

EQUAL OPPORTUNITY & DAVIS-BACON REQUIREMENTS



FLORIDIANS FOR BETTER TRANSPORTATION & FLORIDA DEPARTMENT OF TRANSPORTATION



**LOCAL AGENCY PROGRAM CONFERENCE
ORLANDO, FLORIDA
FEBRUARY 6, 2007**

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EQUAL OPPORTUNITY & DAVIS-BACON REQUIREMENTS



PURPOSE

To provide guidance and technical assistance to cities, counties and metropolitan planning organizations on the following Civil Rights requirements:

- **Disadvantaged Business Enterprise Program**
- **Equal Opportunity on Highway Construction Contracts**
- **Contract Wages/Davis Bacon Act**
- **Title VI Nondiscrimination Agreement**

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EQUAL OPPORTUNITY & DAVIS-BACON REQUIREMENT



Florida Department of Transportation Presenters

**Nita Jackson, Manager, Business Development & Contract Compliance
Equal Opportunity Office**

- Disadvantaged Business Enterprise Program
- Title VI Nondiscrimination Agreement

**Sylvia Barge, State Contract Compliance Administrator
Equal Opportunity Office**

- Equal Opportunity on Highway Construction Contracts

**Mark Wright, Prevailing Wages/Disputes Review Boards Coordinator
Construction Office**

- Wage Rates
- Davis-Bacon

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DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

DBE PROGRAM GUIDANCE for LOCAL AGENCIES

- Governed by 49 CFR Part 26
- Who must have a DBE Program?
 - State DOTs, cities, counties, and MPOs receiving federal financial assistance
- Equal Opportunity Office has designed a document (see handout) to assist cities, counties, and MPOs that receive federal funds from the FDOT in complying with the federal DBE Program requirements.

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DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Local Agencies and MPOs must select one of three options:

1. Adopt FDOT's DBE Program and Annual Goal
 - Race Neutral DBE Program
 - 2006-2007 FFY Goal is 8.1%
 - Individual Goals not assigned to contracts
2. Develop own DBE Program Plan and Annual Goal
 - Plan and Goal must comply with 49 CFR part 26
 - Plan revised only when significant changes occur
 - Develop goal annually
 - Submit to FDOT EOO for review to provide recommendation to FHWA-Florida Division
 - FHWA-Florida Division will forward recommendation to USDOT
3. Adopt DBE Plan and Goal of a local transit or aviation agency
 - Must be approved by USDOT
 - DBE goal methodology must include road and bridge contractors/consultants in the availability analysis
 - Submit to FDOT EOO for review to provide recommendation to FHWA-Florida Division
 - FHWA-Florida Division will forward recommendation to USDOT

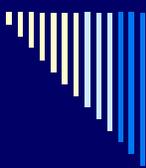
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DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Local Agencies and MPOs are required to provide the following to the FDOT's Equal Opportunity Office regardless of selected option:

1. Anticipated DBE Participation (ADBEP) Statement
 - Contractor awarded the contract must submit at the pre-construction conference
 - Consultant awarded the contract must submit during negotiations
 - Update ADBEP Statement when additions or deletions are made through the life of the contract
 - Local Agency mails or fax the ADBEP Statement to FDOT's Equal Opportunity Office
2. Bid Opportunity List
 - Must include all firms that bid on prime contracts or bid or quote subcontracts on FDOT-assisted projects, including DBEs and non-DBEs
 - Information should be returned with the bid or proposal package.
 - Local agency mails or fax to FDOT's Equal Opportunity Office
3. Equal Opportunity Reporting System
 - Must report actual payments, minority status, and type of work of DBE subcontractors/subconsultants in the EOR System (BizWeb) monthly.
 - Non-DBE subs can be reported monthly or at the end of the contract

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Equal Opportunity Highway Construction Contracts

To effectively assure Equal Employment Opportunity (EEO) it is the Policy of the Federal Highway Administration (FHWA) to require that all Federal Highway construction contracts include specific requirements to Equal Opportunity on Highway Construction Contracts.



