CHAPTER 15 –
EQUAL EMPLOYMENT OPPORTUNITY, ON-THE-JOB
TRAINING AND PREVAILING WAGES

15.1 OVERVIEW

To effectively assure Equal Employment Opportunity (EEO), the Federal Highway Administration (FHWA) requires that all Federal-aid 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 (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 (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 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; districts are responsible for the day-to-day project administration of wages. Additional information may be found on the Department’s Federal-Aid Project Wage Rate Details 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 Local Agency.

**15.1.1 Local Agency Terms of Compliance**

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

A. To assist and cooperate actively with the state by having contractors and subcontractors comply with the equal employment opportunity clause (see Section 15.1.2) and related rules, regulations, and relevant orders of the FHWA and/or Secretary of Labor.

B. To give the state the information it requires for the supervision of compliance, and otherwise assists to achieve compliance.

C. 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.

D. 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.

E. Permit the FDOT's authorized representatives and authorized agents of FHWA 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.

**15.1.2 Local Agencies and Contractors Equal Opportunity Clause**

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.
15.2 OTHER REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

A Local Agency must include the required contract provisions for Federal-Aid Construction Contracts, FHWA 1273 (revised May 1, 2012) 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 should 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.

15.2.1 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.

15.2.2 Prevailing Wages (Davis-Bacon and Related Acts)

Most 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.).

However, Section 1524 of MAP-21 remains in effect. It provided exceptions to certain requirements regarding pay rates and contracting requirements for projects using qualified youth service or conservation corps. This provision requires the DOT/FHWA to "encourage the States and regional transportation planning agencies to enter into contracts and cooperative agreements with qualified youth service or conservation corps... to perform appropriate projects eligible under Sections 162, 206, [former] 213, and 217 of title 23, United States Code, and under Section 1404 of the SAFETEA-LU."

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These projects include scenic byways, recreational trails, transportation alternatives, bicycle and pedestrian, and safe routes to school. Section 1524 of MAP-21 applies to any projects eligible under these sections, including projects developed with other Federal-aid Highway Program funds.

See the MAP-21 Questions and Answers: (http://www.fhwa.dot.gov/map21/qandas/qayscc.cfm)

and Youth Workforce Development Resources at: (http://www.fhwa.dot.gov/environment/transportation_alternatives/guidance/youth_workforce_dev.cfm)

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 (http://www.fhwa.dot.gov/specialfunding/stp/160307.cfm#a) 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 and also incorporate the current wage rate decision as posted on the USDOL Wage Decisions website. It is imperative the Local Agency 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 Local Agency 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 http://www.fdot.gov/construction/memos/2012/DCE10-12a.pdf and federal oversight and monitoring requirements, the Local Agency is responsible for monitoring all Federal-aid subcontracts for inclusion of FHWA 1273.

If a contract has not been awarded within 90 days after bid opening, modifications prior to award to a general wage determination in the contract shall be effective with respect to that contract unless the agency requests and obtains 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).
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 Local Agency, 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 Local Agency 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.

15.2.3 Modifications to Wage Rate Decisions

The Department’s web based application for processing modifications to wage rate decisions on a contract by contract basis is reliant on the local agency contract information entered in LAPIT. Contractors cannot submit requests for additional classifications on their projects unless the local agency creates a contract screen in LAPIT and enters a “contract award date”. Instructions for how to create the contract screen are provided in Chapter 14.

Contractors must request access to the department’s web-based Classification Request Manager System prior to requesting additional classifications.

15.3 LOCAL AGENCY CONTRACT ADMINISTRATION

15.3.1 Local Agency Compliance Monitoring

From preconstruction through to final acceptance of the LAP project, the Local Agency 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 (Chapter 14) requirements. To accomplish this, the Local Agency must designate a Resident Compliance Specialist (RCS). The RCS may be a local agency staff member or a consultant competitively hired to perform Construction Administration (Chapter 21) for a specific project. If the agency uses consultant services for RCS functions, the Local Agency must have a Responsible Charge 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 Local Agency itself, complies with its EEO and related nondiscrimination/affirmative action policies. The Local Agency should address questions about contract compliance to the District Contract Compliance Manager (DCCM) or the District LAP Administrator.

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

15.3.2 Local Agency Responsibilities:

A. Ensure the prime contractor incorporates *FHWA 1273* in all Federal-aid subcontracts. Ref: *State Construction Office Memo 10-12*

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 Local Agency’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 (see *Chapter 14* for additional information on DBE program).
   
   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 [EOO website](#).


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.
15.4 DEPARTMENT OVERSIGHT OF LOCAL AGENCY CONTRACT ADMINISTRATION

In addition to required Local Agency oversight, FDOT and FHWA will monitor both the Local Agency 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/Wages, and with Chapters 14 and 16 of the LAP Manual.

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.

15.4.1 Department Compliance Reviews

FDOT reviews will include program and project level reviews of the LAP Agency's EEO, DBE, and prevailing wage documentation which is monitored by the LAP Agency 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.

15.4.2 Department Compliance Review Schedule

FDOT staff will provide an EEO script, provide assistance to the Local Agency 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 Local Agency'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.

15.4.3 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 Local Agency, but files should be readily 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 Local Agency, project site, contractor’s place of business, or other location where project files are maintained or stored.

15.4.4 Compliance Review Findings

Any findings will be documented and transmitted to the Local Agency. Review correspondence will be uploaded in LAPIT. If the Local Agency fails to address a finding, Federal-Aid funding may be withdrawn for any or all portions of the project or reimbursement withheld until the findings are addressed.

15.4.5 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. Local Agencies 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. Local Agency cooperation is both expected and required by USDOT and Highways regulations. Review teams will always make efforts to minimize burden or business impacts to the Local Agency during the review.

15.5 JULY EEO REPORTS

Local Agencies 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 Local Agency must submit the form to the DCCM by August 31st of each year for statewide reporting. The Local Agency must also maintain this form in its project files.

15.6 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.

Local Agencies may also withhold payment for non-compliance per the agency’s contract terms. Local Agency’s may also withhold the final retainage or payment to the contractor.
until all contract compliance items are addressed and notification of Substantial Compliance is issued by the Department. 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.

15.7 LOCAL AGENCY PROGRAM SANCTIONS

In the event the Local Agency 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 Local Agency under the LAP program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Local Agency;

C. Take such other action that may be deemed appropriate under the circumstances, including Certification removal, until compliance or remedial action has been accomplished by the Local Agency;

D. Refer the case to the U.S. Department of Transportation for appropriate legal proceedings.

15.8 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

FHWA 1273

FDOT Standard Specifications for Road and Bridge Construction

FHWA Davis-Bacon Construction Program Guide

Title VI Assurance – DOT 1050.2A, Appendices A and E

FDOT State Office of Construction Wages Webpage

FDOT Classification Request Manager application