Florida Department of
TRANSPORTATION

Local Agency Program Construction Checklist Training

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Office of Program Management

LAP Checklists 101

- Construction Checklist developed in 2005-2006
- LAP suspended by FHWA in State of Florida
- Systemic non-compliance with federal requirements

APWA Project of the Year - Lake Beulah Trail

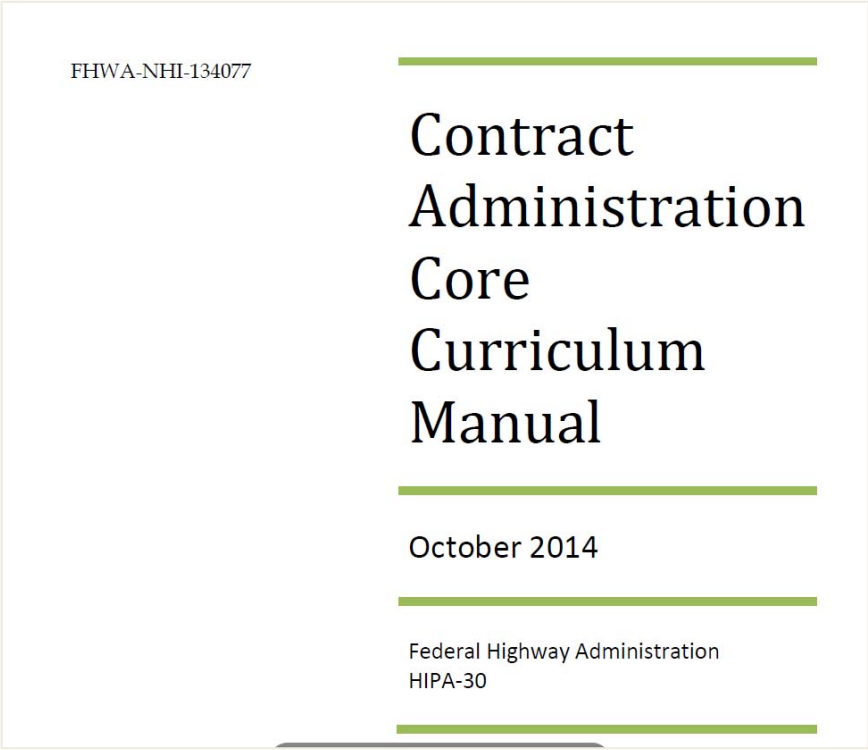
LAP Checklists 101

Use of the Construction Checklist continues today in order to:

- consistently track compliance statewide
- provide federal requirements “cheat sheet”

Federal Contracting Requirements

Primary FHWA Resource for Requirements →


FHWA-NHI-134077

Contract Administration Core Curriculum Manual

October 2014

Federal Highway Administration
HIPA-30

http://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf

Federal Contracting Requirements

U.S. Department of Transportation
Federal Highway Administration

About Programs Resources Briefing Room

Construction

Contract Administration Technologies and Innovations

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Contract Provisions for Federal-aid Construction and Service Contracts Required by FHWA or Other Agencies

Agency / Requirement	Form	Statute	Regulation	Highway Construction (1)	Non-Highway Construction (2)	Service Contracts (3)	Remarks:
Buy America Requirements	State developed provisions	23 USC 313	23 CFR 635.410	Yes	Yes	Yes	Applicable to all projects financed under Title 23 that use or acquire steel & iron materials.
Non-Collusion Provision	State Developed Provisions	23 USC 112 (c)	23 CFR 635.112(f)	Yes	No	No	Applicable to highway construction contracts financed under 23 USC
On-the-Job Training Provisions	Appendix B to Subpart A of Part 230-Training Special Provisions	23 USC 140(a) & (b)	23 CFR 230 Subpart A Appendix B to Subpart A of Part 230-Training Special Provisions	Yes	See remarks	No	Projects designated by the State in setting State-wide training goals
Standardized Changed Conditions Contract Clauses	State developed contract provisions	23 USC 112(e)	23 CFR 635.109	Yes	No	No	Applicable to all highway construction projects (except for design-build projects where applicability will be determined on a project-by-project basis).
FHWA Required Contract Provisions	Form FHWA-1273 - Required Contract Provisions (.pdf)		23 CFR 633.102	Yes	Yes (5)	No	Form FHWA-1273 must be incorporated in all Federal-aid construction solicitations and contracts

http://www.fhwa.dot.gov/construction/contracts/provisions.cfm

Federal-Aid Highways

Federal-Aid Highway Construction Contracts include all Title 23 funded projects on:

- National Highway System (NHS)
- State Highway System (SHS)
- Off-system or local system- *within the right of way of a public highway*

Link to Federal Aid Road Reports:

http://www.dot.state.fl.us/planning/statistics/fedaid/

Federal-Aid Highways

Non-Highway Construction Projects are:

- Outside the right of way of a public highway
- Not linked to a Federal-Aid Highway
  - Linkages may be established thru NEPA
- Eligible activities list considerably reduced

Trails *are the most common eligible construction projects not linked to a Federal-Aid Highway encountered in LAP.*

Service Contracts

Federal-Aid eligible Service Contracts are neither construction nor professional services contracts related to construction of a Federal-Aid Project.