Equal Opportunity Requirements

- To be eligible for federal aid funds for highway construction, the local agency must comply with the civil rights requirements of (23 CFR) Subtitle A, Part 230) these specific requirements apply to contractors and their subcontractors (not including material suppliers holding contracts of \$10,000.00 or more.



Operating Policy

- The local agency must accept as it operating policy the following statement:
- It is the policy of this agency 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, transfers, recruitment, layoff, termination, rates of pay, or other forms of compensation, training, including apprenticeships and On The Job Training programs.



FHWA Form 1273

- The local agency must incorporate into all contracts the “The Required Contract Provisions for Federal-Aid Construction Contracts” also known as FHWA Form 1273.

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Executive Order 11246

- The order requires that Federal Contractors and subcontractors not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor/subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex or national origin.
- This order must be included in all federal-aid contracts by reference.

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Local Agreement Requirements

- Monitor the compliance of contractors and subcontractors
- Carry out sanctions and penalties as required for non compliance with the non discrimination requirements in section II of Form 1273
- Furnish FDOT with information of the Local Agency's monitoring efforts
- Refrain from entering into contracts or contract modification with debarred contractors as required by FHWA Form 1273

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Failure To Comply

- The FDOT may cancel or terminate, or suspend the Local Agency Agreement.
- Refer the case to the Department of Justice for appropriate legal proceedings
- Refrain from extending any further assistance under the program until compliance has been achieved.

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Local Agency Responsibility

- Conduct a preconstruction conference to discuss the required EEO Special provisions
- Ensure that contractors locate, hire, train and increase the skills of women and minorities for employment in highway construction
- Ensure contractors post and maintain required posters and EEO policy
- Prepare required EEO reports
- Monitor onsite compliance with required EEO contract provisions

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Required EEO Reports

- All prime contractors and their subcontractors must submit a annual July Report showing the ethnic breakdown of their employees working on federal aid highway construction projects for the last active payroll in the month of July.
- This report must be retained by the local agency and made available to the FDOT upon request.

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AVAILABLE RESOURCES

- FDOT Contract Compliance Procedure 275-020-002
- FDOT Equal Opportunity EEO Construction Contract Compliance Workbook
- <http://www.dot.state.fl.us/equalopportunit yoffice/>

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FDOT Compliance Contacts

Central Office

Equal Opportunity Office
Sylvia Barge
State Contract Compliance
Administrator
sylvia.barge@dot.state.fl.us (850) 414-4742

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Contract Wages/ Davis Bacon Act

Mark Wright
FDOT Prevailing Wage Coordinator

AGENDA

Wages Training

- I. Welcome
- II. Applicable Federal Regulations
 - Davis-Bacon Act
 - Copeland Act
 - Contract Work Hours and Safety Standards Act (CWHSSA)
- III. Prevailing Wages on Federal Aid construction projects
 - Wage Tables for Contracts (Agency responsibility and types of wage tables with examples of applications).
 - Contractor responsibilities - certified payrolls
 - Contracting agency's monitoring during construction.
 - Deductions
 - Classifications
 - Questions

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II. Applicable Federal Regulations

- **Davis-Bacon Act (DBA)**
Establishes prevailing wage rates for Federal funded construction projects over \$2,000 setting the minimum rate per classification in the specific area.
- **Copeland Act**
Requires certified payrolls and regulates deductions. Also known as the "Anti-kickback Act".
- **Contract Work Hours and Safety Standards Act (CWHSSA).**
Contains provisions for payment of overtime (1.5 normal rate of pay for hours over 40 in a workweek)

See FHWA-1273 and regulations 29 CRF Part 1,3,5 for more information.

