
CHAPTER 1: GENERAL INFORMATION

1.1 OVERVIEW

1.1.1 Government Agency Responsibilities

Multiple government agencies have responsibilities for and an interest in the various elements of the Construction Contract Compliance Program.

The Federal Highway Administration (FHWA) approves the FDOT's compliance program, reviews overall compliance activity through specified periodic reports, and reviews individual contracts and/or contractors as deemed appropriate. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination or harassment filed by project workers.

1.1.2 Nondiscrimination Assurance Required of Primes, Subcontractors, Rental Companies and Material Suppliers

As a recipient of federal funds, each contract FDOT executes with a prime contractor (and each subcontract the prime contractor signs with a subcontractor), must include the exact wording of the nondiscrimination assurance shown in *Example 1.1.2.1*.

**Example 1.1.2.1
Nondiscrimination Assurance
Required in Each Contract & Subcontract
(49 C.F.R. 26.13)**

| |
|---|
| <p>“The contractor, sub recipient 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 C.F.R. 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 recipient deems appropriate.”</p> |
|---|

1.1.3 Contract Documents and the Equal Opportunity Construction Contract Compliance Manual (CCM)

Each executed FDOT construction contract contains multiple specifications and those vary depending on many factors including the contract's federal funding or nonfederal funding. Many specifications pertain specifically to the Construction Contract Compliance program and outline the contractor's general compliance requirements for that contract.

The **CCM** describes FDOT's approved program for contractor compliance reporting and monitoring to achieve a consistent, predictable, and repeatable (CPR) compliance program. It provides a detailed explanation of the general compliance requirements, forms, record keeping, and analytical tools for reporting and monitoring compliance on Florida's construction and design build contracts.

This *Manual* reflects the compliance monitoring program approved by the Federal Highway Administration (FHWA) for FDOT. Any deviation from the policy outlined in the CCM including additional requirements requires prior approval from the State Construction Office and the Equal Opportunity Office. The request must include a compelling justification by the District Construction Engineer.

Chapters One through Six (1-6) of the **CCM** describe the compliance program requirements. Throughout the manual, there is reference to the [Department's Forms Library](#), **Section 1.4**, and the **CCM Reference Guide**. The **CCM Reference Guide** is a collection site for information, tables, and other references regarding this CCM.

Contract specifications are regularly revised for incorporation in newly executed contracts and this CCM is periodically updated to support those and other changes. **Table 1.1.3.1** summarizes the contract compliance specifications.

**Table 1.1.3.1
 Compliance Related Documents Included in
 FDOT Construction and Design Build contracts**

| Documents | Included if federally funded | Included if Non-FAP/State funded |
|---|------------------------------|--|
| 3-8 Audit of Contractor's Records | Yes | Yes |
| 7-1.1 Laws to Be Observed | Yes | Yes |
| 7-16 Wage Rates for Federal-Aid projects | Yes | No |
| 7-24 DBE Program (including Nondiscrimination Assurance) | Yes | Yes |
| 7-25 OJT Requirements | Yes | Yes (applies only in the event the contractor initiates voluntary OJT) |
| 7-27 Equal Employment Opportunity Requirements | Yes | No |
| 7-29 E-Verify | Yes | Yes |
| FHWA 1273 Required Contract Provisions Federal-Aid construction | Yes | No |
| 9-5.3.2 Payment-withholding payment | Yes | Yes |
| 9-5.6 Prompt Payment & Return of Retainage | Yes | Yes |
| | | |

1.1.4 E-Verify

FDOT requires utilization of the [U.S. Department of Homeland Security's E-Verify system](#) to confirm the employment eligibility of all persons who perform employment duties or work pursuant to any FDOT contract within Florida. This requirement extends to all

agreements entered into under an FDOT contract and all parties are advised to maintain records evidencing compliance with E-Verify.

1.1.5 FHWA 1273 Required Contract Provisions Federal-Aid Construction

FHWA 1273 (available in the **CCM Reference Guide**) is a collection of laws and regulations pertaining only to federally funded construction contracts. This CCM reflects Florida's specific compliance expectations regarding **FHWA 1273**.

1.1.6 Audit of Subordinate Agreements

Within ninety (90) days of a Federal-Aid construction contract execution, the districts will issue to the prime a memorandum ("**Subject: Audit of Subordinate Agreements for FHWA 1273**") requesting complete copies of selected subcontracts and purchase orders for the purpose of verifying proper inclusion and/or reference to **FHWA 1273**. For Design Build contracts, this initial request will be made within ninety (90) days of the begin construction date. Regardless of execution date, all Federal-Aid construction and design build contracts are subject to this audit.

The requirement to include **FHWA 1273** in contracts Let August 10, 2012, and after, "in its entirety" is fulfilled by physically incorporating (not referencing) the full and complete document at any place in the agreement. It may not be shortened nor abbreviated. The **Required Contract Provisions** shall not be incorporated by reference in any case. **FHWA 1273** is available as a PDF file on the FHWA website, or it may be used in another file format provided the text is verbatim and complete.

The requirement to reference **FHWA 1273** is fulfilled by including verbiage such as the following at any place in the agreement:

Note: This is for contracts Let prior to and including August 9, 2012, or for contracts for design services; purchase orders; rental agreements and other agreements for supplies or services.

"The contractor is advised of their obligation to comply with the requirements of **FHWA 1273, Required Contract Provisions, Federal-Aid Construction Contracts.**"

The contractor may submit the requested data electronically or by hard copy. Proprietary data may be redacted provided there is no impact on the ability to determine compliance for the specific contract.

In the event **FHWA 1273** is not appropriately reflected in the collected document(s) the noncompliance communications described in **CCM Section 1.6** will be initiated in the timeframes specified and requests to review additional agreements will be issued.

The prime may resolve this noncompliance by providing the RCS a full and complete copy of an executed agreement(s) reflecting the necessary correction(s).

1.1.7 Prime Contractor Responsibilities

The prime contractor is responsible for EEO, OJT, DBE, Prevailing Wage and Title VI compliance by any subcontractor or lower tier subcontractor.

