon delivery
- Refusal to provide supporting documentation regarding product or manufacturing
- Test or quality records reflect no failures or a high failure rate but contract is on time and profitable
- Contractor offers to select samples for testing programs
- Irregularities in signature, dates, or quantities on delivery documents



# Fraud Scheme: QC Testing

**A contractor misrepresents the results of quality control tests to earn contract incentives falsely or to avoid production shutdown in order to increase profits or limited costs**

- Contractor insists on transporting quality control (QC) samples from the construction site to the lab or does not maintain QC samples for later quality assurance testing
- Photocopies of QC test results are provided when originals are expected
- Lab test reports are identical to sample descriptions and test results, varying only in date and lot number tested
- Test results cannot be found, are suddenly found after a delay, or have been destroyed
- Contractor regularly takes or labels QC samples away from inspector oversight



# Examples?

## **U.S. v. Oscar Rayford**

*DBE pass-through scheme. Recovery of federal aid from the North Carolina DOT – \$1.3 million recovery of ineligible Federal-aid expenditures related to a road improvement project.*

## **U.S v. Dragados/Judlau, a Joint Venture et al (FTA)**

*Falsely claimed to hire DBE as subcontractor on \$447 million dollar East Side Access Project; hired non-DBEs. Dragados/Judlau agreed to pay \$7.5 mil civil settlement .*

## **U.S. v. Anthony Willie / U.S. v. Kenneth Duane Adams**

*On November 21, 2017, FHWA suspended Virginia DOT supervisors Anthony “Andy” Willie and Kenneth “Kenny” Duane Adams; and four northern Virginia trucking and snow-removal company owners and their companies after an August 27, 2017, indictment on charges of conspiracy and fraud. In early 2013, Willie and Adams used their official positions to enrich themselves through negotiated bribe agreements with several owners and operators of trucking and snow-removal companies in northern Virginia. From the 2013–2014 to the 2015–2016 snow season, Willie and Adams received approximately \$140,000 in cash bribes. Adams had also received an additional \$160,000 in bribes after negotiating a subcontractor agreement with one of the suspected removal companies.*

## **U.S. v. Cold Spring Construction Co.**

*On December 7, Cold Spring Construction Co., a road construction company in Akron, New York, agreed to pay \$327,653.50 to the U.S. Government to settle allegations that Cold Spring utilized a now-defunct DBE named American Indian Builders & Suppliers, Inc. as a pass-through material supplier on various federally funded roadway projects in the State of New York. Cold Spring obtained its materials from a non-DBE supplier.*

## **U.S. v. David E. Stalowy (Central Florida Environmental Corporation)**

*On April 25, 2017, David E. Stalowy, owner of Central Florida Environmental Corporation (CFE), Winter Springs, FL, agreed to pay a \$112,500 civil settlement with the U.S. Attorney's Office in Orlando, FL, related to violations of the False Claims Act on a road construction project partially funded by the American Recovery and Reinvestment Act of 2009. Stalowy falsely certified that CFE had made timely payments to subcontractors on the North Winter Park Drive Phase 2 project, a local agency project bid awarded by the city of Casselberry, FL.*

*On June 23, 2017, FHWA suspended and proposed the debarment of Stalowy and CFE based on the civil settlement agreement with the United States.*



# Civil Statutes: REMEDIES

## False Claims Act

- 31 USC § 3729 – False Claims
- Qui-Tam Provision

*qui tam pro domino rege quam pro se ipso in hac parte sequitur: "[he] who sues in this matter for the king as [well as] for himself"*



# Civil Statutes: REMEDIES (Continued)

## **Title 2 Code of Federal Regulations (CFR) Part 180 - Government-wide Debarment and Suspension (non-procurement) program**

- Adopted and supplemented by USDOT: 2 CFR Part 1200
- Office of Management and Budget provides guidance to Federal agencies for a government-wide debarment and for nonprocurement programs and activities
- The purpose of the debarment and suspension system is to protect the public interest by excluding persons from Federal programs who are not “presently responsible”
- Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons



# Civil Statutes: REMEDIES (Continued)

## **Suspension**

- Temporary status pending completion of investigation or legal proceeding
- Adequate evidence for debarment
- Immediate action necessary
- Imposed first giving person opportunity to contest

## **Debarment**

- Imposed for specified period as a final determination that person not presently responsible
- Preponderance of the evidence that person's conduct warrants debarment
- Imposed after giving person opportunity to contest



# Civil Statutes: REMEDIES (Continued)

## **Excluded Parties List System via System for Award Management (SAM) <https://www.sam.gov>**

- Maintained by the General Services Administration
- For persons excluded by a Federal agency under the nonprocurement or procurement debarment and suspension system, their information is placed into the EPL
- <https://www.epls.gov/>

## **USDOT/FHWA Guidance:**

- <http://www.fhwa.dot.gov/construction/cqit/suspensi.cfm>



# If You Suspect Fraud, Waste, and Abuse

- Be vigilant about “Red Flag” indicators
- Document the activity you suspect to be fraudulent
- Seek an explanation for irregular activity, if possible
- Make copies of all relevant documents and take photographs, if possible
- Report your concerns or suspicions to management and referral to OIG, as appropriate
- Can report directly to OIG and remain confidential



# If You Suspect Fraud, Waste, and Abuse (Continued)

## Reporting Suspected Fraud to OIG:

- Complete an online complaint form at: [www.oig.dot.gov/hotlineform.jsp](http://www.oig.dot.gov/hotlineform.jsp)
- Call: 1-800-424-9071 (Toll Free)
- Fax: 1-540-373-2090
- E-mail: [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov)
- Mail: DOT Inspector General  
P.O. Box 708 Fredericksburg, VA 22404
- SA Santos Ramirez, Jr.  
Telephone: 954-382-6650  
Mail: USDOT/OIG, 510 Shotgun Road, Suite 220, Sunrise, Florida 33326



# If You Suspect Fraud, Waste, and Abuse (cont)

## OIG Hotline

DOT Office of Inspector General

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**Focus On**

**Review of Web Applications Security and Intrusion Detection in Air Traffic Control Systems**

On May 4, 2009, we issued our report on Federal Aviation Administration (FAA) web applications security and intrusion detection in air traffic control (ATC) systems, requested by the Ranking Minority Members of the full House Transportation and Infrastructure Committee and its Aviation Subcommittee. We found that web applications used in supporting ATC systems operations were not properly secured to prevent attacks or unauthorized access. During the audit, our staff gained unauthorized access to information stored on web application computers and an ATC system, and confirmed system vulnerability to malicious code attacks. In addition, we found that FAA had not established adequate intrusion-detection capability to monitor and detect potential cyber security incidents at ATC facilities. Intrusion-detection systems have been deployed to only 11 (out of hundreds of) ATC facilities. Also, cyber incidents detected were not remediated in a timely manner.

**American Recovery and Reinvestment Act of 2009: Oversight Challenges Facing the Department of Transportation**

On March 31, we issued our report on oversight challenges facing the Department of Transportation with the implementation of the American Recovery and Reinvestment Act (ARRA) of 2009. The objective of this audit was to highlight key DOT oversight challenges-based on prior OIG reports and other agencies' relevant audit work-and identify actions DOT should take now in support of ARRA requirements. Our report condensed the challenges into the following 10 focus areas where DOT must exhibit sustained and effective actions related to providing oversight to grantees receiving ARRA funding; implementing new requirements and programs mandated by ARRA; and preventing fraud, waste, and abuse: (1) acquire sufficient personnel with relevant expertise to oversee grantees; (2) adhere to existing Federal requirements for programs funded under ARRA; (3) evaluate the credibility and completeness of cost and schedule estimates; (4) oversee grantees' contracting management activities and ensure selection of appropriate contract types; (5) address internal control weaknesses and identify unused funds for use on other eligible projects; (6) implement new ARRA tracking and reporting requirements that are designed to promote accountability and transparency; (7) develop comprehensive plans and sound criteria for the new discretionary grant and passenger rail programs created by ARRA; (8) develop appropriate oversight strategies for the new programs created by ARRA by drawing lessons from DOT's Operating Administrations; (9) enhance understanding among DOT staff, grantees, and their contractors on how to recognize, prevent, and report potential fraud; and (10) take timely and effective action to suspend and/or debar individuals or firms that have defrauded the Department so they do not receive Federal contracts in the future.