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III. Prevailing Wages on Federal Aided Construction Projects

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Wage Tables for Contracts

- The Contracting Agency is responsible for inserting the correct wage table(s) in bid documents/contracts. Wage table valid for life of the contract.
- Four major categories of wage tables based on construction type: Highway, Heavy, Building and Residential.
- Highway: Roadways and related construction, parking lots, bridges (over/under passes, grade separations)
- Heavy: Major bridges designed for commercial navigation, railroad, antenna towers, drainage, dredging.
- Building: Rest stop buildings, parking garages, most all buildings/shelters with the exception of those of a residential nature involving 4 stories or less.
- For wage tables and related info:
<http://www.dot.state.fl.us/construction/wage.htm>

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Contractor Responsibilities

- FHWA-1273 and wage table in all subcontracts. Table posted on job site.
- Employees paid weekly, according to table; OT for hrs over 40; no illegal deductions when working on DBA covered projects.
- Weekly certified payrolls due to contracting agency within 7 days of the contractor/sub's normal pay date.
- Payrolls must be accompanied by a statement of compliance. USDOL's WH-347 or FDOT's #700-010-69 is acceptable. FDOT form may be found @:
<http://www.dot.state.fl.us/proceduraldocuments/>
- FDOT EEO Construction Contract Compliance Workbook for added guidance
- @: <http://www.dot.state.fl.us/equalopportunityoffice/>

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Contracting Agency's Monitoring responsibilities during construction

- Assure correct wage table is in contract and posted on the job site.
- Assure payrolls are submitted timely.
- Have a process to check payrolls to ensure accuracy and that workers are paid wages due including overtime pay.
- Ensure no illegal deductions or "kickbacks" have been taken.
- Have a mechanism in place to assure contractors comply with wage requirements. Withholding of progress payments is an example of this.

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Deductions

Deductions must meet the following requirements:

- contractor does not profit directly or indirectly
- deduction is not otherwise prohibited by law
- deduction is voluntarily consented to by the employee and is not a condition of employment
- deduction serves the convenience and interest of the employee.

Normal Permissible Deductions:

Without USDOL approval - examples

- Taxes: Federal Withholding, FICA, State Income Tax
- Court Orders: Garnishments, child support
- Insurance: Health, Life
- Automatic payroll deposits: Financial Institution, Charities
- Pension funds
- Employee Loan/Advances
(must have written voluntary consent)

With USDOL approval - examples

- Uniform rentals/cleaning
- Transportation charges
- *See 29CFR Part 3 for more detailed information on deductions under the Copeland Act.

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Classifications

■ Permissible classifications

- Must be listed in the wage table
- Or added by additional classification request (Prime contractor must initiate the request)

■ Exempt classifications not covered by DBA

(not required to request additional classification or to be reported on payroll*)

- Surveyor
- Rodman
- Instrument Person
- Testing Technician
- Bridge Tender
- Foreman-unless a "working foreman" working 20% or more of work week
- *Welder not exempt though rates are not published for them only for craft they're incidental to (reported as welder/ironworker, etc.)

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Questions

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Contract Wages/Davis Bacon Contact Information

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Prevailing Wage Coordinator
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Title VI and Related Statutes and Authorities

Nondiscrimination Agreement

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 and related statutes and authorities, provide that not person shall on the ground of race, color, national origin, sex, age, handicap/disability, or income status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or retaliation under any program or activity receiving Federal financial assistance.

PURPOSE

- To ensure nondiscrimination in all federal-aid recipients, subrecipients, and contractors program areas and activities, whether those programs and activities are federally funded or not. (Civil Rights Restoration Act of 1987)
- To ensure efforts to prevent discrimination be addressed, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocation of funds, prioritization of projects, and the functions of right-of-way, research, planning and design.

REQUIREMENTS

- Requires the Department and its subrecipients to enter into a signed Nondiscrimination Agreement to ensure nondiscrimination.

ASSURANCES

By signing the Nondiscrimination Agreement, Recipients, subrecipients, and contractors give the following assurances pursuant to 49 CFR 21.7:

- That no person shall on the ground of race, color, national origin, sex, age, handicap/disability, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity conducted by the Recipient regardless of whether those programs and activities are Federally funded or not. Activities and programs which the Recipient hereby agrees to carry out in compliance with Title VI and related authorities include but are not limited to: all major programs and activities of the Recipient.

