



# Equal Employment Opportunity

## Construction Contract Compliance Manual

### EEO-DBE-OJT-WAGES

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Department of Transportation

## INTRODUCTION

### PURPOSE:

The *Equal Opportunity Construction Contract Compliance Manual (CCM)* contains guidance and provides instruction on establishing the requirements of the Florida Department of Transportation (FDOT) to meet the requirements to administer the Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), and On-the-Job Training (OJT) contract requirements. The CCM will give instruction on the inclusion or incorporation of the required contract provisions into each construction contract funded under **Title 23, Code of Federal Regulations (C.F.R.) Part 230**. The CCM will also provide a uniform process for addressing the requirements set forth by the **Davis-Bacon** labor standards and **Contract Work Hours and Safety Standards Act** (CWHSSA). The U.S. Department of Labor (USDOL) regulations in 29 C.F.R. Parts 1, 3 and 5, provide the policy for implementation, while 23 U.S.C. 113, serves as the source statute for applicability determinations in the Federal-aid Highway Program. This procedure applies to all offices with the responsibility for administering the Equal Opportunity and Prevailing Wage Provisions in construction contracts and to contractors of highway and bridge construction contracts.

### AUTHORITY:

Sections 20.23(3)(a) and 334.048(3), Florida Statutes

### REFERENCES:

- **23 C.F.R. 200** Prohibits discrimination in any program, service or activity of state departments of transportation.
- **23 C.F.R. 230** Prescribes the policies, procedures, and guidance for equal opportunity on federal construction contracts.
- **23 C.F.R. 230.111** Prescribes state agency requirements for an OJT Training program for all Federal-Aid-aid Highway construction contracts.

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- **23 C.F.R. 230.407** This is a list of definitions for the federal regulation used and referenced in carrying out the FDOT's compliance program.
  - **29 C.F.R. 1, 3, 5, 6, 7** USDOL procedures for predetermination of wage rates and labor standard provisions.
  - **23 C.F.R. 230.409** Prescribes the policies, procedures, and guidance of the contract compliance review process.
  - **FDOT Standard Specifications for Road and Bridge Construction**, Section 7-1 Laws to be Observed; 7-16 Wage Rates; 7-24 DBE; 7-25 OJT; 9 Measurement and Payment.
  - **FHWA-1273** Federal-Aid-aid Required Contract Provisions for highway construction projects.
  - 49 C.F.R. 21 Prohibits discrimination in the United States Department of Transportation (USDOT) federally assisted programs.
  - **49 C.F.R. 26** Authorizes FDOT to issue sanctions for the condition and state of noncompliance in the DBE Program.
  - **23 C.F.R. 230:** Prescribes the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.
  - **28 C.F.R. 35:** Prohibits discrimination based on disability by public entities.
  - **29 C.F.R. 1630:** Regulates implementation of the Equal Employment provisions of Americans with Disabilities Act (ADA).
  - **29 C.F.R. 3 (Copeland "Anti-Kickback" Law) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c):** All contracts in excess of \$2,000 shall comply with the provision for compliance with the **Copeland "Anti-Kickback" Act (18 U.S.C. 874)**, as supplemented by **USDOL regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States")**. The **Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
  - **40 U.S.C. 3141-4147 (Davis-Bacon Act of 1931 and as amended):** Under the provisions of this Act, contractors or their subcontractors are to pay workers employed

directly upon the site of the work no less than the local prevailing wages and fringe benefits paid on projects of a similar character. **The Davis-Bacon Act** directs the Secretary of Labor to determine such local prevailing wage rates that can be found in a document titled "**General Decision Number.**"