- *Equipment Purchases (e.g. ITS) are the most common use in Florida*

LAP Checklist 101

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

525-010-44
PROGRAM MANAGEMENT
10/15
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LOCAL AGENCY PROGRAM CHECKLIST FOR CONSTRUCTION CONTRACTS (Phase 58) – FEDERAL AND STATE REQUIREMENTS

Project Title: _____
Financial Management Number: _____
Federal-Aid Project Number: _____
Local Agency Name: _____
Materials Certification and Acceptance (MAC) System Use Required (Yes/No): _____

Federal-Aid Highway (Yes/No): _____
LAP Agreement Amount ($): _____
Scheduled Advertisement Date: _____
Specifications Used: FDOT ☐ LAP Big Four ☐ Local Agency ☐
SHS/NHS Project (Yes/No): _____ If yes, identify System: _____

Requirement	Reference	Local Agency Responsibilities	District Monitoring Responsibilities	Requirement Location

LAP Checklists 101

What is included in the LAP Construction Checklist?

- Federal-Aid construction contract provisions
  - Most common
  - Highest Risk
  - Provisions set forth by agencies other than FHWA- USDOL and EEO

FDOT calls them "Division 1 Specifications"

1. Plans, Specifications, & Estimates (PS&E)

Requirement	Reference	Local Agency Responsibilities	District Monitoring Responsibilities	Requirement Location
1. Plan, Specification & Estimates (PS&E) Submittal	23 CFR 635.309(a) LAP Agreement – Section 13.08 LAP Manual National Environmental Policy Act (NEPA) Contract Administration Core Curriculum Manual, FHWA HIPA-30, October 2014	Submit PS&E package to FDOT for approval. Provide assurance that all: Right-of-way (ROW) clearances, NEPA compliance have been completed, and appropriate permits have been obtained. Utility and railroad work arrangements and coordination must be made and properly noticed in the bid proposal. SHS/NHS projects will be designed in accordance with the Plans Preparation Manual. Non-SHS and Non NHS projects will be designed in accordance with the Florida Greenbook. Local Agency uses its own Division 1 Specifications for all project types, but includes FDOT's Division 1 Specifications for Local Agencies in the bid document located on the Department's Specs on the Web page. Local Agency will use FDOT's Division II and Division III Specifications when the construction project is on the SHS, NHS, or greater than $10 million in total costs. For Class C projects with bridges or box culverts refer to LAP Manual Ch. 19 & 20 for specifications guidance. When the project is off the SHS and NHS, Local Agency will use FDOT's pre-approved Big 4 specifications for earthwork, concrete, asphalt, and landscaping items, or will seek FDOT approval for local agency specifications	Review/approve signed and sealed PS&E package ROW Form# 575-095-05 date: _____ Executed Status of Environmental Certification and Determination received from DEMO. date: _____ Clear Letters received dates: Utilities _____ Railroad _____ No Permits _____ Permits Req. _____	Signed and sealed PS&E Package and all Certifications must be uploaded to LAPIT prior to executing this Checklist. All permits issued must be submitted to the Department and incorporated into the PS&E Package.

LAP Checklists 101

- Checklist items will not be presented in alphabetical order, rather arranged by subject matter.
- Any time you see this star on a slide it denotes that FDOT contract language for this element is provided in the LAP Division 1 documents available in Specs on the Web.

23. Owner Force Account

- Force Account projects do require an executed construction checklist for federal authorization
  - Most items will be N/A
- Force account construction may not be authorized without a FDOT approved **Cost Effectiveness Finding**.
- Cost Effectiveness Findings are not for **cost** alone!
- Agency must include additional justification such as inadequate competition exists, effects on the community, etc.

23. Owner Force Account/ Cost-Effective Justification	23 CFR 635B under 635.205

23. Owner Force Account

23 CFR 635B

"Direct performance of highway construction work by… [local public agency] labor, equipment, materials, supplies, furnished by them and used under their direct control."

Make sure you actually have the staff and resources to perform all components of the work!

23. Owner Force Account/ Cost-Effective Justification	23 CFR 635B under 635.205

Contract Provisions NOT Allowed

Item #8 Contractor Purchased Equipment for State or Local Ownership

Contractor **<u>cannot</u>** purchase equipment and transfer ownership to the local agency at the end of the contract.

8. Contractor Purchased Equipment for State or Local Ownership	23 CFR 140 2 CFR 200.313

Contract Provisions NOT Allowed

Item #14 Foreign Contractor and Supplier Restrictions

§30.15 Restrictions on Federal public works projects.

The contracting officer shall insert the following clause in solicitations and contracts as prescribed at §30.11(a) through (b) of this part:

RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS

(a) *Definitions*. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9

(b) *General*. This clause implements the procurement provisions contained in the Continuing Resolution on the Fiscal Year 1988 Budget, Public Law No. 100-202, and the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law No. 100-223.

(c) *Restrictions*. The Contractor shall not knowingly enter into any subcontract under this contract: (1) With a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.); or (2) for the supply of any product for use on the Federal Public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

*Do not limit contracts to domestic-owned companies, but you may also not contract with companies operating in **federally** restricted locations. Florida has orders on Cuba, Syria, new one on Israel that are not applicable on FA projects.*

14. Foreign Contractor and Supplier Restriction	49 CFR 30

Contract Provisions NOT Allowed

Item #19 State or Local Hiring Preferences

Do not restrict completion to local or in-state companies.

