

CHAPTER 6– EQUAL EMPLOYMENT OPPORTUNITY, ON-THE-JOB TRAINING AND PREVAILING WAGES

6.1 OVERVIEW

To effectively assure Equal Employment Opportunity (EEO), the Federal Highway Administration (FHWA) requires that all Federal-aid (FA) highway construction contracts include specific requirements to implement the Title VI Program, related civil rights laws and regulations. These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more.

Multiple government agencies have responsibilities for an interest in the various elements of the construction contract compliance program. Program jurisdiction and roles are generally defined below, but is not inclusive of every federal or state agency who may have a vested interest or perform audits on contract compliance, either administrative or project specific.

FHWA approves the Florida Department of Transportation's (Department) 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.

The Department's Equal Opportunity Office (EOO) is responsible for the development and monitoring of policies and procedures that provide assurances to the FHWA that all requirements are met on **Federal-aid** projects. The [Contract Compliance Manual \(CCM, FDOT Topic No. 275-020-005\)](#) reflects the compliance monitoring program approved by the FHWA for use on Federal-aid Highway Program projects in the State of Florida. The Local Agency (LA) shall use the **CCM** to monitor a contractor's performance on every LAP project. Any deviation from the policy outlined in the **CCM**, including additional requirements, requires prior approval from the Department's State Construction Office and the Equal Opportunity Office. The request must include a compelling justification by the District Construction Engineer.

The State Construction Office is responsible for the administration of the **Davis Bacon Act** (and other related acts) requirements relating to wage rates. The State Wage Rate Coordinator establishes policies and procedures pertaining to that requirement; Department Districts are responsible for the day-to-day project administration of wages. Additional information may be found on the Department's Construction website at <http://www.fdot.gov/construction/Wage.shtm>.

Under each District Construction Office, District Contract Compliance Managers (DCCMs) are responsible for the day-to-day administration of the Department's contract compliance program. Resident Compliance Specialists (RCS) monitor contract

compliance at the project level on behalf of the LA.

6.2 LOCAL AGENCY TERMS OF COMPLIANCE

When the LA executes a LAP Agreement to receive Federal-aid Highway Program funds it agrees to the following:

- A. To give the Department the information it requires for the supervision of compliance, and otherwise assists to achieve compliance.
- B. To refrain from entering into any contract or contract modification subject to **Executive Order 11246** of September 24, 1965, with a contractor barred from, or not eligible for, government contracts and federally-assisted construction contracts. This must follow the Executive Order and other relevant rules, laws, and regulations.
- C. To penalize contractors and subcontractors for violation of the equal employment opportunity clause, following Part II, subpart D of the Executive Order. The penalties must be allowed by the state, FHWA or the Secretary of Labor.
- D. Permit the Department's authorized representatives and authorized agents of FHWA (and other governmental agencies) to inspect all work, workmanship, materials, payrolls, and records and to audit the books, records, and accounts pertaining to the financing and development of the project.
- E. To assist and cooperate actively with the Department by having contractors and subcontractors comply with the equal employment opportunity clause (below) and related rules, regulations, and relevant orders of the FHWA and/or Secretary of Labor.
- F. F. To be an eligible recipient of Federal-aid funds, Local Agencies, contractors and subcontractors must accept the following statement as their operating policy:

"It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, age, disability, or national origin. 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."

In addition, [Title VI Assurance – DOT 1050.2A, Appendices A and E](#) must be appended

to every federally funded contract.

6.3 OTHER REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

A LA must include the required contract provisions for Federal-Aid Construction Contracts, [FHWA 1273](#) into all construction contracts and subcontracts, regardless of tier, in order to ensure compliance with EEO and all other related contract compliance requirements. While consultant contracts do not require **FHWA 1273**, any contractor or subcontractor for Design/Build projects must include **FHWA 1273**. Notwithstanding, FHWA and FDOT understand that all 1273 provisions may not apply to Design Build consultant contracts.

In addition, **FHWA 1273** references [Executive Order 11246](#) which must be referenced in all contracts. The Office of Federal Contract Compliance Programs, U.S. Department of Labor (OFCCP, USDOL) has the exclusive authority to determine compliance with **Executive Order 11246** and its regulations for implementation.

6.3.1 On-the-Job Training and Workforce Development

FDOT **On-the-Job Training Requirements Standard Specification 7-25** is required on Federal-aid construction contracts that are 275-days or more in length and a contract value greater than \$2 million at award. Local agencies coordinate with the District LAP Administrator and the DCCM on including **FDOT 7-25** in project bid documents, and then for monitoring project specific On-the-Job Training (OJT) requirements after contract award.

Regardless of whether the LAP project is subject to the **OJT Training Special Provisions, Section 6(b)** of **FHWA 1273** requires contractors to make full use of training programs to assist in developing skills of minorities and women.