All contractors are to implement and maintain, throughout the course of a contract, actions which comply with their contractual obligations. Records evidencing each aspect of required compliance are to be developed and maintained by all contractors for a minimum period of three years following the date of final payment of the contract for all work regardless if such records are or are not routinely collected by the FDOT during the contract.

1.1.8 Prime Contractor Compliance Process

The prime is responsible for compliance on the contract. Implementation of the prime's compliance responsibility requires development of a process for reviewing and confirming their contractors' compliance with all aspects of EEO, DBE, OJT, and Wages.

A prime's process may entail any one of a multitude of approaches including, but not limited to: requiring documentation submissions, verification of data, etc. Relying solely on a subcontractor's affirmation of compliance may not be adequate.

The prime's compliance process should include a series of actions and sanctions aimed at overcoming subcontractor noncompliance and timeframes for taking such action. Noncompliance communications may include a series of verbal and written notices; sanctions may include the withholding of subcontractor progress payments, contract termination and/or denial of subsequent subcontracts.

The prime contractor, at the time of executing subcontracts, should discuss/review their compliance process. The prime's process should include communications to the subcontractor regarding record keeping, record submission, and timeframe requirements and a definition of how and when incidents of subcontractor noncompliance will be addressed by the prime. The FDOT is available to assist contractors in the development of their compliance process.

Prime contractors are encouraged to remain cognizant that subcontractors work for a variety of primes and, accordingly, may be subjected to multiple individual compliance processes. The collection of document copies versus originals should be allowed; primes can always ask a subcontractor for additional data if compliance appears questionable based on such documents.

When a prime has a recurring contractual relationship with a subcontractor, the prime may wish to establish subcontractor compliance files in order to reduce duplication of subcontractor submissions.

1.1.9 Prime Contractor Compliance Records and FDOT Review

Prime contractors are to ensure that records are developed, collected and maintained to retain compliance with requirements for a minimum period of three (3) years following the date of final payment. These records are to be made available for inspection by FDOT and FHWA representatives when requested.

1.1.10 Default of the Prime Contractor

In the event a prime contractor defaults on a contract and their contract compliance data is incomplete or incorrect, the Resident Compliance Specialist (RCS) will proceed with all noncompliance communications and actions such that the surety company and/or the successor contractor are fully aware of the conditions. A surety company is exempt from contract compliance reporting requirements but is responsible for ensuring that the successor contractor carries out the requirements.

1.1.11 Compliance Training and Technical Assistance

The District Construction Office and the Equal Opportunity Office (EOO) provide training to contractor personnel as well as compliance staff regarding the requirements of the FDOT Construction Compliance Program.

District Construction Office's will be responsible for training workshops for Contract Compliance procedures and FHWA 1273 requirements. The District Offices may combine training workshops by regional area. A minimum of one training workshop per year must include contractors. Additional training sessions should be held for all Resident Compliance Specialists and Local Agency Programs. The District may conduct further training sessions as needed. At the beginning of each Federal Fiscal Year by October 15th the EEO Contract Compliance Administrator will receive a tentative training schedule or itinerary from each District Construction Office. A list of completed training activities for the year must be submitted to the Equal Opportunity Office Contract Compliance Administrator by September 15th of the following year.

1.2 FDOT RESPONSIBILITIES

1.2.1 Equal Opportunity Office (EOO)

The EOO has the responsibility for setting policy, issuing guidance, providing training and technical assistance, and monitoring District compliance through District visits and **Quality Assurance Reviews**. In addition, the EOO will initiate all required reporting to FHWA. While the District offices will be required to provide information to the EOO for reporting, the districts will not provide reports to FHWA.

The EOO will perform other specific activities, including setting FDOT's DBE goal, maintaining the Equal Opportunity Compliance System, DBE outreach initiatives and supportive services, **Title VI**, and various other programs.

1.2.2 State Construction Office (SCO)

The SCO is responsible for the administration of the **Davis-Bacon Act** requirements relating to wage rates, payrolls, and prompt payment. The SCO Prevailing Wage Rate Coordinator establishes policies and procedures pertaining to requirements relating to wages; RCSs are responsible for the day-to-day project administration of wages. (See **Construction Project Administration Manual, Topic No. 7000-000-000** for additional information).

1.2.3 District Construction Office

Under each District Construction Compliance Office (DCCO), a District Contract Compliance Manager (DCCM) is responsible for the day-to-day administration of the contract compliance program. The Resident Compliance Specialists (RCS's) monitor contract compliance at the project level.

The District Contract Compliance Manager is responsible for monitoring the contractor's EEO, DBE and OJT activities, providing training to Resident Compliance Specialists (RCS), local agencies, contractors, construction engineering and inspection firms, and providing annual and special purpose reporting to the EOO.

Each DCCM schedules, conducts, and prepares compliance reviews of contractors as prescribed in Section 4.5. Each District is required to complete eight reviews annually. The DCCM shall also update and keep current the EOO SharePoint site of planned and completed contract compliance reviews. The review period is based on the federal fiscal year (October 1 to September 30) and the planned list of compliance reviews shall be entered into the SharePoint site by October 15th. The District is not limited to eight compliance reviews and is encouraged to exceed the required number of reviews. If there is reason to suspect that a contractor is noncompliant with **FHWA 1273, 23 Code of Federal Regulations**, or other federal authorities, the District should conduct a compliance review to assess compliance with federal provisions, even if the District has completed the required number of reviews. Each company reviewed, prime or subcontractor, is considered as one review. Reviews can be a mixture of project and area reviews, depending on the work program mix of the district. Follow-up reviews are generally not included in the required number of reviews. However, if a follow-up review requires an extensive amount of work and oversight, the follow-up review will be calculated in the overall number of required reviews and requires prior approval from the EOO. The project review will cover the workforce for the entire contract and will include the prime contractor and all applicable subcontractors active on the project. In an area wide review, the contractor's entire workforce in a geographical area is reviewed. The geographical area is determined by the DCCM and should be clearly identified to the contractor.