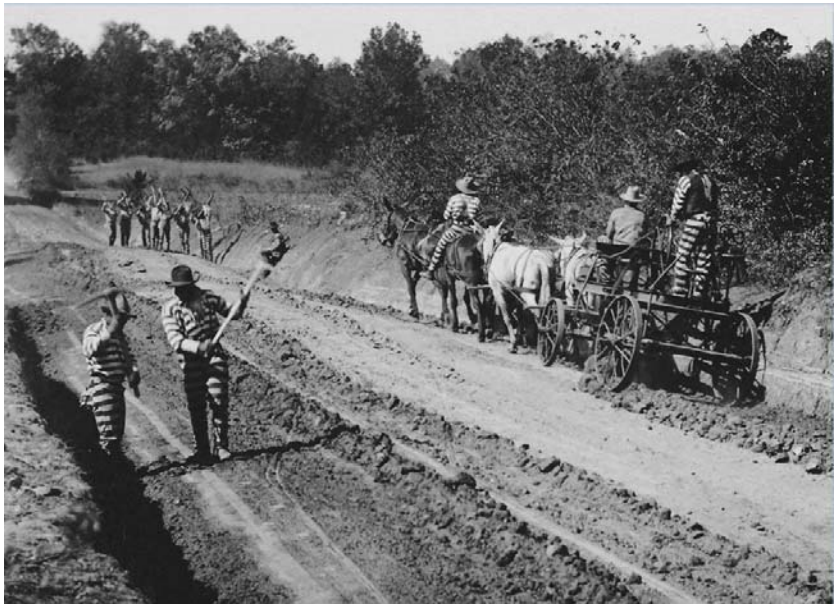
19. Local/State Hiring Preference	23 CFR 635.117 255.0991 F.S.

Contract Provisions NOT Allowed

Item #28 Convict Produced Materials

Convict produced materials and labor are not allowed on FA projects.

28. Prohibition Against Convict Produced Materials	23 CFR 635.417 FDOT Std Spec 6-5.1



Contract Provisions NOT Allowed

Item #29 Public Agencies in Competition with the Private Sector

Other LPAs are not allowed to compete for work on your agency contracts.

29. Public Agencies in Competition with the Private Sector	23 CFR 635.112(e)

Contract Provisions NOT Allowed

Item #30 Use of Publicly-Owned Equipment

"…Equipment previously purchased or otherwise acquired by the public agency involved for use in its own operations" is not allowed.

30. Publicly-Owned Equipment	23 CFR 635.106

**Exceptional cases with clear cost effective use may be considered with a Public Interest Finding.*

Contract Provisions NOT Allowed

Item #31 Salvage Credits

Salvage credits applied directly to the project are not allowed.

31. Salvage Credits	2 CFR 200.313

Contract Provisions NOT Allowed

Item #33 Designated State or Locally Sourced Materials

Contractor must furnish all materials and shall also be permitted to select the sources to obtain the materials.

34. State/ Local Owned/ Furnished/ Designated Materials	23 CFR 635.407

**Exceptional cases with clear cost effective use may be considered with a Public Interest Finding.*

34. State/ Local Owned/ Furnished/ Designated Materials

Do not use unless there is a public interest finding approved by FDOT. Local Agency tax savings programs are generally not allowed for federal projects.

34. State/ Local Owned/ Furnished/ Designated Materials	23 CFR 635.407

2. Advertisement

2. Advertisement	23 USC 112 23 CFR 635.112

- Advertise within how many days of the District issued NTP?
  - **30**
- What is the minimum number of days your advertisement should run?
  - **21**
- What geographic boundaries should you advertise within?
  - **Regional- federal, County- per F.S.**

2. Advertisement

2. Advertisement	23 USC 112 23 CFR 635.112

337.11 (3) (a) F.S., 337.14 F.S., 336.44 F.S.... Publish the advertisement

- In county where such contract is made
- at least once each week for 2 consecutive weeks prior to the making of such contract

23 CFR 635.113 requires 21 days and regional publication

2. Advertisement

2. Advertisement	23 USC 112 23 CFR 635.112

- How many bids must you receive to award the project?

  - **There is not a minimum in rule, but no less than two is preferred to move forward with contract award.**

3. BONDING

3. Bonding	255.05 F.S. 23 CFR 635.110(b) 2 CFR 200.325

255.05 F.S. requires all contractors performing a public work for a Local Agency execute a payment and performance bond with a surety insurer prior to commencing work.

- Bonding requirements may not be used to limit competition per 23 CFR 635.110(b) and 255.05 F.S.

3. BONDING

3. Bonding	255.05 F.S. 23 CFR 635.110(b) 2 CFR 200.325

255.05 (d) F.S. allows an exemption threshold:

…At the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, a person entering into such a contract that is ***for $200,000 or less*** *may be exempted from executing the payment and performance bond.*

4. BUY AMERICA

4. Buy America	23 CFR 635.410 FDOT Standard Specification 6-5.2

Incorporate FDOT Standard Spec 6-5.2:

6-5.2 Source of Supply-Steel: Use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and

- ***Applies to any steel or iron permanently incorporated into FAHP (i.e. manhole covers)***
- ***Does not apply to temporary elements such as detour bridges, temporary sheet piling***

5. Certification of Current Capacity

- Contractor certifies they have the capacity to complete the project based on their Maximum Capacity Rating

5. Certification of Current Capacity	14-22.006, F.A.C.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

LAP CERTIFICATION OF CURRENT CAPACITY

525-010-46
PRODUCTION SUPPORT
12/09
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CONFIDENTIAL

For bids to be received on _____
(Letting Date)

Fill in your FDOT Vendor Number
VF __ __ __ __ __ __ __ __ __ __ __ __
(Only applicable to FDOT pre-qualified contractors)

CERTIFICATE

I hereby certify that the amount of any proposal submitted by this bidder for the above letting does not exceed the amount of the Firm's CURRENT CAPACITY (maximum capacity rating less total uncompleted work).