**Latest Releases**

May 04 [Review of Web Applications Security and Intrusion Detection in Air Traffic Control Systems](#)

Apr 30 [American Recovery and Reinvestment Act: DOT's Implementation Challenges and the OIG's Strategy for Continued Oversight of Funds and Programs](#)

Apr 29 [DOT OIG Economic Recovery Oversight Plan](#)

Apr 29 [American Recovery and Reinvestment Act: DOT's Implementation Challenges and the OIG's Strategy for Continued Oversight of Funds and Programs](#)

Apr 24 [Quality Control Review of the Department's Implementation of Earned Value management and Security Cost Reporting](#)

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- Competition and Economic Analysis
- Acquisition and Procurement
- Criminal Investigations
- Recovery Oversight

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**OIG Hotline**

- Report Allegations of Fraud, Waste, and Abuse in DOT Programs and Stimulus Concerns in DOT Programs
- Contractor FAR Reporting Requirements
- FRAUD ALERT: Fraudulent DOT Procurement Letter Makes Unauthorized Request For Contractor Financial Information

Last updated: May 4 2009

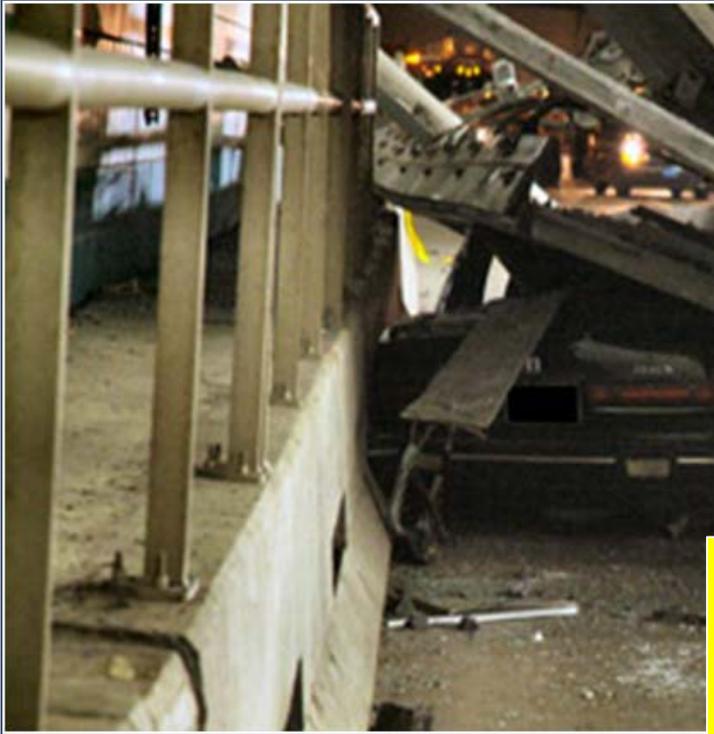
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- Contractor FAR Reporting Requirements
- FRAUD ALERT: Fraudulent DOT Procurement Letter Makes Unauthorized Request For Contractor Financial Information



# Why Should You Care?

*...to prevent this  
from happening  
again*



*Massachusetts Central  
Artery/Tunnel Project,  
a.k.a "Big Dig"*