The DCCM will perform the following functions:

1. Conduct eight (8) contract compliance reviews per federal fiscal year, by October 1st of each year.

-
2. Review and submit/reject DBE commitments and payments through EOC.
 3. Provide technical assistance and training to local agencies and contractors regarding **FHWA 1273** and other federal authorities.
 4. Conduct Construction Contract Compliance Administration Field Office Reviews or other audits of RCSs.
 5. Provide training and review of compliance staff/consultants in monitoring responsibilities as identified in the EEO Construction Contract Compliance Manual.
 6. Conduct and participate in investigations, reviews and audits as necessary.
 7. Complete annual FHWA reports and special reporting.
 8. Ensure retention of project records.
 9. Coordinate with LAP Administrators to verify that Local Agency contracts have an assigned RCS who is trained in monitoring federally funded contracts.
 10. Provide technical assistance to the District LAP Administrators regarding the Equal Employment Opportunity Contract Compliance Program.
 11. Report timely and accurate data as scheduled or upon request.

Every six (6) months, or as often as necessary, the DCCO will conduct a **Construction Contract Compliance Field Office Review** of no less than 20% of the RCS' projects to determine if the EEO procedures are being followed. Project records (files) will be reviewed for accuracy and content to ensure contract compliance with EOC reporting requirements as well as EEO, OJT and DBE contract clauses and contract activities. The review and the closeout should be completed within seven (7) days.

A written report will be prepared, and review findings and recommendations will be forwarded to the Resident Engineer within seven (7) days of the closeout for further handling and/or distribution. Any deficiencies noted in the report should be corrected within fourteen (14) days of the dated formal report. If the District is unable to resolve any issues arising from the cited deficiency and the deficiency cannot be resolved, the issue will be forwarded to the EEO for resolution. The District Compliance Manager will provide a quarterly schedule of offices to be reviewed by the 15th day of the month preceding the scheduled quarter to the EEO. The final reports shall be kept at the DCCO and made available to the EEO upon request.

1.2.4 Resident Construction Office (RCO)

Resident Construction Offices have the responsibility of supporting the Contract Compliance Program through Resident Compliance Specialists (RCS). Duties vary by District based on organizational preference. The RCO is responsible for reviewing, evaluating, ensuring the completion and review of certain workforce interviews and job site inspections, and assisting project administrators and the DCCOs as required.

When FDOT contracts with a consultant to manage a construction project, the consultant will have the responsibilities for all actions of the Resident Compliance Specialist. Depending on the experience of the consultant, the DCCO will be required to train the consultant's employees to perform the required compliance functions.

The Resident Compliance Specialist will:

1. Provide technical assistance to contractors and subcontractors.
2. Ensure contractors are entering DBE commitments and payments through EOC; submit/reject DBE commitments and payments through EOC; and monitor the progress of the contract and DBE participation.
3. Maintain the official compliance records for the project.
4. Assist the DCCO in compliance review activities.
5. Determine if DBEs are performing CUF.
6. Maintain all documents, conduct interviews, and monitor the contractors' compliance related to the OJT Program.
7. Notify the DCCO of specific concerns or issues regarding contractors' compliance with **FHWA 1273** and other federal authorities.

1.2.5 Preconstruction Conference

The RCS will ensure information is presented regarding DBE participation, including verify submittal of DBE commitments in EOC before preconstruction conference; OJT, labor compliance, including certified payrolls, wage conformances, displaying of USDOL/FHWA bulletin board posters; prompt payment to and return of retainage for subcontractors/suppliers.

The contractor will be advised of the responsibility for monitoring the EEO compliance of their subcontractors. The RCS will also discuss sanctions for noncompliance if reporting requirements are not fulfilled (see **Construction Project Administration Manual, Topic No. 700-00-000**).

The district will conduct a Post Preconstruction Training Meeting with contractors and EEO Officers that are new to the FDOT and other contractors/EEO Officers as deemed necessary to discuss the EEO, DBE and OJT requirements.

1.2.6 Complaint Investigation

When a contractor's employee files a complaint of discrimination or harassment to any FDOT personnel, alleging discriminatory practices by the contractor, the complaint should be referred to the contractor for investigation. If requested by the contractor, the District Contract Compliance Manager, with the knowledge of the EOO, may assist the contractor with the investigation and resolution of a complaint.

When assisting in the contractor's investigation, the District Contract Compliance Manager must ensure that:

1. A prompt internal investigation is made by the contractor and documented.
2. A follow-up inquiry is made with the contractor to determine the outcome of the investigation. If the contractor's investigation determines that discrimination has taken place, appropriate corrective action within a reasonable time frame should occur. If the inquiry indicates that persons other than the complainant has been affected, corrective action should include such other persons.

3. The matter has been resolved. If the complaint has not been resolved the DCCM will notify the EOO, and a decision will be made based on the information gathered during the follow-up inquiry. If unlawful discrimination has occurred, the Manager of the EOO will be responsible for bringing the matter to the attention of the FHWA.
4. The complainant is informed of their right to file a complaint with the FCHR or U.S. EEOC within 300 days of the date of alleged discrimination.

1.3 EQUAL OPPORTUNITY COMPLIANCE SYSTEM

1.3.1 Purpose

To provide a centralized reporting system for contractors and consultants to report and monitor payments and commitments made to Disadvantaged Business Enterprises (DBEs) and Minority Business Enterprises (MBEs) subcontractors and material suppliers.

1.3.2 Overview of the EOC System

The Equal Opportunity Compliance (EOC) system is an internet-based system. The EOC System currently supports the FDOTs' Disadvantaged Business Enterprise (DBE) data collection and reporting requirement.

This is a statewide password secured application used by FDOT prime contractors and consultants to log in and submit Bidder Opportunity, DBE commitments, and DBE monthly payment data electronically.

1.3.3 Accessing the EOC System, Addressing System Problems, Technical Assistance and Training

The EOC System serves FDOT employees, consultants and contractors. The role played by a user and their business association determines how an individual user can obtain access to the EOC System. Refer to *Manual section 1.4* for additional information.