The total uncompleted work as shown on the "Status of Contracts on Hand" report (page 2) $ _____

I further certify that the "Status of Contracts on Hand" report (page 2) was prepared as follows:

1. If the letting is before the 25th day of the month, the certificate and report reflect the uncompleted work as of the 15th day of the month, last preceding the month of the letting.

2. If the letting is after the 25th day of the month, the certificate and report reflects the uncompleted work in progress as of the 15th day of the month of the letting.

3. All new contracts (and subcontracts) awarded earlier than five days before the letting date are included in the report and charged against our total rating.

I certify that the information above is correct.

_____
NAME OF FIRM

Sworn to and subscribed this _____ day of _____, 20 _____

By: _____

_____
Title

6. Change Orders & 38. Time Extensions

- Change orders may include:
  - Plan Changes or revisions
  - Specification changes
  - Change in cost (+/-)
  - Change in time (+/-)

6. Change Orders	23 CFR 635.120 FDOT CPAM 7.3.11

38. Time Extensions	23 CFR 635.121 FDOT Std Spec 8-7.3.2

6. Change Orders & 38. Time Extensions

- Non-participating events for Time Extensions:
  - Maintenance shutdowns
  - Breakdowns (e.g. equipment)
  - Suspensions or stop work orders due to safety, permit or pollution violations
  - Shutdowns due to construction accidents
  - Material delays*
  - Inclement weather*

38. Time Extensions	23 CFR 635.121 FDOT Std Spec 8-7.3.2

6. Change Orders & 38. Time Extensions

- Procedures for granting change orders must be incorporated into the contract documents. Use:
  - ***Construction Projects Administration Manual (CPAM) Section 7.3.11***
  - ***FDOT Standard Specification 4-3***
  - ***FDOT Standard Specification 8-7.3.2***

7. CLAIMS

7. Claims	23 CFR 635.124 FDOT Std Spec 5-12 FDOT CPAM 7.5

COMMON CAUSES:

- Contract requirements interpretation
- Changed Conditions
- Owner-caused delays

5-12 Claims by Contractor.

5-12.1 General: When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

7. CLAIMS

7. Claims	23 CFR 635.124 FDOT Std Spec 5-12 FDOT CPAM 7.5

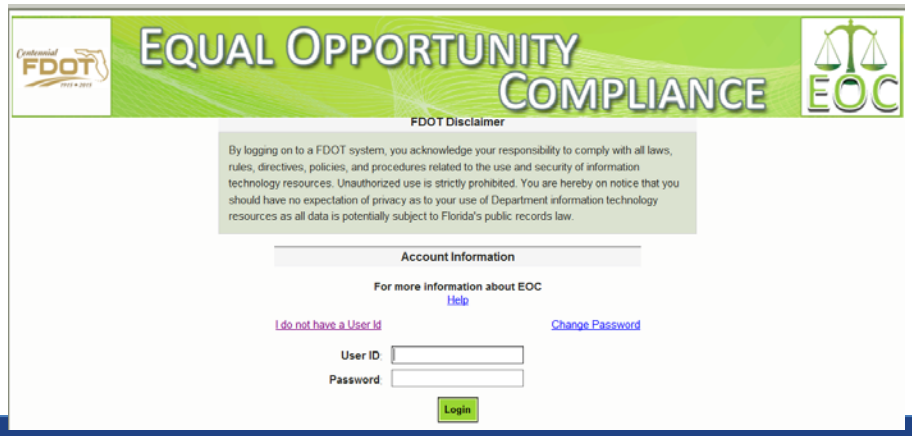
Common Procedure Elements:

- How long contractor has to file.
- How the contractor should submit the claim.
- What documentation the contractor must submit with the claim.
  - Daily logs, photos, invoices, delivery receipts
- Compensation
- Remedies, Settlement

9. Disadvantaged Business Enterprise (DBE) and Bid Opportunity

9. Disadvantaged Business Enterprise (DBE) and Bid Opportunity	49 CFR 26 49 CFR 26.45 LAP Manual Chapter 14 FDOT Std Spec 7-24