- **40 U.S.C. Chapter 37, Sections 3701-3708 (Contract Work Hours and Safety Standards Act):** Where applicable, all contracts awarded in excess of \$2,000 for construction contracts that involve the employment of mechanics or laborers shall include a provision for compliance with **Subparts 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by USDOL regulations (29 C.F.R. Part 5).** Under **Subsection 102** of the **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)**, each contractor shall be required to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. **Subpart 107** of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous or dangerous.
- **41 C.F.R. 60:** The purpose of the regulations in this part is to achieve the aims of **Parts II, III, and IV of Executive Order 11246** for the promotion and ensuring of equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with government contractors or with contractors performing under federally assisted construction contracts.
- **41 C.F.R. 60.1:** Clarifies the existing requirement that a nonexempt construction contractor's total construction workforce is covered under **41 C.F.R. 60** even though some employees may perform work on non-federal assisted contracts.
- **42 USC 12101:** Regulates Equal Opportunity for individuals with disabilities.
- **49 C.F.R. 23 and 26:** Regulates participation by DBEs in state departments of transportation programs.
- **Equal Pay Act of 1963:** A law that requires equal pay between the sexes on jobs that require equal skill, effort, and responsibility.
- **Equal Pay Act of 1976 (EPA):** This legislation prohibits discrimination based on sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.
- **Executive Order 11246:** This legislation bans discrimination and requires contractors and subcontractors to take affirmative action to ensure that all individuals have an equal

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opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a Vietnam-era or special disabled veteran.

- **Rehabilitation Act of 1973:** Prohibits job discrimination because of disabilities and requires affirmative action to employ and advance in the employment of qualified individuals with disabilities who with reasonable accommodation can perform the essentials of a job.
- **Title I of the Americans with Disabilities Act (ADA) of 1990:** Prohibits employment discrimination against qualified individuals with disabilities.
- **Title VI of the Civil Rights Act Of 1964:** Prohibits discrimination based on race, color, or national origin in all programs or activities receiving federal funding.
- **Title VII of the Civil Rights Act of 1964 (and as amended):** Prohibits employment discrimination based on race, color, religion, sex and national origin.
- **Title VIII of the Civil Rights Act of 1964 (and as amended):** The portion of the *Civil Rights Act of 1968 (also known as the Fair Housing Act), as amended by the Housing and Community Development Act of 1974 and the Fair Housing Amendments Act of 1988*, which prohibits discrimination in the sale, lease, rental, advertising, financing, and brokerage services of housing and real property based on race, color, religion, sex, national origin, disability, or familial status.
- **Vietnam Era Veterans Readjustment Assistance Act of 1972, (38 U.S.C. 4212):** Prohibits discrimination and requires affirmative action to employ and advance in the employment of qualified Vietnam-era veterans and qualified disabled veterans.
- **Other regulations** governing State compliance programs include: **Title VI of the Civil Rights Act of 1964**, and the **Davis-Bacon Act**, the **Copeland Act** and the **Contract Work Hours and Safety Standards Act**.

## SCOPE:

This CCM shall be used by FDOT staff, contractors, subcontractors, consultants, local agencies, and all personnel involved in the administration of construction contract compliance.

## DEFINITIONS:

**Adverse Impact:** The selection of members of a protected-class, at a rate lower than that of other groups. A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5 or 80%) of the rate for the group with the highest rate will generally be regarded by the enforcement agencies as evidence of adverse impact.

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**Affected Class:** A group of individuals who have been denied equal employment opportunities or benefits, as a result of discriminatory practices or policies. Evidence of the existence of an affected class requires identification of the discriminatory practices, identification of the effects of the discrimination, and identification of those suffering from the effects of the discrimination.

**Affirmative Action (AA):** Specific actions in recruitment, hiring, upgrading, and other areas designed and taken for the purpose of eliminating the present effects of past discrimination, or to prevent discrimination. Affirmative action achieves, maintains or leads to equal employment opportunity.

**Affirmative Action Program (AAP):** A written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate and measure equal opportunity program progress and effectiveness.

**Affirmative Recruitment:** Special targeted and focused recruitment efforts undertaken to assure that qualified minorities and females are well represented in the applicant pool for positions to be filled.

**Age Discrimination in Employment Act of 1967 (ADEA):** Protects individuals 40 years of age or older, except where age is a bona fide occupational qualification or where the person is a key executive or policy-maker and meets other criteria.