1.4 DIRECTORY OF COMPLIANCE WEBSITES & ADDRESSES

| WEBSITES | |
|---|---|
| Florida Dept. of Economic Opportunity | http://www.floridajobs.org/ |
| Career Source Florida | http://careersourceflorida.com/ |
| FDOT | |
| Construction Compliance Manual Reference Guide by Chapter | https://www.fdot.gov/equalopportunity/contractcompliancemanual.shtm |
| DBE Directory | https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/ |
| DBE Payment Reporting | https://fdotwp1.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance |
| Equal Opportunity Office | https://www.fdot.gov/equalopportunity |

| | | |
|--|----------------------------|---|
| <u>EOC System:</u> EOC Access information EOC system training | | https://www.fdot.gov/equalopportunity/eoc.shtm |
| <u>Sample DBE/AA Plan</u> | | Contract Compliance (fdot.gov) |
| <u>Forms & Procedures</u> | | Procedural Document Library (fdot.gov) |
| <u>FHWA Job Site Posters</u> | | http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm |
| <u>FDOT Specifications</u> | | http://www.fdot.gov/programmanagement/Specs.shtm |
| <u>State Construction Office</u> | | http://www.dot.state.fl.us/construction/ |
| <u>Wage Information</u> | | http://www.dot.state.fl.us/construction/Wage.shtm |
| <u>FHWA</u> | | http://www.fhwa.dot.gov/ |
| U.S. Dept. of Labor | <u>USDOL Main Website</u> | http://www.dol.gov/ |
| | Wage Tables/Determinations | http://www.dol.gov/whd/regs/compliance/web/SCA_FAQ.htm |
| U.S. MAIL ADDRESSES | | |
| FDOT Equal Opportunity Office 605 Suwannee St., MS 65 Tallahassee, FL 32399 | | FDOT State Construction Office 605 Suwannee St. MS 31 Tallahassee, FL 32399 |
| E-MAIL ADDRESSES | | |
| EOC System Assistance | | eoohelp@dot.state.fl.us |
| Prevailing Wage Coordinator | | Wd.conformance@dot.state.fl.us |
| Contractor Submittals for Approval of <ul style="list-style-type: none"> ➤ DBE AA Plans ➤ Notification to FDOT of EEO Officer (275-021-13) | | EEOfirms@dot.state.fl.us |

1.5 CONTRACTOR COMPLIANCE REGISTER

1.5.1 Purpose

The Equal Opportunity Reporting System stores the basic identification and EEO compliance data of contractors in a file referred to as the “Contractor Compliance Register.” Compliance staff (District and project) may read data stored in the Register. Prime contractors and subcontractors are included in the Compliance Register.

1.5.2 How a Contractor is added to the Equal Opportunity Gateway (EOG)

A company’s name and their Identification Number (FEID) may be added to the register by any of the following:

1. FDOT Data Based Systems
2. Contractor’s submission of **“Notification to FDOT of EEO Officer” (Form 275-021-13)** to FDOT Equal Opportunity Office, Tallahassee.
3. Contractor’s submission of company’s DBE AA Plan to FDOT Equal Opportunity Office, Tallahassee

[Quick links](#) to a full listing of [EEO Officers](#) and [approved DBE/AA Plans](#) can be found on line at the [FDOT EEO website](#).

1.5.3 Data Reported in the Register (EOG)

The data reported in the register and the source of that data is shown in **Table 1.5.3.1**.

Table 1.5.3.1
Data Reported in the Register

| Section | Data | Where Data is Obtained |
|-------------------------------|--|--|
| Contractor | Name of Company FEID number | Automatically supplied by the FDOT Transport System -or- input by EEO |
| EEO Officer | Last name, first name, Title Phone/Fax numbers Email address | Notification to FDOT of EEO Officer (Form 275-021-13). Submitted to and updated by the Equal Opportunity Office. |
| Corporate Official | Last name, first name, Title Phone/Fax numbers, Email address | Notification to FDOT of EEO Officer (Form 275-021-13) |
| DBE AA Liaison Officer | Last name, first name, Title Phone/Fax numbers Email address | Contractor's DBE AA Plan. Submitted to and updated by Equal Opportunity Office |
| DBE AA Plan | Expiration Date | Set by Equal Opportunity Office |

1.6 PERFORMANCE DEFICIENCY COMMUNICATIONS AND ACTIONS

1.6.1 Purpose

Describes the FDOT's sanctions, communications, and timeframes for informing prime contractors of instances where the prime contractor and/or subcontractor(s) do not fulfill compliance requirements and/or meet timeframe requirements.

1.6.2 Noncompliance; Consideration of Good Faith Efforts

Deficiency communications shall be issued to the prime from the DCCO or designated compliance staff, for the prime and/or subcontractor's noncompliance with compliance program requirements including the submission of required data in any element of the program:

1. Disadvantaged Business Enterprise (DBE)
2. Equal Employment Opportunity/Affirmative Action (EEO/AA)
3. OJT Training
4. Wage Rates and Payrolls.

A review of the contractor's good faith efforts to achieve compliance in any of the compliance areas (particularly for EEO, OJT and Wages) should be considered prior to issuance of noncompliance communications. Verifiable good faith efforts by

the contractor which may include formal corrective action plans and evidence of efforts made to fulfill requirements and timeframes demonstrate a contractor’s good faith efforts. Actual good faith efforts vary from situation to situation. Characteristics of good faith efforts are summarized in **Table 1.6.2.1**, Characteristics of good faith efforts.

Table 1.6.2.1 Characteristics of Good Faith Efforts

| Good Faith Efforts are not: | Good Faith Efforts are: |
|--|--|
| A single action or “a hit and run effort” | Integrated activities designed to achieve objectives |
| Put in place and then abandoned | Evaluated and redefined to obtain better results, continuous effort and follow through |
| Unverifiable | Documented and verifiable actions |
| A haphazard collection of voluminous documents | Evidenced by organized documentation |
| Random | Planned and thought out to achieve objective(s) |
| Static | Redirected by an analysis of results being obtained |
| A gamble; a long-shot | Sincere and designed to achieve results |

If the contractor requests that deficiency communications be waived due to their good faith efforts to achieve compliance, the written concurrence of the District Contract Compliance Manager is required.

1.6.3 Noncompliance Sanctions

Two (2) sanctions are concurrently applied when a performance deficiency exists:

1. Withholding of **Monthly Progress Estimate(s)**
2. Issuance of a **Performance Deficiency Letter(s)**

A project’s **Monthly Progress Estimate** is withheld in its entirety for a performance deficiency. Subsequent **Monthly Progress Estimate(s)** are also withheld until the performance deficiency is satisfactorily resolved.