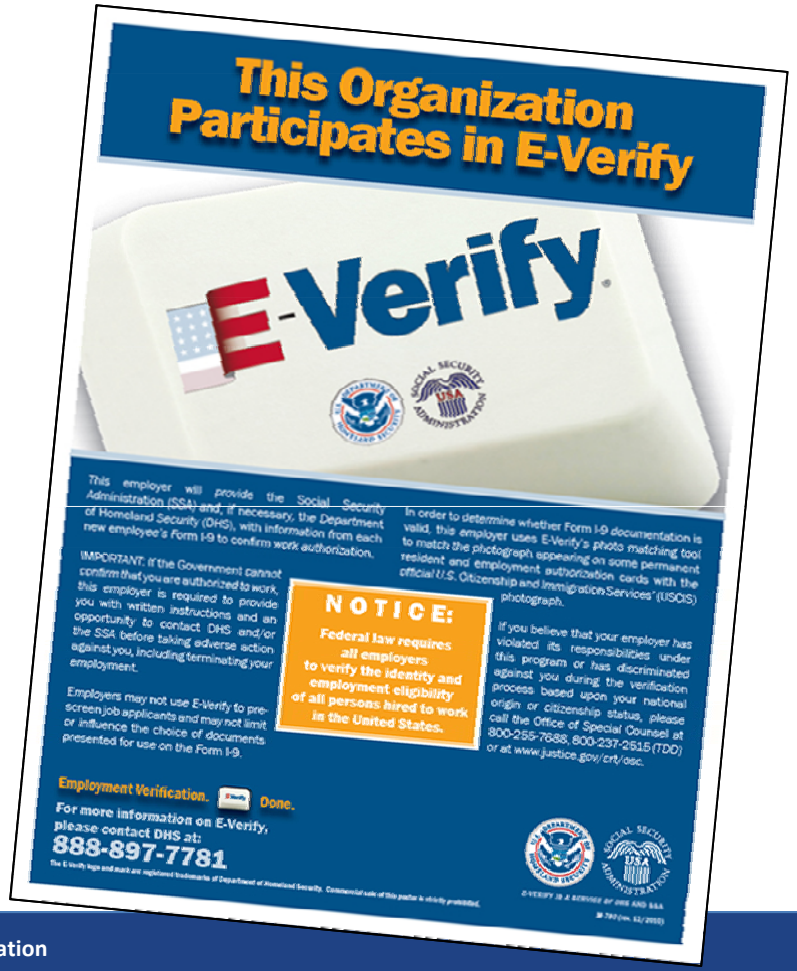
- 49 CFR 26 mandates the FDOT DBE Program Plan.
- 9.91% statewide DBE goal
- DBE Program provisions found in FDOT Specification 7-24 are required in both bid and contract documents
- FDOT uses the Equal Opportunity Compliance (EOC) application to track DBE bid opportunity and actual commitments reporting statewide.



10. E-VERIFY

- Include the E-verify provision, FDOT Special Provision SP0072800.
- E-verify is in effect for those employees hired during the term of the contract to work on the contract.

10. E-Verify	Florida Governor's Executive Order 11-116 FDOT SP0072800


This Organization Participates in E-Verify

E-Verify

This employer will provide the Social Security Administration (SSA) and, if necessary, the Department of Homeland Security (DHS), with information from each new employee's Form I-9 to confirm work authorization.

IMPORTANT: If the Government cannot confirm that you are authorized to work, this employer is required to provide you with written instructions and an opportunity to contact DHS and/or the SSA before taking adverse action against you, including terminating your employment.

Employers may not use E-Verify to pre-screen job applicants and may not limit or influence the choice of documents presented for use on the Form I-9.

NOTICE:
Federal law requires all employers to verify the identity and employment eligibility of all persons hired to work in the United States.

In order to determine whether Form I-9 documentation is valid, this employer uses E-Verify's photo matching tool to match the photograph appearing on some permanent resident and employment authorization cards with the official U.S. Citizenship and Immigration Services' (USCIS) photograph.

If you believe that your employer has violated its responsibilities under this program or has discriminated against you during the verification process based upon your national origin or citizenship status, please call the Office of Special Counsel at 800-255-7688, 800-237-2515 (TDD) or at www.justice.gov/crt/osc.

Employment Verification. Done.

For more information on E-Verify, please contact DHS at:
888-897-7781

11. Equal Employment Opportunity

- Include Title VI Assurance – DOT 1050.2, Appendices A/E in all contracts and sub-contracts (7 provisions)

http://www.dot.state.fl.us/programmanagement/LAP/Forms/AppendicesAandE2015.pdf

Nondiscrimination: The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

11. Equal Employment Opportunity	23 CFR 230 DOT 1050.2 FDOT SP0073000

13. FHWA 1273

13. FHWA Form 1273	23 CFR 633 FDOT SP0070101

- FHWA 1273 must be physically incorporated in every original contract and subcontract. It cannot be referenced or added via amendment.

- A best practice is to use a table of contents for attachments/exhibits in the contract itself that lists FHWA 1273 or a clause like the one below:

ARTICLE VI. LAP EEO REQUIREMENTS:

Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273) as attached in Exhibit A are required regulations of this contract and are hereby made a binding part of this agreement. Contractor Compliance with these regulations is required.

22. ON THE JOB TRAINING

OJT is required for all Federal-Aid Highway Program projects greater than 275 days <u>and</u> $2 million.

- Include FDOT's Standard Specification 7-25 Training Requirements in bid proposal and contract as applicable.

- FHWA 1273 includes a provision for training opportunities on all Federal-Aid highway construction projects, but non-specific on type.

Chapter 5 of the [EEO Construction Contract Compliance Workbook]() details the forms and procedures for achieving compliance with the training special provisions.

22. On the Job Training	23 CFR 230 FDOT Std Spec 7-25

26. Prevailing Minimum Wage

- Include FDOT Special Provision 7-16 and the latest Davis-Bacon wage table in the contract.
- Current wage tables can be obtained at: http://www.dot.state.fl.us/construction/wage.shtm or http://www.dol.gov
- Contractors that perform work on Davis-Bacon Act (DBA) covered projects must pay wages in accordance with those predetermined by the Secretary of the United States Department of Labor (USDOL).
- Some projects located on roadways classified as local roads or rural minor collectors are not applicable to Davis-Bacon Act.

26. Prevailing Minimum Wage	23 USC 113 23 CFR 633A FDOT SP0071600

12. EQUIPMENT RENTAL RATES

Develop procedure for proper payment provisions based on 48 CFR 31 and include in bid document or use FDOT Spec 4-3.2.1.