**American Indian or Alaskan Native (not Hispanic or Latino):** A person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment.

**Applicant:** A person who is seeking work and conforms to the employer's policy definition of an "applicant." An employer's definition of applicant, for example, may be limited to include only those who submit a completed company employment application.

**Applicant Log:** A record of applicants for employment detailing each applicant's name, date of application, referral source, and position applied for, race and sex. The status of the applicant is also recorded.

**Applicant Flow:** The number of applicants for employment for a given job over a stated period of time.

**Applicant Pool:** The collection of candidates from which an employer selects persons to fill available positions.

**Apprentice:** A person employed and individually registered in a bona fide apprenticeship program registered with the USDOL, Employment and Training Administration, Bureau of

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Apprenticeship and Training, or with the State Apprenticeship Agency, recognized by the Bureau, or a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

**Asian (not Hispanic or Latino):** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent including, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

**Banking:** Trainees completed in excess of contract requirements in which the contractor wishes to hold in reserve for utilization and credit on another project. Training may occur on state funded projects for banking purposes.

**Banking Certificate of Training:** Certificate issued as verification that the contractor has banked credit for completion of training in excess of contract requirements.

**Black or African American (not Hispanic or Latino):** Persons having origins in any of the Black racial groups of Africa.

**Bona Fide Occupational Qualification (BFOQ):** A qualification established by the employer that is required in order to be able to perform the duties of a particular job.

**Calendar Day:** Every day shown on the calendar, ending and beginning at midnight.

**Certification:** The contractor's sworn statement that the company has complied with the Equal Opportunity Special Provisions Requirements for Federal-Aid Construction Projects.

**Certificate of Training:** Certificate issued as verification of the trainee's successful completion of the training requirements for the classification in which training occurred. This is also known as a graduation certificate.

**Certified Payrolls:** The **weekly payrolls are called certified** because each payroll is signed and contains language certifying that the information is true and correct. The payroll certification language is on the reverse side of the WH-347. If you are using another type of payroll format you may attach the certification from the back of the WH-347, or any other format that contains the same certification language on the WH-347 (reverse).

**Civil Rights Act of 1964:** The nation's first comprehensive law making it illegal to discriminate based on race, color, religion, sex, and national origin. **Title VII** of that law, which is enforced by the Equal Employment Opportunity Commission, is specifically aimed at preventing discrimination in employment.

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**Classification:** A craft in which a trainee receives OJT training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

**Clerical:** A job category on the FDOT EEO Report, which includes personnel performing all clerical/administrative type work regardless of level of difficulty, and regardless of where the activities are performed (field-site or office). Job classifications typically included are bookkeepers, typists, clerks, accounts receivables/ payables, etc.

**Collective Bargaining Agreement:** A written contract between an employer and a labor union, for a definitive period of time, spelling out conditions of employment, wages, hours of work, rights of employees, rights of the union, and procedures to be followed in settling disputes.

**Commercially Useful Function (CUF):** A determination of a CUF correlates to the proper reporting of work for DBE utilization purposes. A DBE performs a CUF when it is (1) responsible for execution of the work of the contract; (2) carries out its responsibilities by actually performing, managing, and supervising the work involved; and, (3) is responsible, with respect to materials and supplies used on the contract, for negotiating price directly with the supplier, determining quality and quantity, ordering material, and installing (where applicable) and paying for the material itself.

**Complainant:** The person(s) who files a complaint.

**Complaint:** A formal (written) employment discrimination charge filed in accordance with the company policy or Equal Employment Opportunity Commission (EEOC) guidelines or Florida Commission on Human Relations (FCHR) guidelines, which alleges a violation of state and/or civil rights laws.

**Compliance:** A contractor's status when fully meeting the requirements and obligations imposed by the contract provisions and the FDOT pertaining to Equal Employment Opportunity, Disadvantaged Business Enterprise, OJT Training, Wages and Payrolls and their implementing laws and regulations.