Upon the FDOT’s receipt and verification of compliance with outstanding requirements, the withheld **Monthly Progress Estimate(s)** is released for payment processing. The FDOT’s receipt and verification of compliance with outstanding performance deficiency requirements does not eradicate the Performance Deficiency. Continued performance warnings of performance deficiency may adversely affect the Contractor’s Performance Rating on the project.

1.6.4 Contractor's Past Performance Rating and Report

Performance Deficiency warnings and notices are included in the FDOT's Contractor Performance Rating program. Refer to **Form 700-010-25, Contractor's Past Performance Report** for complete information. The following Performance Category is most applicable to the Construction Contract Compliance Program:

Category 3: Timely and Complete Submittal of Documents

The following Performance Categories may be cited for certain aspects of noncompliance:

Category 5: Coordination/Cooperation with CEI Personnel, Property Owners and Utilities

Category 8: Conformance with Contract Documents

1.6.5 Noncompliance Communications

All communications regarding performance deficiency are addressed with the Prime Contractor for resolution. Communications may be via traditional mail or electronically via email. **Table 1.6.5.1** "Summary of Noncompliance Communications" identifies the Basis of Noncompliance Communications issued for each of the program areas (DBE, EEO, OJT, and Wages). A **Notification of Payroll Violation, Form 700-010-59**, shall be issued for noncompliance issues for the program area of wages.

A single Deficiency Warning and/or single Performance Deficiency letter addresses all deficiency conditions pertaining to all contractors on a project for one specific timeframe. Letters may include multiple performance rating categories and/or for multiple contractors.

One Notice of Noncompliance letter may be issued monthly summarizing noncompliance related to Disadvantaged Business Enterprises, Equal Employment Opportunity and OJT Training. Initial communication of non-receipt of payroll or a payroll violation is communicated immediately; they are not grouped into the monthly Notice of Noncompliance letters.

Non-receipt of Payroll is cited in a Notice of Noncompliance letter which may be issued any day of the month and as many times as necessary; notification that payroll has not been received shall not wait and must be issued immediately. Likewise, **Payroll Violations (Form 700-010-59)** are issued throughout the month following each occurrence of a payroll violation.

In cases of blatant or severe noncompliance, a Performance Deficiency letter may be issued without a Notice of Noncompliance and/or without a Deficiency Warning letter.

Table 1.6.5.2 “Issuance of Performance Deficiency Communications” summarizes the four levels of progressive written communication that are available. Distribution of those communications is not limited to those listed. **Chapter 1: CCM Reference Guide** provides examples of citing for noncompliance communications.

For format and content for each letter refer to the **Chapter 1 CCM Reference Guide** for each of the following:



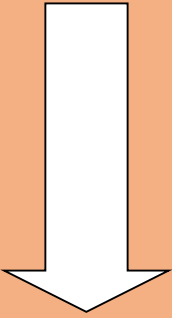

- Example Letter A - Notice of Noncompliance**
- Example Letter B - Performance Deficiency Warning Letter for Contract Noncompliance**
- Example Letter C - Performance Deficiency Letter for Contract Noncompliance**
- Example Letter D - Examples of Citing for Noncompliance Notification of Payroll Violation, Form 700-010-59**

1.6.6 Recurring Notices of Noncompliance

The Notice of Noncompliance, no receipt of payroll, or the payroll violation letters are the initial steps in the sanction process; it is not a routine reminder of compliance requirements.

Following consultation with the District Contract Compliance Manager, a performance deficiency letter may be issued due to recurring issuance of the notice of noncompliance letters and/or recurring issuance of payroll violations.

Table 1.6.5.1 Summary of Noncompliance Communications

| | | Basis of Noncompliance | | |
|----------|-----------------------------------|--|---|---|
| | | column X | column Y | column Z |
| | | DBE-EEO-OJT: Noncompliance With Requirements | Non-Receipt Payroll Letter | Payroll Violation |
| Row A | Issue What? | Notice of Noncompliance Letter | Payroll Letter | Payroll Violation Form (#700-010-59) Including Notice and Intent to Withhold |
| B | What is the Issue Date | One Per Month (end of month suggested) | Any Day in the Month | Any Day in the Month |
| C | Issue How Many Each Month? | One | Any Number | Any Number |
| D | What is the Due Date? | Seven (7) Business days after Issue Date (B) | Seven (7) Business Days after Issue Date (B) | Twenty days following contractor's receipt of Payroll Violation |
| E | Continued Non-Compliance |  |  |  |
| F | Issue What? | Performance Deficiency Warning Letter Including Notice of Intent to Withhold Monthly Progress Estimate | | |
| G | What is the Issue Date? | First Business Day after "Due Date" (D) | | |
| H | Issue How Many Each Month? | One | | |
| I | When is the "Due date?" | Seven (7) Business days after "Issue Date" (G) | | |
| J | Continued Non-Compliance |  | | |
| K | Issue What? | Performance Deficiency Letter for Contract Noncompliance | | |
| L | Issue When? | First Business Day after "Data Due Date" (K) | | |
| M | Issue How Many Each Month? | One | | |
| N | When is the data due? | Contractor's discretion | | |
| O | When is Payment Released | Upon receipt and verification of data | | |

3. OJT Training
4. Wages and Payrolls (WAGES)

Two (2) offices in the FDOT, the EOO and the SCO, administer details pertinent to application of the Equal Opportunity Construction Contract Compliance program.

The following requirements administered by EOO and SCO impact the specific application of the Equal Opportunity Construction Contract Compliance program:

Equal Opportunity Construction Contract Compliance Manual
FDOT DBE Program
Standard Specifications for Bridge and Road Work (“Specifications”)
Construction Program Administration Manual (“CPAM”)

There are other FDOT offices, at the State and District level, with responsibility regarding the execution and content of construction contracts including, but not limited to:

- Contract Administration Office(s): construction contracts administration including advertisement, bid opening and review, award and execution.
- Specification and Design Office(s): technical content of the construction contract.