6.3.2 Prevailing Wages (Davis-Bacon and Related Acts)

LAP projects are subject to Davis-Bacon and Related Act Provisions as specified in **FHWA 1273**. Projects funded under **23 United States Code (USC) Chapter 133**, including projects carried out under the Transportation Alternatives (TA) Set-Aside under **23 U.S.C. 133(h)**, shall be treated as projects on a Federal-aid highway. This subjects all Surface Transportation Block Grant (STBG) projects (excluding the RTP set-aside) to, among other things, [Davis-Bacon Act prevailing wage requirements](#) and other Federal-aid requirements (e.g., [Buy America](#), planning, environmental review, letting, etc.).

To the extent the requirements of **23 U.S.C. 133** relating to Treatment of Projects conflicts with the express provisions in **Section 1524**, the provisions in **Section 1524** prevail because they are more specific than the general provision of **23 U.S.C. 133(i)**. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. Roadways functionally classified as local

roads or rural minor collectors identified as exempt in **Section IV Davis-Bacon and Related Act Provisions of FHWA 1273 (May 1, 2012)** is now superseded by the FAST Act guidance for treatment of Federal-aid projects effective October 1, 2015. The [FHWA Memorandum on Special Federal-aid Funding](#) is applicable to related funding obligated on or after October 1, 2015, whether funded from the new STBG authorizations or STP funds authorized in previous years.

Applicable Federal-aid construction contracts must incorporate FDOT **Standard Specification 7-16** as expanded that references the current wage rate decision as posted on the [USDOL Wage Decisions](#) website applicable to the contract. It is imperative the LA incorporate the current wage rate decision in the bid documents and monitor the USDOL website for updates throughout the advertisement period of the contract. Wage rate decisions are updated as needed by the USDOL and may be revised multiple times in a year. The applicable wage rate decision is that which is posted ten (10) days prior to the bid opening date. If the wage rate decision is amended between the date of advertisement and 10-days prior to the bid opening, the LA will need to issue a bid addendum or contract amendment to incorporate the correct wage rate decision. The Wage Rate Decision must be attached to all Federal-aid contracts and subcontracts, per **FHWA 1273**. Per **Chapter 1, Section 1.1.6** of the **Contract Compliance Manual** and Federal regulations pertaining to sub-recipient oversight and monitoring, the LA is responsible for monitoring all Federal-aid subcontracts for inclusion of **FHWA 1273**.

Only FDOT in coordination with its federal partner, USDOL, may determine the applicability or exemption of prevailing minimum wage rates on a LAP project. Neither a LA, nor the District LAP Administrator has the authority to exempt a LAP project from Davis-Bacon. To determine applicability on a project by project basis, the District LAP Administrator will coordinate on behalf of the LA with the State Local Programs Office. In order to process exemption requests, the State LAP Administrator requires identification of the project limits, system classification, and all Federal-aid funding sources associated with the project.

6.3.3 Modifications to Wage Rate Decisions

If the contracting agency has not sent the notice of award within 90-days after bid opening, modifications by USDOL to the wage decision prior to the notice of award shall be effective to that contract. The agency may request and obtain an extension of the 90-day period from the Wage and Hour Division (Reference US DOL Davis-Bacon FAQs website under [modifications to wage determinations](#)). The cut-off date used by Federal enforcement agencies for “notice of award” is defined as the “date the contracting agency formally notifies the bidder”.

The Department’s [Classification Request Manager System](#) is a web based application for requesting and processing modifications to wage rate decisions during the construction period. Requests are processed on a contract by contract basis. Contractors cannot submit requests for modifications or additional classifications to the wage decision applicable to their projects unless two actions occur:

- 1) The LA creates a contract screen in [Local Agency Program Information Tool \(LAPIT\)](#) and enters a “contract award date”. Instructions for how to create the contract screen in *LAPIT* are provided in **Chapter 14 and the LAPIT User Guides**.
- 2) The contractor(s) must request access to the [Classification Request Manager System](#) from the State Construction Office.

6.4 LOCAL AGENCY CONTRACT ADMINISTRATION

6.4.1 Local Agency Compliance Monitoring

From preconstruction to final acceptance of the LAP project, the LA must monitor the contractor's performance to make sure it complies with all provisions of **FHWA 1273** including the various EEO, OJT, Wages and DBE (see **Chapter 14** for additional information on DBE program) requirements. To accomplish this, the LA must designate an RCS. The RCS may be a LA staff member or a consultant competitively hired to perform Construction Administration (**Chapter 21**) for a specific project. If the LA uses consultant services for RCS functions, the LA must have a Responsible Charge (**Chapter 2**) who is an agency staff member and performs oversight of the consultant services.