12. Equipment Rental Rates	23 CFR 635.120 48 CFR 31

Equipment rental rates must be adjusted to exclude ineligible costs such as:

- Contingencies
- Replacement cost escalator factors
- Premium Rental Rates for short term rental periods

15. INCENTIVE/DISINCENTIVE CLAUSES

Reserve use for critical projects where minimizing traffic delays is essential:

- Projects with high traffic volume facilities
- Projects that complete a gap in a significant highway system
- Major reconstruction or rehabilitation of existing facilities that severely disrupt traffic
- Reconstruction or rehabilitation of major bridges
- Projects with lengthy detours

15. Incentive/ Disincentive Clauses	23 CFR 635.127(d,f) FDOT CPAM 1.2.7

15. INCENTIVE/DISINCENTIVE CLAUSES

Incentive clause: compensates contractor for each day that identified critical work is completed ahead of schedule

Disincentive clause: deduction assessed for each day that critical work is delayed

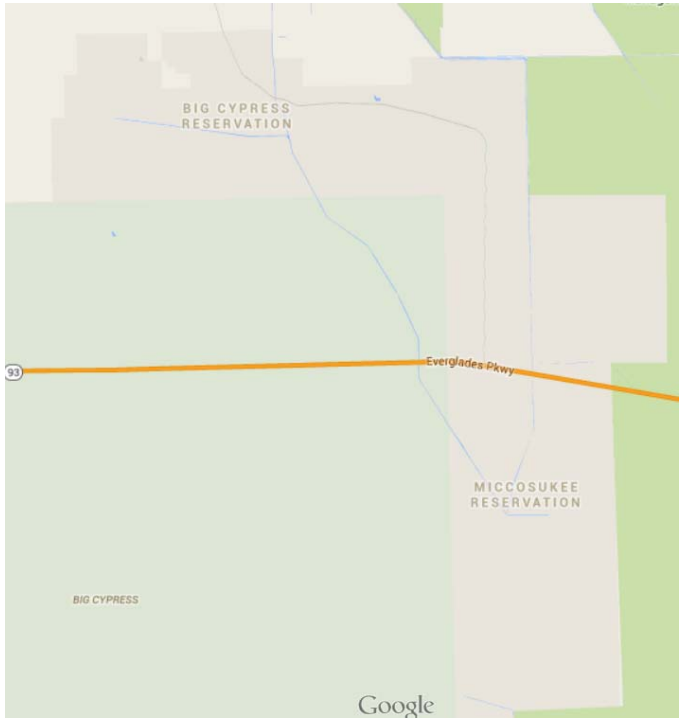
15. Incentive/ Disincentive Clauses	23 CFR 635.127(d,f) FDOT CPAM 1.2.7

16. Indian Preference on Federal-Aid Projects (Labor & Employment)

Applicable to projects located on roads within, or providing access to an Indian reservation or other Indian lands.

- *Preference is not limited to the tribal affiliation of the reservation served by the project. Must be open to all Native Americans.*

Seek approval from FHWA FL Division Office prior to use.



16. Indian Preference on Federal-Aid Projects (Labor & Employment)	23 CFR 635.117

17. LIQUIDATED DAMAGES

Develop rates based on 23 CFR 635.127 and include in contract provisions. Local Agency may use FDOT Standard Spec 8-10.2.

Original Contract Amount	Daily Charge Per Calendar Day
$50,000 and under	$836
Over $50,000 but less than $250,000	$884
$250,000 but less than $500,000	$1,074
$500,000 but less than $2,500,000	$1,742
$2,500,000 but less than $5,000,000	$2,876
$5,000,000 but less than $10,000,000	$3,770

"Liquidated damages contract provision provides the mechanism for the contracting agency to recover its costs associated with a contract time overrun by the contractor."

17. Liquidated Damages	23 CFR 635.127 FDOT Std Spec 8-10.2

Required Certifications Nos. 18, 21, 36

Each bid package shall include contract provisions and associated certifications for:

- Lobbying (FDOT Form # 375-030-33 & #375-030-34)
- Non-Collusion (FDOT Form # 575-060-13)
- Suspension/Debarment (FDOT Form # 375-030-32)

- Each certification shall be uploaded to **LAPIT** with the final contract package.

**Report suspected bid rigging, fraud, waste and abuse to the Office of Inspector General- USDOT or FDOT*

18. LOBBYING CERTIFICATION

- **Applicable to all contracts and subcontracts. Use Form No. 375-030-33**

- *Certifying that no Federal appropriated funds have been paid to a person for the purpose of attempting to influence any member of Congress or a Federal employee in connection with any Federal grant, contract, loan, or agreement.*

- If lobbying activities have occurred use the secondary "Disclosure of Lobbying Activities Form" No. 375-030-34

18. Lobbying Certification	49 CFR 20

21. NON-COLLUSION STATEMENT

- ***"…required from all bidders and is to be submitted as part of the proposal package. Failure to submit the required certification will result in the bid being considered as non-responsive and ineligible for award consideration." CCACM***

- A provision indicating the above should be incorporated into every bid package along with the required form. May use FDOT Form No. 575-060-13.