1.7.2 Reference Statement

This section of the ***Construction Contract Compliance Manual*** is intended to serve as a summary to contractors and compliance personnel regarding the specific compliance program requirements.

The procedures and practices of multiple FDOT offices impact each construction contract and various special circumstances impact these procedures and practices on a temporary or permanent basis.

1.7.3 Construction Contract Characteristics Directing Compliance Requirements

The specific characteristics of an individual construction contract determining which of the contract compliance program areas apply include:

- Type of Work
- Contract Funding
- Original Contract Days
- Original Contract Dollars

These characteristics can be identified by reviewing the contract’s Bid Blank and the contract’s Specifications Package (which includes Standard Specifications, Special Provisions, and Technical Special Provisions).

When a project is funded with both Federal-Aid Project funds and state funds, the entire construction project is administered wholly under federally funded compliance requirements.

FDOT may on occasion, award emergency contracts for construction work related to government declared emergencies. Compliance reporting requirements on an emergency contract are determined at the time each contract is awarded.

1.7.4 Subcontracts

The prime contractor is responsible for assuring that all subcontractors are in compliance with the required Equal Employment Opportunity Special Provisions of the contract.

Prime contractors may accomplish the work of a project by entering into subcontract arrangements with written agreements (“subcontracts”) containing the requirements and pertinent provisions of the prime’s contract. Subcontractors may further subordinate their contract and such relationships are known as second tier, third tier, etc., subcontracts.

Subcontract documentation submitted to FDOT by the prime includes a ***Certification of Sublet Work (Form 700-010-36)*** and a ***Schedule A*** indicating the sublet items and contract amount. The Subcontract is furnished to FDOT upon request.

For further reference see ***Table 1.7.4.1 Subcontract and Rental Agreement Summary*** in the CCM reference guide.

1.7.5 Agencies Supplying Craft and Labor Workers

Prime contractors and subcontractors may elect to staff their project workforce with persons provided by staffing agencies. Staffing agencies that employ and place workers in temporary jobs at client work sites for a limited period of time are often referred to as Temporary Employment Agencies. Staffing agencies that employ and place workers in day-to-day jobs at client sites are often referred to as Day Labor Agencies.

At the job site, the contractor typically exercises supervisory control over agency workers. The contractor and the agency are joint employers of the temporary workers.

Agencies are typically responsible for all personnel and payroll administration of the worker, including recruitment, hiring, payment of wages, payroll withholding, workers’ compensation, etc.

The contractor or subcontractor using a staffing agency issue written communication to FDOT outlining their use of an agency prior to any of their temporary workers appearing on the project. ***FDOT form 275-021-15, Notification for Use of Temporary Employment Agency/Day Laborers*** is used by prime contractors and subcontractors to communicate to Resident Compliance Specialists their use of Temporary or Day Labor workers. ***Form 275-021-15*** is available in the [FDOT Forms Library](#) on our website.

The contractor or subcontractor using a staffing agency is encouraged to provide copies of the following documents to the staffing agency prior to use of their personnel on a project:

1. ***Notification for Use of Temporary Employment Agency/Day Laborers, FDOT Form 275-021-15***
2. Contractor's EEO/AA Policy and Plan including EEO Officer
3. Project's Wage Table(s)

FHWA 1273, Required Contract Provisions, Federal-Aid Construction

1.7.6 Summary of Contract Compliance Reporting Requirements by Program Area

The following tables summarize the requirements of each area of the compliance program:

- ***Table 1.7.6.1 Summary of DBE Requirements***
- ***Table 1.7.6.2 Summary of Company EEO Requirements***
- ***Table 1.7.6.3 Summary of Project EEO Requirements***
- ***Table 1.7.6.4 Summary of OJT Training Requirements***
- ***Table 1.7.6.5 Summary of Payroll and Wage Requirements***

Refer to individual Compliance Manual Chapters for comprehensive information on these requirements.

Table 1.7.6.1

Summary of DBE Requirements

| | | FEDERALLY FUNDED | | STATE FUNDED | |
|--|--|-----------------------|--|-----------------------|--|
| PROGRAM ELEMENT | TIME FRAME | P R I M E | Sub-contract (\$10,000+) Rental (\$10,000 +) with operator Suppliers or Subs (under \$10k) or Rental w/out operator Agencies supplying job site workers | P R I M E | Subcontract (\$10,000+) Rental (\$10,000 +) with operator Suppliers or Subs (under \$10k) or Rental w/out operator Agencies supplying job site workers |
| DBE /AA Plan | Initial submission before submission of bid | Y E S | NO | Y E S | NO |
| DBE Liaison Officer | Initial appointment at time of DBE/AA Plan adoption and throughout the term of the contract | Y E S | NO | Y E S | NO |
| Bid Opportunity List | Submitted using the EOC System. | Y E S | NO | Y E S | NO |
| DBE Commitments | Initially submitted in the EOC System before the Preconstruction Conference. Maintained throughout the contract. Updates will automatically occur in the EOC system. | Y E S | NO | Y E S | NO |
| Actual Payments to DBE's | Monthly entry of payments to DBEs in the EOC System | Y E S | NO | Y E S | NO |
| Commercially Useful Function Review (CUF) | | YES | YES | NO | NO |
| <u>Footnotes:</u> | | | | | |
| Y E S | Data is submitted in timeframe specified | | | | |