Following the **Contract Compliance Manual**, the RCS should conduct reviews of the contractor, maintain records and reports concerning the contractor's performance, and ensure that the LA complies with its EEO and related nondiscrimination/affirmative action policies. The LA addresses questions about contract compliance monitoring to the [District Contract Compliance Manager](#) (DCCM) or the District LAP Administrator.

If deficiencies are found during the course of a project, the LA must ask the contractor to provide a corrective action plan and provide opportunity for the contractor to comply with the contract provisions. If the contractor clearly resists complying, or if it fails to comply after agreeing to specific corrective steps, then the LA must notify the DCCM and District LAP Administrator. The Department will assist the LA in all remediation, termination or other actions deemed appropriate.

6.4.2 Local Agency Responsibilities:

- A. Ensure the prime contractor incorporates **FHWA 1273** in all Federal-aid subcontracts.
- B. Conduct project preconstruction meetings to discuss DBE, EEO, OJT, and Prevailing Wage Rate Provisions for Federal Aid Contracts with the contractor.
 - i. Issue and explain all relevant procedures and forms, including those posted to the jobsite bulletin board. (The jobsite bulletin board must be posted within the project limits prior to any work being performed on the project.)

- ii. Ensure all relevant project personnel attend the meeting; including but not limited to the FDOT staff, contractor, inspectors, invoicing specialists, the LA's RCS and the contractor's compliance specialist.
 - iii. Ensure the contractor enters the anticipated DBE participation commitments into EOC prior to the pre-construction meeting.
 - iv. Preconstruction meeting minutes must be distributed to all attendees, uploaded into LAPIT, and retained in the project file.
- C. Ensure that the contractor posts and maintains required notices and posters throughout the life of the project, including the contractor's EEO policy, wage decision and additional classifications, if any. Required posters can be found on the [EEO website](#).
- D. Monitor on-site compliance with the EEO Required Contract Provisions, Labor Compliance and Training Special Provisions, if applicable, for Federal-aid Contracts.
- E. Ensure contractors locate, assess, and increase the skills of minority groups, women employees, and applicants for employment per **FHWA 1273**.
- F. Provide additional training and instructions upon request from the contractor.
- G. Prepare and/or ensure the preparation of the required EEO reports.
- H. Address any FDOT review findings in a timely manner and notify the DCCM and/or District LAP Administrator once all findings have been addressed.

6.5 DEPARTMENT OVERSIGHT OF LOCAL AGENCY CONTRACT ADMINISTRATION

In addition to required LA oversight, FDOT and FHWA will monitor both the LA and its contractors for compliance as a part of the normal project management, oversight reviews and contract compliance reviews of selected contracts. FDOT adheres closely to its [Contract Compliance Manual](#) in determining compliance with EEO/OJT/DBE/Wages.

If there is reason to suspect that a contractor is noncompliant with **FHWA 1273, Chapter 23 of the Code of Federal Regulations (CFR)**, or other federal authorities, the District shall conduct a compliance review to assess compliance with federal provisions.

6.5.1 Department Compliance Reviews

FDOT reviews will include program and project level reviews of the LA's EEO, OJT, DBE, and prevailing wage documentation which is monitored by the LA RCS or consultant designee. This includes certified payrolls, wage rate interviews, comparison of interviews

with certified payrolls with appropriate follow up as needed and project site display of required posters and wage rate information.

6.5.2 Department Compliance Review Schedule

FDOT staff will provide an EEO script, provide assistance to the LA in answering questions regarding contract compliance and provide a draft review schedule for the duration for the project at the project preconstruction meeting. (Full details on preconstruction meetings are found in **Chapter 21 Construction Administration.**)

The review of the LA's processes should be conducted as early in the active portion of the project as practical, but no later than 30% construction completion to ensure proper documentation throughout the remainder of the project. The DCCM or designee will conduct this portion of the review in accordance with the requirements of the Construction Contract Compliance Administration (CCCA) Field Office Review as indicated in the **Contract Compliance Manual.**

Additional compliance reviews will be conducted when feasible. FDOT staff may review projects at 60%, 90% and final completion of the project, but will conduct reviews no less than twice- at 30% and final completion of the project. The number of reviews will be determined by the DCCM and an updated schedule will be provided to the Local Agency no less than 2-weeks prior to the desired review date.

6.5.3 Compliance Review Documentation

Per **2 CFR 200.335 Methods for collection, transmission, and storage of information and in accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information**, documents related to Federal-aid award are encouraged to be stored electronically. Paper copies are not required to be stored by the LA, but files must be available upon request for auditors. Electronic files may be requested to be uploaded to LAPIT or other FDOT document file transfer tool, otherwise any project documents electronic or paper will be reviewed onsite at the LA, project site, contractor's place of business, or other location where project files are maintained or stored.

