

# Frequently Asked Questions

General and Administrative	
<b>Why does my company have to follow the Equal Employment Opportunity (EEO) regulations on federally funded highway construction jobs?</b>	The U.S. Department of Transportation requires contractors that work on FHWA-assisted aid jobs to comply with Equal Employment Opportunity authorities, including 23 Code of Federal Regulations Part 230 and Executive Order 11246. FHWA 1273. FHWA 1273 makes compliance a contractual obligation.
<b>What do I need to do to comply with EEO federal regulations?</b>	The EEO Contract Compliance Manual has been developed to provide contractors with an overview of their EEO requirements. A copy of this manual is available at <a href="#">Contract Compliance Manual</a> .
<b>What is the force and effect of the Contract Compliance Manual?</b>	The <a href="#">FDOT Contract Compliance Manual</a> is the only approved source for information on FHWA 1273 civil rights oversight on FHWA-assisted contracts in Florida. 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 (EEO) maintains 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.
<b>Must FHWA 1273 be included in Purchase Orders, Lease Agreements, etc.?</b>	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.
<b>How do I determine which CEI firms are responsible for 1273 oversight in each district</b>	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 (EEO) 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="#">EEO Contract Compliance</a> webpage.

<p><b>or on particular projects?</b></p>	
<p><b>How do I determine whether a contractor or subcontractor is ineligible to work on federally assisted projects?</b></p>	<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:  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>
<p><b>How often must I check the eligibility of contractors and subcontractors on my project?</b></p>	<p>Neither FHWA nor FDOT require regular eligibility checks. Rather, ensuring eligibility 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><b>When and how often will the Contract Compliance Manual be updated?</b></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 (EOO) program documents, the Manual will receive at least biennial review and update, more frequently if required.</p> <p>EOO 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>What is a digital signature? And which contract</b></p>	<p>A digital signature is a means of electronically signing a document and provides the same force and effect as a handwritten signature. Use of digital signatures is an ongoing FDOT initiative and those doing business with FDOT are encouraged to obtain a digital signature. Due to the complexity of obtaining digital signatures, certain documents such as the</p>

<p><b>compliance forms require a digital signature, and which can still be hand signed?</b></p>	<p>WH 347 Statement of Compliance on certified payrolls may be executed using a traditional handwritten (Wet Ink) signature. For more information, visit <a href="https://www.fdot.gov/digital-signatures">Digital Signatures (fdot.gov)</a></p>
<p><b>What are the signature requirements for compliance forms (CUF, OJT, etc.) and how is consistency among the districts ensured?</b></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 utilizes to track OJT, DBE, EEO and Wage compliance. 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).</p>
<p><b>Equal Employment Opportunity</b></p>	
<p><b>Is there a standard template for applicant flow logs, contractor complaint logs, EEOC complaint logs?</b></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, FDOT or US DOL.</p>
<p><b>Must primes hold subcontractors to advertising to determine diversity recruitment?</b></p>	<p>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.</p>
<p><b>What is a home office review and how are they part of the contract compliance program?</b></p>	<p>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 several reasons. Examples include but are not limited to:</p> <ul style="list-style-type: none"> <li>• where the contractor or subcontractor project workforce is too small for effective analysis.</li> </ul>

	<ul style="list-style-type: none"> <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> <p>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.</p>
<p><b>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?</b></p>	<p>No. FHWA 1273 and related regulations are tied to the specific FHWA-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>.</p>
<p><b>How do I add, change or remove EEO officers on a particular project?</b></p>	<p>Complete the EEO Officer Notification Form (<a href="#">275-021-13</a>) and provide it to the Statewide Contract Compliance Administrator via the EEO. A listing of EEO Officers may be located under <a href="#">Compliance QuickLinks</a> on the EEO Website.</p>
<p><b>Does FDOT offer an electronic service for entering 1391 (July Report) data?</b></p>	<p>Currently, no. 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><b>Should LAP require FDOT OJT Specs on projects that</b></p>	<p>Division 1 Specs are included in all LAP Projects.</p>

<b>are below the TSP threshold?</b>	
<b>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?</b>	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. 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.
<b>Who is responsible for conducting OJT Training Evaluation Meeting</b>	The District Contract Compliance Manager (DCCM) or his/her designee are responsible for conducting the OJT Training Evaluation Meeting.

**Prevailing Wages and Payrolls**

<b>To what extent is it necessary to verify owner/operators? Checking every owner listed on the certified payroll?</b>	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(i)</a> ) are not specific as to how verification takes place. For more information, see the <a href="#">Prevailing Wage Resource Book</a> , Chapter 9.
<b>When is a casting yard truly off site and not subject to DBRA?</b>	Site of work definitions are found at <a href="#">29 CFR 5.2(l)(2) and 5.2(l)(3)</a> . In short, for Davis Bacon purposes, a fabrication plant is considered ‘off site’ where its location and operation are without regard to a particular FHWA- 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> .
<b>When DOL provides written instruction on DBRA application to a project, is that</b>	Yes. The US DOL Wage & 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

<p><b>considered binding? What if the state or FHWA disagrees?</b></p>	<p><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><b>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?</b></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><b>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 to ensure you are matching the correct wages to the right person.</b></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>

<p><b>As a Contractor, why do I get so many Payroll Violation Notices?</b></p>	<p>Performance Deficiency Communication and Actions are covered in Section 1.6 of the Contract Compliance Manual. 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, <b>Payroll Violations (Form 700-010-59)</b> are issued throughout the month following each occurrence of a payroll violation.</p> <p>FDOT Compliance staff may make every effort to remedy a violation beforehand by contacting the Contractor and seeking a quick resolution if possible to avoid the sending of a Notice.</p>
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**DBE**

<p><b>Are joint checks issued by the Prime and a DBE considered a red flag for Commercially Useful Function (CUF)?</b></p>	<p>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>.</p>
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<p><b>Can you provide a graphic illustration of construction tiering?</b></p>	
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<p><b>Why does the EOC system (or ARRF accounts) require re-</b></p>	<p>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. All EOC users are required to complete the</p>
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<b>registration every year?</b>	Computer Security Awareness Training CBT course annually. Failure to renew the EOC account will result in access being revoked.
<b>Does Prompt Payment only apply to DBEs?</b>	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 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.
<b>What is retainage and how do I determine that it is returned promptly?</b>	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 to hold retainage but allows the prime 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> .
<b>How often must EOC be updated to reflect anticipated DBE use and/or DBE payments?</b>	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.
<b>What is a bidder opportunity list and is this a contract compliance issue?</b>	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>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 in Section 2.4 of the <a href="#">Contract Compliance Manual</a>.</p>
<p><b>How do I determine CUF on DBE contracts for furnish and install?</b></p>	<p>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. <b>See Section 2.7 of the Contract Compliance Manual for further information.</b></p>
<p><b>How do I determine CUF when the DBE is a regular dealer, bulk supplier or manufacturer?</b></p>	<p>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 <b>Section 2.7.8 and 2.7.9 of the <a href="#">Contract Compliance Manual</a> for more information.</b></p>
<p><b>What if the contractor refuses to submit proof of prompt payment upon request?</b></p>	<p>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></p>