Table 1.7.6.2

Summary of Company EEO Requirements

| PROGRAM ELEMENT | TIME FRAME | FEDERALLY FUNDED | | | | STATE FUNDED | | |
|--|---|-----------------------|---|---|-------------------------------------|-----------------------|---------------------------|---|
| | | P R I M E | Sub Contractor (\$10,000+) Rental Agreement (\$10,000 +) with operator | Supplier Sub Contractor (under \$10,000) Rental w/out operators | Agencies supplying job site workers | P R I M E | Subcontractor (\$10,000+) | Supplier Subcontractor (under \$10,000) Rental w/out operators Agencies supplying job site workers |
| EEO/ AA Policy & Plan | Comply as Required by FHWA- 1273 | Y E S | Y E S | NO | NO* | N O | NO | NO |
| EEO Officer | Initial appointment before 1 st work day | Y E S | Y E S | NO | NO* | Y E S | Y E S | NO |
| Supervisory and Personnel Office EEO Meetings | Initial Meeting prior to 1 st workday. Subsequent meetings at 6-month Intervals; new appointees within 30 days | Y E S | Y E S | NO | NO* | N O | NO | NO |
| Company Wide EEO Report | To be made available upon request for a compliance review or determination of OJT. | Y E S | Y E S | NO | NO* | N O | NO | NO |
| Contractor Recruitment Program | Initiate before 1 st workday. Records to be made available upon request of FDOT or FHWA. | Y E S | Y E S | NO | NO | N O | NO | NO |
| Non-segregated facilities | Throughout the term of the contract(s) | Y E S | Y E S | NO | Y E S | N O | NO | NO |
| Analysis for Non-discrimination | Throughout the term of the contract(s) | Y E S | Y E S | NO | NO* | N O | NO | NO |
| <u>Footnotes:</u> | | | | | | | | |
| Y E S | Data is submitted in timeframe specified | | | | | | | |
| Y E S | Data is not routinely submitted to FDOT but records reflecting compliance are required. | | | | | | | |
| * | Covered under data of employing contractor | | | | | | | |

Table 1.7.6.3

Summary of Project EEO Requirements

| PROGRAM ELEMENT | | TIME FRAME | | FEDERALLY FUNDED | | | STATE FUNDED | | |
|---|---|-------------|-------------|------------------|---|--|-------------------------------------|-----------|----------------------------|
| | | | | P R I M E | Sub Contractor (\$10,000+) Rental Agreement (\$10,000 +) with operator | Supplier Subs (under \$10,000) Rental w/out operator | Agencies supplying job site workers | P R I M E | Sub Contractor (\$10,000+) |
| Job Site Bulletin Board | In place on or before workers first appear on the project; removed when workers are no longer on the project. | Y E S | Y E S | NO | NO* | N O | NO | NO | |
| Annual July EEO Report (FHWA 1391) | Due by August 20 th | Y E S | Y E S | NO | Included on Report of employing contractor if OJT the week reported | N O | NO | NO | |
| EEO Information to Project Personnel | Routinely inform employees of EEO; no specified interval; | Y E S | Y E S | NO | Included in communications of employing contractor | N O | NO | NO | |
| Project EEO Report(s) | To be made available upon request. | Y E S | Y E S | NO | Included on Report of employing contractor if OJT the week reported | N O | NO | NO | |
| <u>Footnotes:</u> | | | | | | | | | |
| Y E S | Data is submitted in timeframe specified | | | | | | | | |
| Y E S | Data is not routinely submitted for contracts let Jan. 2005 - August 2012 (i.e., Element is included in Certification of Compliance). | | | | | | | | |

Table 1.7.6.4

**Summary of
 OJT Training Requirements**

| | | FEDERALLY FUNDED (Contract of at least \$2 million and 275 days) | | STATE FUNDED OJT may be authorized on a voluntary basis for banking purposes provided the Contract is at least \$2 million and 275 days and an RCS is avail. To monitor | |
|--|--|--|---|---|---|
| | | P R I M E | Sub-contractor Enrolling & Instructing a Trainee | P R I M E | Sub-contractor Enrolling & Instructing a Trainee |
| PROGRAM ELEMENT | TIME FRAME | | | | |
| Company Wide EEO Report | Due as requested and/or at or before Training Evaluation Meeting | Y E S | Y E S | Y E S | Y E S |
| Post Pre-Construction Training Evaluation Meeting | Conducted no more than 30 days prior to beginning construction or at another date agreeable to attendees. Meeting minutes are distributed with 14 days of their finalization with initial minutes issued as soon as practical and 14 days provided for requests to revise | Y E S | Y E S | Y E S | Y E S |
| OJT Training Schedule | Due or developed at or within ten days of the Training Evaluation Meeting. Schedule Revisions are due when events are missed by 14 or more days, the use of additional classifications is requested, or trainees terminate. | Y E S | Y E S | Y E S | Y E S |
| Proficiency Statements for each Training Classification on the OJT Schedule | Due or developed at or within ten days of the Training Evaluation Meeting for each training classification listed on the Schedule. Proficiency statements for additional classifications accompany OJT Schedule Revisions. | Y E S | Y E S | Y E S | Y E S |
| Notification of Trainee Personnel Action | Due within seven days of proposed effective date; Request to Graduate is due once minimum hours are accumulated and satisfactory observation occurs. | Y E S | Y E S | Y E S | Y E S |
| Request for Proficiency Observation | First and second observation requests may be submitted based on trainee readiness and accumulation of at least minimum hours. Third and subsequent observation requests require accumulation of maximum hours. | Y E S | Y E S | Y E S | Y E S |
| Trainee Monthly Time Reports | Due on the 10 th day of the month for each month following enrollment of the trainee up to graduation of trainee | Y E S | Y E S | Y E S | Y E S |
| Footnotes: | | | | | |
| Y E S | Data is submitted in timeframe specified | | | | |

Table 1.7.6.5

**Summary of Payroll & Wage
 EEO Requirements**

| PROGRAM ELEMENT | | TIME FRAME | FEDERALLY FUNDED | | | | STATE FUNDED | | |
|--|---|--|-----------------------|--|-------------|-------------------------------------|-----------------------|--|----------|
| | | | P R I M E | Sub Contractor (all dollar amounts) Rental Agreement with operator (all dollar amounts) | Supplier | Agencies supplying job site workers | P R I M E | Sub Contractor (all dollar amounts) Rental Agreement with operator (all dollar amounts) | Supplier |
| Employee Interview of craft and laborer Workers | Conducted each month. This form is completed by FDOT or representative | Y E S | Y E S | NO | Y E S | N O | NO | NO | |
| Certified Payrolls | Due 7 days after regular pay day for each week in which any contract work is performed | Y E S | Y E S | NO | Y E S | N O | NO | NO | |
| Additional classification Request | As needed during the term of the contract and after contract award | Y E S | Y E S | NO | Y E S | N O | NO | NO | |
| Request to USDOL for Authorization of Payroll Deductions | Prior to employing workers on the project and as needed to ensure continuity of authorization. | Y E S | Y E S | NO | Y E S | N O | NO | NO | |
| Supplemental Certified Payrolls submitted to resolve Payroll Violation(s) | Due within twenty (20) calendar days following receipt of payroll violation notification (FDOT form 700-010-59) | Y E S | Y E S | NO | Y E S | N O | NO | NO | |
| Footnotes: | | | | | | | | | |
| Y E S | | Data is submitted in timeframe specified | | | | | | | |

