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## **CHAPTER 10 EQUAL EMPLOYMENT OPPORTUNITY, ON-THE-JOB TRAINING AND PREVAILING WAGES**

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## 10.1 OVERVIEW

This **Chapter** pertains to requirements for FAHP construction contracts, including design-bid-build and design-build contracts where the work is awarded by the LA to a contractor. Per **Chapter 2**, LAP is the preferred mechanism for delivery of FAHP construction projects that include construction activities awarded to a contractor for the performance of the work. FAHP projects from various funding sources meeting the definition of construction shall be treated as “LAP” projects and utilize the LAP delivery mechanism. This **Chapter** is applicable to:

- LAP construction projects, including those that utilize design-build and alternative contracting efficiencies
- Emergency Repair projects
- Permanent Repair projects
- Non-traditional Federal-aid grants
- Federal Lands Acquisition Program “FLAP” grants transferred to and administered by FHWA, Florida Division Office. (FMIS will indicate “FHWA Administered”).

Individual project exceptions must be approved by Central Office, LP. Equal Employment Opportunity (EEO) requirements for professional services contracts are found in **Chapters 11 and 14**.

To effectively assure EEO, the FHWA requires that all FAHP 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 are 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 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 (EEO) is responsible for the development and monitoring of policies and procedures that provide assurances to the FHWA that all requirements are met on FAHP projects. The [Contract Compliance Manual \(CCM, FDOT Topic No. 275-020-005\)](#) reflects the compliance monitoring program approved by the FHWA for use on FAHP projects in the State of Florida. The 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 EOO. 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.

## 10.2 LOCAL AGENCY TERMS OF COMPLIANCE

When the LA executes a grant agreement to receive FAHP funds it agrees to the following:

- To give the Department the information it requires for the supervision of compliance, and otherwise assists to achieve compliance.
- 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.
- To penalize contractors and subcontractors for violation of the EEO clause, following Part II, subpart D of the Executive Order. The penalties must be allowed by the State, FHWA, or the Secretary of Labor.
- 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.
- To assist and cooperate actively with the Department by having contractors and subcontractors comply with the EEO clause (below) and related rules, regulations, and relevant orders of the FHWA and/or Secretary of Labor.
- To be an eligible recipient of Federal-aid funds, LAs, 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.

### **10.3 OTHER REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS**

A LA must include the required FAHP construction contract provisions, [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 the Department understand that all **FHWA 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.

#### **10.3.1 On-the-Job Training and Workforce Development**

**FDOT Standard Specification 7-25 On-the-Job Training Requirements** 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. LAs coordinate with the District LP Administrator and the DCCM on including **FDOT Standard Specification 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.

#### **10.3.2 Prevailing Wages (Davis-Bacon and Related Acts)**

FAHP projects are subject to Davis-Bacon and Related Act Provisions as specified in **FHWA 1273**. Projects funded under **23 USC 133**, including projects carried out under the Transportation Alternatives (TA) Set-Aside under **23 USC 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 USC 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 USC 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**

**(October 23, 2023)** 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 as required in **FHWA 1273**. Per **Chapter 1, Section 1.1.6** of the **CCM** and Federal regulations pertaining to subrecipient oversight and monitoring, the LA is responsible for monitoring all Federal-aid subcontracts for inclusion of **FHWA 1273**.

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

### 10.3.3 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 LA 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 \(CRM\) 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 the [GAP](#) system and enters a "contract award date". Instructions for how to create the contract screen in **GAP** are provided in the online [HELP guide](#) available in **GAP**.
- 2) The contractor(s) must request access to **CRM** from the State Construction Office.

## 10.4 LOCAL AGENCY CONTRACT ADMINISTRATION

### 10.4.1 Local Agency Compliance Monitoring

From preconstruction to final acceptance of the FAHP 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 11** 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 15**) for a specific project. If the LA uses consultant services for RCS functions, the LA must have a Responsible Charge (**Chapter 7**) who is a fulltime staff member and performs oversight of the consultant services.

Following the **CCM**, the RCS conducts reviews of the contractor, maintain records and reports concerning the contractor's performance, and ensures that the LA complies with its EEO and related nondiscrimination/affirmative action policies. The LA addresses questions about contract compliance monitoring to the [DCCM](#) or the District LP 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 LP Administrator. The Department will assist the LA in all remediation, termination or other actions deemed appropriate.

### 10.4.2 Local Agency Responsibilities

- Incorporate all required Federal contract compliance provisions and forms as identified on the **LAP Construction Checklist** and in this **Manual** in the solicitation package, fully executed contract, and contract changes or amendments (as applicable).
- Ensure the prime contractor incorporates **FHWA 1273** in all Federal-aid subcontracts.