6.5.4 Compliance Review Findings and Corrective Actions

Any findings that require corrective action(s) will be documented and transmitted to the LA to address with the contractor. Review correspondence will be uploaded in LAPIT. If the LA or their contractor fails to perform corrective actions, **Federal-Aid funding may be withdrawn for any or all portions of the project or reimbursement withheld until the findings are addressed.**

6.5.5 Other Agency Compliance Reviews

Further, the LAP program is of interest to other Federal and State agencies, including USDOT, USDOL, the Offices of Government Accountability Offices (GAO), Program

Management Improvement Teams (PMIT) and similar review groups. LAs should anticipate the possibility of project or program reviews, particularly for EEO and contractor compliance. Wherever possible, FHWA or FDOT will provide reasonable notice in advance of the review, along with the material to be inspected and staff interviewed, if any. LA cooperation is required by [USDOT](#) and [Highways regulations](#).

6.6 JULY EEO REPORTS

LAs must ensure that Contractors complete and submit the **FHWA 1391**. The contractor and subcontractors submit this form showing the ethnic utilization breakdown on their Federal-aid highway construction projects. They submit the form each August for projects under construction during the month of July. The report is a summary of employees on their last payroll period before the end of July. The LA must submit the form to the DCCM by August 20th of each year for statewide reporting. The LA must also maintain this form in its project files.

6.7 PROJECT INVOICING AND PROJECT CLOSE OUT

Project progress invoices may be rejected by the Department if there are outstanding contract compliance findings related to the pay period for which the invoice was submitted. Reimbursement will be withheld by the Department until findings are addressed. Reimbursements may not be withheld for periods where there are no findings or after all findings have been addressed.

LAs should withhold payment for non-compliance or take other sanctions or remedial measures per the agency's contract terms with the contractor. LA's should also withhold the final retainage or payment to the contractor until all contract compliance items are addressed and a Notification of Substantial Compliance is issued by the Department. Substantial compliance specifically includes but is not limited to demonstrating contractor prompt payment and return of retainage, if any. Per the Contract Compliance Manual 4.6.5 and other federal and state authorities, absent a showing of good cause, contractors must pay any subcontractors within thirty (30) days of receipt of payment by the LA. In addition, contractors must return any retainage to subcontractors within thirty (30) days of completion of the subcontract work. As a condition of substantial compliance, LAs must monitor contractors to ensure adherence with these requirements.

Per (**49 CFR 26.29(a)**), a contract provision must exist in every FA contract that requires prime contractors and subcontractors pay for satisfactory performance of their contracts no later than 30 days from their receipt of payment. The Department uses **Form No. 700-010-38 Certification Disbursement of Previous Payment to Subcontractors** to monitor for active compliance at every tier of the work performed. Use of **Form No. 700-010-38** is required by **FDOT Specification 9-5.6 Certification of Payment to Subcontractors**. If the LA removes the spec from its LAP Division 1 Specs package in lieu of its own prompt payment language; the LA must include a clause that meets the requirement in the **Contract Compliance Manual, Section 4.6.5**. It is recommended the LAs use **FDOT Specification 9-5.6** on all Federal-aid projects.

At the completion of the project, the DCCM or designee will conduct a final contract compliance review. Upon completion of the review and when all findings, if any, are addressed adequately per the DCCM, a notification of Substantial Compliance (or Completion) will be issued by the DCCM. The final invoice cannot be processed for payment if substantial compliance is not achieved. The notification shall be uploaded to LAPIT at the time of issuance.

6.8 LOCAL AGENCY PROGRAM SANCTIONS

In the event the LA fails or refuses to comply with the terms of this chapter, the Department may take any or all of the following sanctions:

- A. Cancel, terminate, or suspend the LAP Agreement in whole or in part;
- B. Refrain from extending any further assistance to the LA under the LAP program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA;
- C. Take such other action that may be deemed appropriate under the circumstances, including LAP Certification removal, until compliance or remedial action has been accomplished by the LA;
- D. Refer the case to the U.S. Department of Transportation for appropriate legal proceedings.

6.9 RESOURCES

[Contract Compliance Manual FDOT Topic No. 275-020-005](#) (forms and other resources specific to contract compliance are located in the **CCM** and have not been reproduced here)

[USDOL Wage Decisions](#)

[USDOL Executive Order 11246](#)

[FHWA 1273](#)

[FHWA Davis-Bacon Construction Program Guide](#)

[FHWA Buy America](#)

[FHWA Memorandum on Special Federal-aid Funding](#)

[Title VI Assurance – DOT 1050.2A, Appendices A and E](#)

[FDOT State Office of Construction Wages Webpage](#)

[FDOT Classification Request Manager application](#)

[FDOT District Contract Compliance Manager](#)

[FDOT Standard Specifications for Road and Bridge Construction](#)

[Form No. 700-010-38 Certification Disbursement of Previous Payment to
Subcontractors](#)