1.7.7 Local Agency Program

FDOT has legislative authority to contract with Florida’s Local Agencies to plan, develop, design, acquire right-of-way, and construct transportation facilities. FDOT reimburses these Local Agencies for services provided to the public. The formal name given to this program is the Local Agency Program (LAP). Authority for LAP is provided in **Sections 20.23(3)(a), 334.044(7), 339.05, and 339.12 of the Florida Statutes.**

A Local Agency is defined as a unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has responsibility for planning, construction, operation or maintenance of, or jurisdiction over, a transportation facility. The term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization (MPO), an expressway or

transportation authority, a road and bridge district, a special road and bridge district, or a regional governmental unit.

FDOT's LAP projects are federally funded and therefore are, required to conform to ***FHWA 1273, Required Contract Provisions of Federal-Aid Construction Contracts.***

LAP projects may not include funding from Federal-Aid Highway, the National Highway System or the State Highway System. In such cases there is no requirement to be in compliance with the ***Davis-Bacon and Copeland Acts***, however there are certain exceptions.

Projects of the following types are subject to ***Davis-Bacon and Copeland Act*** prevailing wage requirements, notwithstanding that they may be located "off-system":

- Safe Routes to Schools projects;
- Non-motorized Transportation Pilot Projects; and
- High priority and other congressionally designated projects (unless the requirement are specifically waived in legislation).

The FDOT District LAP Administrator, District Contract Compliance Manager, Prevailing Wage Coordinator, or other compliance staff designee should be consulted prior to the start of construction in order to obtain written confirmation that a LAP or ARRA project is exempt from ***Davis-Bacon*** and ***Copeland Act*** payroll and reporting requirements.

Contractors of LAP projects may demonstrate compliance with ***FHWA 1273 and Davis-Bacon*** and ***Copeland Acts*** by adhering to either the forms and reporting requirements of the specific local agency or by conforming to the forms and requirements of the FDOT EEO Construction Contract Compliance Manual. The Local Agency informs contractors of the requirements to be followed.

The applicability of the DBE, EEO, Wages and OJT compliance for LAP projects is summarized in ***Table 1.7.7.1.***

**Table 1.7.7.1
 EEO Construction Contract Compliance Requirements for
 Local Area Program (“LAP”)**

| Contract Compliance Program Area | Project On State Highway System including Federal-Aid Highways, National Highway System, State Highway System | Project on all other roads including Rural Minor Collector Rural Local Urban Local Roads | | |
|--|---|--|---|--|
| DBE (including Bid Opportunity List) | Yes * | Yes | | |
| EEO | Yes ** | Yes | | |
| Certified Payrolls/Wages | Yes *** | Check with Prevailing Wage Rate Coordinator | | |
| OJT | Yes **** if 275 or more days and \$2M or more and not an enhancement project No if enhancement project (regardless of contract days and/or dollars) No if less than 275 days and/or under \$2M | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Yes **** if 275 or more days and \$2M or more and not an enhancement project</td> </tr> <tr> <td style="text-align: center;">No if enhancement project (regardless of contract days and/or dollars) No if less than 275 days and/or under \$2M</td> </tr> </table> | Yes **** if 275 or more days and \$2M or more and not an enhancement project | No if enhancement project (regardless of contract days and/or dollars) No if less than 275 days and/or under \$2M |
| Yes **** if 275 or more days and \$2M or more and not an enhancement project | | | | |
| No if enhancement project (regardless of contract days and/or dollars) No if less than 275 days and/or under \$2M | | | | |
| <u>Footnotes:</u> | | | | |
| * | See Federally Funded columns on Table 1.7.6.1, Summary of DBE Requirements | | | |
| ** | See Federally Funded columns on Table 1.7.6.2, Summary of Company EEO Requirements, and See Federally Funded columns on Table 1.7.6.3, Summary of Project EEO Requirements | | | |
| *** | See Federally Funded columns on Table 1.7.6.5, Summary of Payroll & Wage Requirements | | | |
| **** | See Federally Funded columns on Table 1.7.6.4, Summary of OJT Training Requirements | | | |

1.8 GENERAL PROGRAM FORMS & DOCUMENTS

This is list of forms and documents referenced in this chapter. All forms may be accessed through the [FDOT Forms Library](#) and/or the Chapter One Reference Guide.

NUMERICAL SEQUENCE

| FDOT Form No. | Document Title | Manual Section |
|---------------|---|----------------|
| 275-021-13 | <i>Notification to FDOT of EEO Officer</i> | 1.5.3 |
| 275-021-15 | <i>Contractor Notification for Use of Temporary Employment Agency/Day Laborers</i> | 1.7.5 |
| 700-010-25 | <i>Contractor's Past Performance Rating</i> | 1.6.4 |
| 700-010-59 | <i>Notification of Payroll Violation</i> | 1.6.5 |
| n-a | <i>FHWA 1273, Required Contract Provisions, Federal-Aid Construction, May 1, 2012</i> | 1.1.8 |

ALPHABETICAL SEQUENCE

| Document Title | FDOT Form No. | Manual Section |
|---|---------------|----------------|
| <i>Contractor's Past Performance Rating</i> | 700-010-25 | 1.6.4 |
| <i>Contractor Notification for Use of Temporary Employment Agency/Day Laborers</i> | 275-021-15 | 1.7.5 |
| <i>FHWA 1273, Required Contract Provisions, Federal-Aid Construction, May 1, 2012</i> | n-a | 1.1.8 |
| <i>Notification of Payroll Violation</i> | 700-010-59 | 1.6.5 |
| <i>Notification to FDOT of EEO Officer</i> | 275-021-13 | 1.5.3 |