**Concentration:** Preponderance of persons by race, sex and/or race and sex combination.

**Contract:** A legally binding agreement between the parties (FDOT and the prime contractor).

**Contract Time:** The number of calendar days allowed for completion of the contract work, including authorized time extensions.

**Contractor:** The individual, firm, joint venture, or company contracting with the FDOT to perform the work.

1. Prime Contractor: A company having a contract with the FDOT.

2. Subcontractor: A company having a contract with a prime contractor or subcontractor regardless of tier.

3. Tier: indicates that a company is subordinate to another company on the contract. A subcontractor is first tier to the prime. A company that subcontractor engages is "Second Tier", and if they in turn engage another company, that company is "Third Tier."

**Contractor's Compliance Staff:** Used in this Manual, the contractor's compliance staff is any contractor employee(s) with responsibility for any aspect of FHWA 1273 compliance. This specifically includes, but is not necessarily limited to those with responsibilities associated with EEO, DBE, OJT or prevailing wages.

**Corrective Action Plan:** A contractor's unequivocal written and signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (This is sometimes called a conciliation agreement or a letter of commitment).

**Craft Workers:** Hourly paid workers exercising independent judgment and performing jobs of relatively high skill level based on extensive training. This includes all those in the construction trades, as well as hourly paid supervisors and lead operators. The EEO Categories included in Craft Workers are Equipment Operators, Mechanics, Truck Drivers, Ironworkers, Carpenters, Cement Masons, Electricians, Pipe Fitters, Pipe Layers, Painters, and Semi-Skilled Laborers.

**Culture:** The customs, skills, arts, language, and other related behaviors of a people that set them apart as a distinct group or society.

**Day Labor Agencies:** A staffing agency that employs and places workers in day-to-day jobs at client sites.

**Deficiency:** A shortfall, insufficiency, lack or void regarding the equal opportunity requirements of the contract and/or the FDOT Construction Compliance Program.

**Department:** The State Highway Agency (FDOT) charged by its laws with the responsibility for highway construction. The term "state" is considered equivalent to State Highway Agency.

**DEO:** The Department of Economic Opportunity promotes economic prosperity for all Floridians and businesses through successful workforce, community, and economic development strategies.

**Digital Signature:** A digital signature is a means of electronically executing a document. Digital signatures are generally "authenticated" by an approved source and have password or other means of encryption/ protection. As such, they may take the place of notary or other certification of true signature. Digital signatures have same force and effect of a real or "wet" signature, including the consequences for false statements. As the industry increasingly relies on

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paperless documentation, digital signatures will become more prevalent. Those doing business with FDOT must obtain a digital signature through one of the approved sources.

**Disadvantaged Business Enterprise (DBE):** A for-profit small business concern (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Discrimination:** Adverse or disparate treatment based on race, color, religion, sex, national origin or disability.

**Disparity:** Inadequate representation of minorities and/or women in a workforce or applicant pool.

**Diversity:** The employment of women and minorities in each job category and in classifications typical of the workforce.

**DUNS Number:** The Data Universal Numbering System (DUNS) used to keep track of how federal grant money is dispensed. The DUNS number is also used in ARRA project reporting.

**Economically Disadvantaged:** Individual participating in the FDOT's OJT Training program determined to be below or at poverty level as determined by the following: (1) Certification from the Florida State Employment Service and/or Joint Training Partnership Act Program or (2) Prior year unemployment verification using a W-2 or other income tax data reflecting the person's economic status; or AFDC (Aid for Families with Dependent Children) Recipient Verification; or other public services established to enhance family economics verification.

**Electronic Payrolls:** Certified payrolls submitted by electronic mail (email, facsimile, FTP sites, diskettes or USB drives) or any method of submittal that is not by hard copy, hand delivered, and U.S. mail.

**Employ Florida Marketplace:** Florida's public referral source that offers a multitude of resources to help employers find the perfect candidate and to create job listings. The Employ Florida Marketplace is a **one-stop online resource** for job listings, education and training opportunities, career building assistance and much more.