- Conduct project preconstruction meetings to discuss DBE, EEO, OJT, and Prevailing Wage Rate Provisions for Federal Aid Contracts with the contractor.
  - 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.)
  - Ensure all relevant project personnel attend the meeting; including but not limited to Department staff, contractor, inspectors, invoicing specialists, the LA's RCS and the contractor's compliance specialist.
  - Ensure the contractor enters the anticipated DBE participation commitments into **Equal Opportunity Compliance (EOC)** system prior to the pre-construction meeting.
  - Preconstruction meeting minutes must be distributed to all attendees, uploaded into **GAP**, and retained in the project file.
- 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 [EOO website](#).
- Monitor on-site compliance with the EEO Required Contract Provisions and Labor Compliance and Training Special Provisions, as applicable.
- Ensure contractors locate, assess, and increase the skills of minority groups, women employees, and applicants for employment per **FHWA 1273**.
- Provide additional training and instructions upon request from the contractor.
- Prepare and/or ensure the preparation of the required EEO reports.
- Address any Department review findings in a timely manner and notify the DCCM and/or District LP Administrator once all findings have been addressed.

## 10.5 DEPARTMENT OVERSIGHT OF LOCAL AGENCY CONTRACT ADMINISTRATION

In addition to LA oversight, the Department 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. The Department adheres closely to its [CCM](#) in determining compliance with EEO/OJT/DBE/Wages.

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

### 10.5.1 Department Compliance Reviews

The Department reviews 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.

## 10.5.2 Department Compliance Review Schedule

At or before the project preconstruction meeting, Department staff provide an EEO script, technical assistance regarding contract compliance, and a draft compliance review schedule for the duration for the project. (Full details on preconstruction meetings are found in **Chapter 21**.) The number of reviews is determined by the DCCM and an updated schedule is provided to the LA no less than 2 weeks prior to the desired review date.

The review of the project and 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 **CCM**.

Additional compliance reviews are conducted when feasible. Department staff may review projects periodically based on risk (i.e. 60%, 90%) but will conduct reviews no less than twice for every FAHP project - at 30% construction and final completion of the project.

## 10.5.3 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 awards 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 **GAP** or other Department document file transfer tools, 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.

## 10.5.4 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 **GAP**. 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.

## 10.5.5 Other Agency Compliance Reviews

Further, FAHP project delivery 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 the Department 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](#).

## 10.6 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 which falls fully within July. The LA must submit the form to the DCCM by August 20<sup>th</sup> of each year for statewide reporting. The LA must also maintain this form in its project files.

## 10.7 REIMBURSEMENT AND RETAINAGE

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. Partial payments will be processed for portions of the work that comply, per F.S. and **FDOT Specifications**.

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 **GAP** at the time of issuance.

LAs withhold payment from the contractor for non-compliance or take other sanctions or remedial measures per the LA's contract terms with the contractor and in accordance with **s. 255.077 and 255.078 F.S.** which places limitations on retainage LAs may withhold from a contractor. LAs 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 **CCM, Section 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 specification 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 **CCM, Section 4.6.5**. It is recommended the LAs use **FDOT Specification 9-5.6** on all FAHP projects.

## 10.8 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:

- Cancel, terminate, or suspend the grant agreement in whole or in part.
- Refrain from extending any further assistance to the LA under the FAHP funding program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA.
- 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.
- Refer the case to the USDOT or USDOL for appropriate legal proceedings.

## 10.9 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the Federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum monitoring requirements performed by the Department. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

*Table 1: Minimum Monitoring Requirements for Federal-Aid Projects*

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
EEO Contract Compliance Requirements- Solicitation Package Instructions and Contract Provisions	LA project solicitations and contracts are reviewed to verify incorporation of EEO related provisions and requirements. Forms and contract language as specified in this chapter must be incorporated into LA solicitation packages and contracts with contractors and consultants. District contract manager reviews LA solicitation packages and contracts prior to execution with the consultant or contractor to ensure provisions are incorporated.	All LA solicitation packages and contracts executed with consultants and contractors for FA projects are reviewed for compliance. Required contract provisions are identified on the LAP Construction and Professional Services checklists.
LA Contract Changes	Contract changes agreed upon between the LA	All contract changes are

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
	and their consultant/contractor are documented, justified, and submitted in writing to the grant manager for approval prior to the LA implementing the contract change. Department contract manager verifies contract changes are in compliance with State and Federal requirements.	reviewed and approved prior to implementation by the LA. SAs or time extensions to the Department grant agreement are issued as needed.
FDOT Contract Compliance Reviews	DCCM or designee provide a draft review schedule for the duration for the project at the project preconstruction meeting. The number of reviews will be determined by the DCCM and an updated schedule will be provided to the LA no less than 2 weeks prior to the desired review date. The DCCM or designee conducts reviews in accordance with the requirements of the Construction Contract Compliance Administration (CCCA) Field Office Review as indicated in the <b>CCM</b> .	<p>Low Risk- at or before 30% construction and final review at construction completion.</p> <p>Moderate- at or before 30% construction, one interim review if project duration allows, and final review.</p> <p>Elevated- at or before 30% construction, one interim review, and final review.</p> <p>High- at or before 30% construction, 60% construction, 90% construction and final review.</p>

## 10.10 RESOURCES

[Contract Compliance Manual FDOT Topic No. 275-020-005](#) (forms and other resources specific to contract compliance are located in the **CCM**)

[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](#)

[Florida Grant Application Process "GAP" Login](#)