21. Non-Collusion Provision	23 CFR 635.112(f)

36. SUSPENSION & DEBARMENT

Applicable to all contracts, sub-contracts, lower tier contracts, purchase orders, lease agreements, consultant contracts, or any other covered transaction requiring FHWA approval…

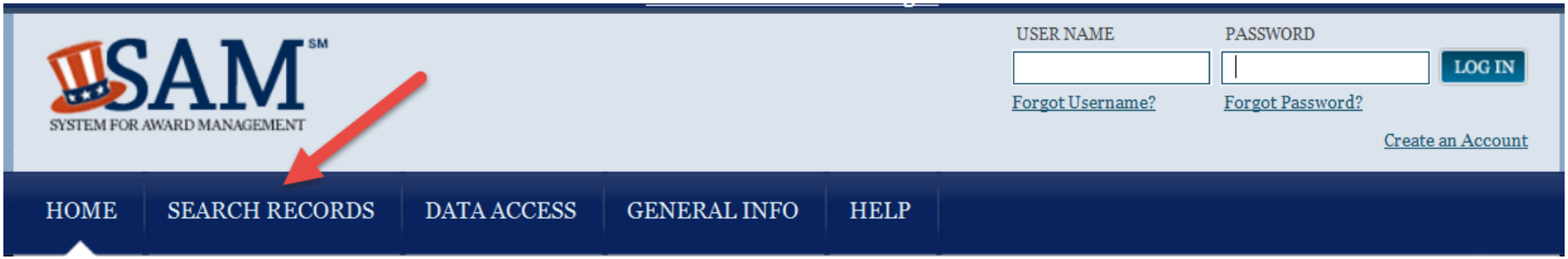
Local Agency will need to verify status for all contractors and subcontractors utilizing the federal and state databases:

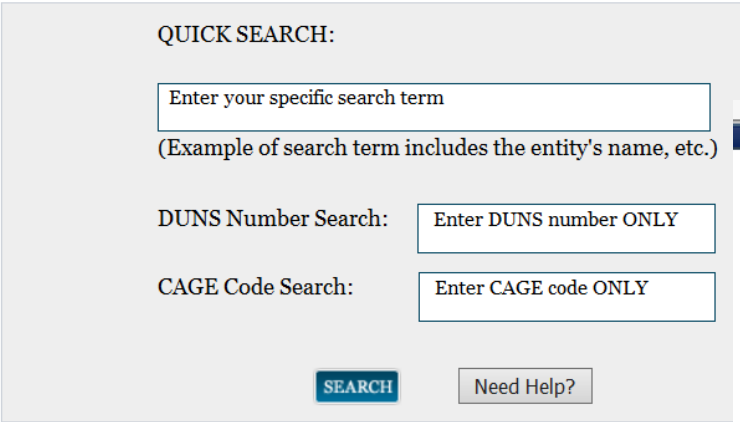
https://www.sam.gov/portal/SAM/#1

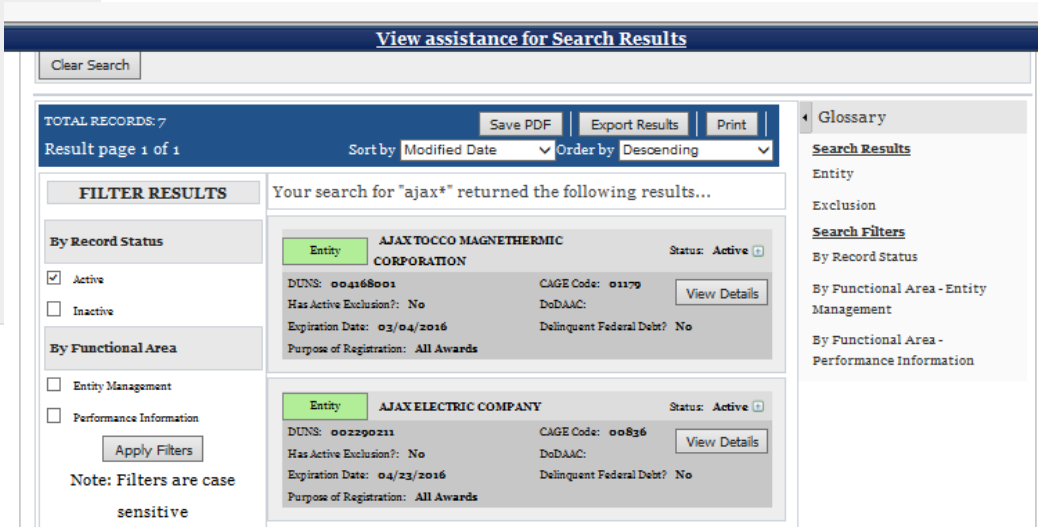
http://www.dot.state.fl.us/construction/legal/NewSuspension.shtm

36. Suspension and Debarment	49 CFR 29

36. SUSPENSION & DEBARMENT







36. Suspension and Debarment	49 CFR 29

20. METHOD OF CONSTRUCTION (or method of building)

- Award all projects to the ***lowest responsive responsible bidder*** except those under alternative contracting methods as approved by FDOT.

