

## **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. To be eligible for Federal-aid funds, the Local Agency must comply with the Civil Rights/Nondiscrimination requirements (as identified in **Chapter 16**).

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 (FDOT) 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.

Under the FDOT's Finance and Administration, the 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 federally funded projects. Due to this procedural review and approval between FHWA and FDOT, the Local Agency must use the [Equal Opportunity, Construction Contract Compliance Procedure](#) and the [Contract Compliance Manual](#) (Topic No. 275-020-002) to monitor a contractor's performance on every LAP project.

**The Contract Compliance Manual reflects the compliance monitoring program approved by the FHWA for use on Federal-aid projects in the State of Florida. Any deviation from the policy outlined in the CCM including additional requirements requires prior approval from the State Construction Office and the Equal Opportunity Office. The request must include a compelling justification by the District Construction Engineer.**

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

FDOT's State Construction Office (SCO) is responsible for the administration of the **Davis Bacon Act** (and other related acts) requirements relating to wage rates. The SCO Prevailing Wage Rate Coordinator establishes policies and procedures pertaining to that requirement; districts are responsible for the day-to-day project administration of wages.

### 15.1.1 Local Agency Terms of Compliance

When the Local Agency executes a LAP Agreement to receive FHWA 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, FDOT [Equal Opportunity Requirements](#) 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 Training Special Provisions \(7-25\)](#) are generally required on construction contracts on the State or National Highway System (SHS or NHS), 225 days or more in length, and a greater contract value than \$1million at award. LAP agencies should coordinate with the District LAP Administrator and the DCCM for including **FDOT 7-25** in project bid documents and also 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 contracts are subject to Davis-Bacon and Related Act Provisions as specified in **FHWA 1273** and [FDOT Specifications](#). In some circumstances involving purely local roads/rural minor collectors without connection to or dependence upon a Federal-aid highway or project, Davis-Bacon may not apply (see **Section 15.3**). However, regardless of the nature of the road, all projects in FHWA's Transportation Alternatives Program (TAP) are specifically covered by Davis-Bacon requirements. These include all Safe Routes to School (SRTS) and Recreational Trails Program (RTP) projects.

Applicable federal-aid construction contracts must incorporate [FDOT 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 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 contracts and subcontracts, per **FHWA 1273**. Per [State Construction Office Memo 10-12](#) and federal oversight and monitoring requirements, the Local Agency is responsible for monitoring all subcontracts for inclusion of **FHWA 1273**.

The LAP Administrator will review the bid documents for the inclusion of the applicable wage rate decision at the time of draft bid document approval (as noted on the Construction Checklist for LAP projects) and will verify the wage rate decision was not amended by USDOL, during the advertisement period, at the time of the draft contract award review and concurrence.

### **PROJECT SPECIFIC EXEMPTIONS FROM WAGE RATES**

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 FDOT [Statewide Wage Rate Coordinator](#). In order to process exemption requests, the Statewide Wage Rate Coordinator needs the project limits, system classification, and all funding types associated with the project.

The FDOT Statewide Wage Coordinator will provide a written determination to the LAP Administrator, which will in turn be provided to the Local Agency. Any determination for exemption from wage rate provisions shall be retained in the project file and uploaded to LAPIT. **Exemptions for wage rates will only be evaluated by the Department prior to project advertisement. Upon advertisement of the LAP project, all Davis-Bacon provisions will be applicable without exception.**

LAP projects that are advertised and awarded as requiring prevailing wages cannot be later amended or changed under any circumstance. If it is discovered post-award that the roadway or project limits are exempt from prevailing wages the contract cannot be amended. The contractor must continue to pay prevailing wages and the Local Agency must continue to monitor the contract for compliance with prevailing wages.

## 15.3 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 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.

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. FDOT publishes and annually updates a [Contract Compliance Manual](#), formerly known as the **Contract Compliance Workbook**, a comprehensive but straightforward guide that describes compliance monitoring and related documents in each compliance program. The Local Agency should address questions about contract compliance to the District LAP Administrator or to the [District Contract Compliance Manager](#).