ASSURANCES

- Assures that prompt measures necessary to effectuate this agreement will be taken.
- Assures that each recipient "program", "activity", and "facility" be conducted or will be operated in compliance with the

ASSURANCES

- Assurances are given in consideration of and for the purposes of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance.
- Assures that the following notification is insert in all solicitations for bids of work or materials and made in connection with all Department programs and is in adapted form in all proposals for negotiated agreements:

The (NAME OF THE RECIPIENT), in accordance with Title VI of the Civil Rights Act of 1964, related statutes and other nondiscrimination authorities, hereby notifies all bidders that they will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises and/or disadvantaged business enterprises, as defined by 49 CFR Part 26, will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, handicap/disability, or income status in consideration for an

ASSURANCES

- Assures that the clauses of Appendix A, Appendix B, & Appendix C shall be inserted where required
- Agrees that the United States has the right to seek judicial enforcement with regard to any matter arising under Title VI of the Civil Rights Act of 1964, related statutes and other discrimination authorities and the nondiscrimination agreement

REQUIREMENTS

- Requires and serves as the recipient's Title VI Plan pursuant to 23 CFR 200 and FHWA's Title VI Implementation Guide
- Requires the issuance of a Policy Statement signed by the recipient's chief executive officer
- Requires affirmative action be taken to correct deficiencies found by the Department or the USDOT within a reasonable time period in order to implement the Title VI requirements of this agreement

REQUIREMENTS

- Requires the designation of a Title VI Specialist who has a responsible position within the organization and access to the Chief Executive Officer
- Requires the processing of complaints of discrimination consistent with the provisions contained in this agreement
- Requires the collection of statistical data of participants in, and beneficiaries of programs and activities
- Requires Title VI Reviews of program areas and activities. Revise where applicable, policies, procedures, and directives to include Title VI requirements

REQUIREMENTS

- Requires training on Title VI and related statutes and authorities for program areas and civil rights personnel
- Requires the preparation of a yearly report of Title VI accomplishments for the past year and goals for the upcoming year
- Requires Title VI information be disseminated to the general public and, where appropriate, in languages other than English (Limited English Proficiency Requirements)
- Requires and serves as the recipient's procedure for processing formal and informal discrimination complaints as detailed in the nondiscrimination agreement

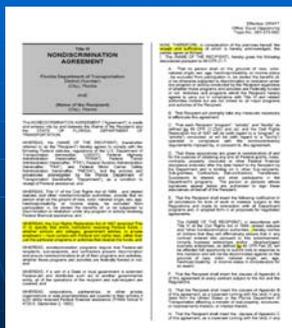
SANCTIONS

- Sanctions apply should the recipient fails or refuses to comply with the terms of the nondiscrimination agreement
- No amendments, modifications, or other changes to this agreement shall be made unless all parties agree in writing

WHERE ARE WE?

- Undergoing Approval Process
- Expected Release March 1st

NONDISCRIMINATION AGREEMENT



RESOURCES

FDOT Equal Opportunity Office
<http://www.dot.state.fl.us/equalopportunityoffice/>

USDOT Office of Civil Rights
<http://www.dotcr.oost.dot.gov/>

FHWA Office of Civil Rights
<http://www.fhwa.dot.gov/civilrights/nondis.htm>

23 CFR Part 200 Title VI Program and Related Statutes-Implementation and Review Procedures
http://www.access.gpo.gov/nara/cfr/waisidx_02/23cfr200_02.html

Department of Transportation Policy Guidance Concerning Application of Title VI of the Civil Rights Act of 1964 to Metropolitan and Statewide Planning
<http://www.eis.gov/fedregstr/EPA-IMPACT/2000/May/Day-19/12590.htm>

49 CFR, Part 21 Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964
<http://www.fhwa.dot.gov/heap/49cfr21.htm>

US Department of Transportation Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries
<http://www.usdoj.gov/crt/cor/lep/dotlep.htm>

Civil Rights Restoration Act
Title 42 U.S.C. §2000d-§2000-7 Civil Rights (Title VI of the Civil Rights Act of 1964)

TITLE VI PROGRAM CONTACT INFORMATION

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