Common alternative methods include:

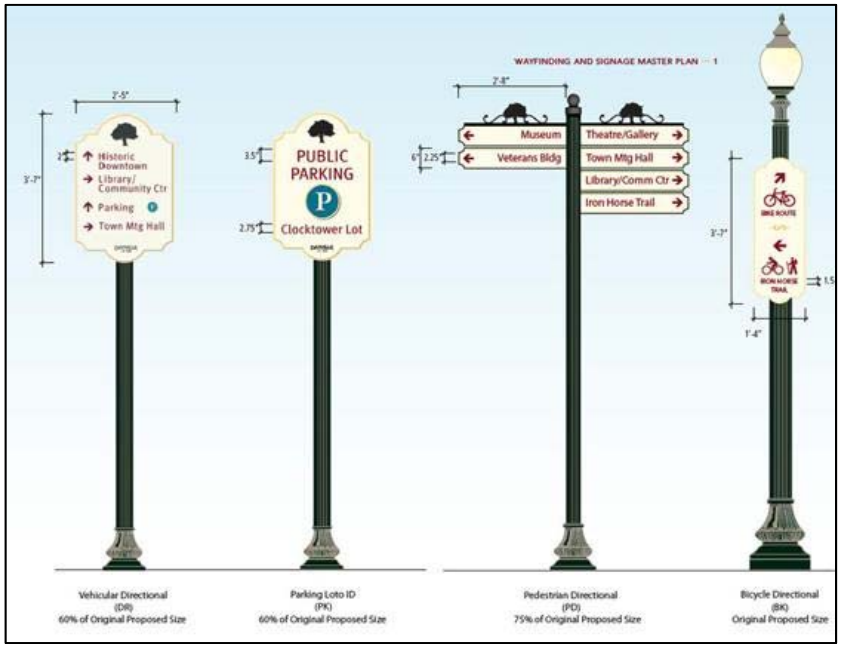
- Design-build
- Cost-plus-time bidding (A+B)
- Bid Alternates (additive or deductive alternates)
- CM @ Risk

20. Method of Construction (or Method of Bidding)	23 CFR 635.104 & 23 CFR 114(a)

24. PATENTED/PROPRIETARY MATERIALS

- Proprietary Products may be used when approved in accordance with **FDOT Procedure No. 630-020-005**.

- Certifications issued for:
  - Synchronization-function, aesthetics, logistics
  - No equally suitable alternative exists



Justifications cannot be solely based on cost savings, time savings, or similarity to other designs.

24. Patented/ Proprietary Materials	23 CFR 635.411 FDOT Procedure No. 630-020-005

25. PREQUALIFICATION

25.Prequalification	23 CFR 635.110 337.14 F.S. Chapter 14-22, F.A.C.

Use FDOT prequalified contractors for projects on the NHS and SHS and Class C projects. FDOT prequalified contractor is not required on NHS or SHS projects with a contract value under $250,000.

https://www3b.dot.state.fl.us/contractorprequalification/public/PrequalifiedVendorSearch.aspx

27. PROGRESS PAYMENTS/ESTIMATES

Develop contract language to ensure that payments are based on work completed, this may include stockpiled materials.

- standards of measurement for quantities
- payment for quantities (lump sum, plan)
- deleted work
- partial & final payments

- **retainage**
- withholding payments for failure to comply
- off-site storage
- certification of payment to subcontractors

27. Progress Payments/Estimates	23 CFR 635.122 FDOT Std Spec 9-5

32. Standardized Changed Conditions Contract Clauses

- Develop contract language to ensure that the requirements of 23 CFR 635.109 are met. Clauses include:
  - ***Differing site conditions***
  - ***Suspension of work ordered by the engineer***
  - ***Significant changes in the character of work***

Best Practice: Use the CFR language verbatim, unless you have an alternate approved provision that meets the intent of 23 CFR 635.109.

32. Standardized Changed Conditions Contract Clauses	23 CFR 635.109 FDOT Std Specs 4-3 and 5-12

35. SUBCONTRACTING

- FHWA 1273 requires the prime contractor to perform 30% of work on National Highway System (NHS).
- Develop contract language to meet the requirements. The local agency may use FDOT Standard Specification 8-1: Subletting or Assigning of Contracts for guidance.
- Monitor subcontracts for compliance with FHWA 1273.
- Maintain an updated certificate of sublet work in project file.

35. Subcontracting	23 CFR 635.116 FDOT Std Spec 8-1

37. TERMINATION OF CONTRACT

- Develop contract language for termination of contract for cause, convenience, and default and include in the bid document

- Provisions must identify the manner by which the termination will be effected and the basis for settlement.

**Contracts terminated for default may be completed through the surety or may be re-advertised and will still be eligible for reimbursement.*

37. Termination of Contract	23 CFR 635.125

39. WARRANTY CLAUSES

- Warranty provisions on a NHS project must be approved by FHWA. Warranty provisions on the SHS must not conflict with FDOT Standard Specifications. Off-system warranties may not cover maintenance.

- General condition warranties for an entire project are not allowed on the NHS.

- Warranty provisions shall be for a specific construction product or feature. Items of maintenance are **not** eligible for federal projects and shall not be covered. Transfer of product warranties is allowed.

Cargo Preference Act

- FDOT Special Provision 7-26 included in LAP Division 1 document (added in Dec 2015)
- Cargo Preference Act will not be added to the Construction Checklist until additional official guidance is received from FHWA.
- Applies to contractors who are shipping equipment and materials over sea under the jurisdiction of the Maritime Administration.
- Not presumed to have an impact on LAP at this time.

Thank You!

- FDOT Standard Specifications

http://www.dot.state.fl.us/programmanagement/Implemented/SpecBooks/July2015/Files/715eBook_Revised.pdf

- FDOT CPAM

http://www.dot.state.fl.us/construction/manuals/cpam/CPAMManual.shtm

- FHWA Contract Administration Core Curriculum Manual

http://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf

- LAP Website

http://www.dot.state.fl.us/programmanagement/LAP/Default.shtm

THANK YOU for attending today's training!

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