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 FDOT 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** to all subcontracts.  
Ref: [State Construction Office Memo 10-12](#)
- B. Conduct project preconstruction meetings to discuss DBE (as identified in Chapter 14), 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 [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.

### 15.3.3 FDOT and External Partner Monitoring Process and Responsibilities

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, 23 Code of Federal Regulations**, or other federal authorities, the District shall conduct a compliance review to assess compliance with federal provisions.

#### FDOT REVIEW FOCUS

FDOT reviews will include program and project level reviews of the LAP Agency's Equal Employment Opportunity (EEO), Disadvantage Business Enterprise (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.

## FDOT REVIEW SCHEDULE

Prior to the Local Agency issuing the contractor Notice to Proceed, the LAP Administrator or FDOT designee must attend the preconstruction meeting. In addition, FDOT staff will forward all meeting notices to the FHWA District Transportation Engineer (DTE) and the Office of Inspector General's Contract Audit Unit. In preparation for this meeting, the FDOT will provide a boilerplate EEO Pre-construction Meeting script to the agency RCS. During the meeting, FDOT staff will provide assistance to the Local Agency in answering questions regarding contract compliance and provide a draft review schedule for the duration for the project

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. This portion of the review is to ensure the Local Agency is in compliance with the procedures outlined in the FDOT **Contract Compliance Manual**. 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 **FDOT Equal Opportunity Construction Contract Compliance Procedure Topic No. 275-020-002**.

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 a schedule will be provided to the Local Agency no less than 2 weeks prior to the desired review date.

## 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.

## 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.**

## OTHER AGENCY REVIEWS

Further, the LAP program is of interest to other USDOT, Federal and State agencies, including Offices of Inspector General (OIG), 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.

## 15.4 JULY EEO REPORTS

Local Agencies must ensure that Contractors complete and submit the **Construction Contractors EEO Report (Form No. 275-010-12)**. 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. If a project is active, but no work is completed during the month of July a report will be submitted stating no work. The Local Agency must submit the form to the District Contract Compliance Manager (DCCM) by August 31<sup>st</sup> of each year for statewide reporting. The Local Agency must also maintain this form in its project files and upload the form to LAPIT.

## 15.5 PROJECT INVOICING AND PROJECT CLOSE OUT

Project progress invoices may be rejected by the FDOT if there are outstanding contract compliance findings related to the pay period for which the invoice was submitted. Reimbursement will be withheld by the FDOT 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 the Substantial Compliance Memo has been issued by the FDOT.

At the completion of the project, the FDOT 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 memo of Substantial Compliance (or Completion) will be issued by the DCCM. The final invoice cannot be processed for payment if the Substantial Compliance memo has not been issued. The memo must be uploaded to LAPIT at the time of issuance.

## 15.6 LOCAL AGENCY PROGRAM SANCTIONS

In the event the Local Agency fails or refuses to comply with the terms of this chapter, FDOT 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.

## 15.7 AUTHORITIES AND RESOURCES

### [Authorities and Resources](#)

#### [Equal Opportunity Construction Contract Compliance Procedure](#)

#### [Contract Compliance Manual](#)

**\*A FULL LIST OF FORMS TO CONDUCT PROJECT CONTRACT COMPLIANCE IS LOCATED IN THE CCM.\*** The forms listed below are in no way intended to be a comprehensive list of required documents for construction administration on federal projects.

[FDOT Form No. 275-010-12](#) Construction Contractors July EEO Report Form

EEO Posters for jobsite bulletin board

<http://www.dot.state.fl.us/equalopportunityoffice/ccposters.shtm>

#### [USDOL Wage Decisions](#)

FDOT Specification 7-16 for inclusion in contract documents on Federal-aid projects.  
[FHWA 1273](#) (need to add specification language for bid documents link to PDF)

[FDOT Training Special Provisions](#) including OJT