**Employment Discrimination:** Any action associated with employment, which denies equal treatment or opportunity to an individual, or group of individuals, as compared to others similarly situated, based on race, color, disability, sex or other protections.

**Employment Practice:** Recruitment, hiring, and selection practices, transfer or promotion policies, and other provisions or functions associated with the employer's employment or

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selection process, which contributes, intentionally or not to the analysis, screening, hiring and/or upgrading of employees.

**Equal Employment Opportunity (EEO):** The absence of partiality or distinction in employment treatment so that the right of all persons to work and advance based on merit, ability, and potential is maintained.

**Equal Employment Opportunity Commission (EEOC):** An independent commission created by the Civil Rights Acts of 1964, as amended, which is responsible for enforcing Title VII. The EEOC may bring suit, subpoena witnesses, issue guidelines which have the force of law, render decisions, and provide technical assistance to employers and legal assistance to Complainants.

**Equal Employment Opportunity Officer (EEO Officer):** The person appointed the responsibility for effectively administering and promoting a company's active Equal Employment Opportunity Program and ensuring that the company's policy, plan and program are being carried out.

**Ethnic Group:** A group identified based on religion, color, or national origin.

**FDOT:** The Florida Department of Transportation or Department.

**Employer Identification Number or FEID Number:** This is a nine-digit number the Internal Revenue Service (IRS) assigns to legal entities (e.g. a corporation, partnership, or sole proprietorship). This number is used by that entity to identify itself in reporting to the IRS, the Social Security Administration and to the FDOT EOC System.

**Federally Assisted Construction Contract:** Any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the government or borrowed on the credit of the government pursuant to any program involving a grant, contract, loan, insurance or guarantee under which the applicant itself participates in the construction work.

**FHWA:** The Federal Highway Administration is a division of the U.S. Department of Transportation and is responsible for setting policies, writing procedures, and providing oversight, guidance and direction to State Departments of Transportation receiving funds.

**Florida Commission on Human Relations (FCHR):** The state commission responsible for investigating employment discrimination charges filed in accordance with **Chapter 760, F. S.**

**Florida Jobs and Benefits:** The free reemployment services and assistance provided by the State of Florida to unemployed workers, recent graduates, and those entering the job market for the first time. See Employ Florida Marketplace.

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**Foremen/Forewomen:** A job category on the FDOT EEO Report that includes salaried or hourly paid employees primarily responsible for the work or craft and/or laborer personnel on construction projects.

**Fringe benefits:** Include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as some contributions to training funds. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

**Good-Faith Efforts:** Affirmative action measures designed to implement the established objectives of an affirmative action plan.

**Graduation:** Action requested by the prime contractor when a trainee completes all training requirements. Graduation is based upon satisfactory completion of proficiency demonstrations set up as milestones in each specific training classification, completion of the minimum hours in a training classification range and the employer's satisfaction that the trainee does meet journeyman status in the classification of training.

**Handicapped or Disabled Individual(s):** Any person who: (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment. Persons with certain drug and/or alcohol abuse situations are excluded from this definition.

**Hispanic or Latino:** A person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin regardless of race.

**Independent Contractor:** A person engaged in a business of his or her own within a strictly contractual relationship and therefore outside of coverage of the Fair Labor Standards Act (FLSA). Misclassification of employees as independent contractors to circumvent employment laws is a common occurrence and requires the application of an 'economic reality' test as defined by FLSA and the Supreme Court. See US DOT Fact Sheet 13 for more information.

**Inspector:** An authorized representative of the engineer, assigned to make official inspections of the materials furnished and of the work performed by the contractor.

**Job Category (or EEO Job Category):** Broad categories to which individual job classifications are assigned for reporting purposes.

**Journeyman/Journeywoman:** One who is able to perform all of the tasks of their trade or occupation. This includes those who have graduated from formal apprenticeship or formal OJT training programs such as the FDOT/FTBA program.

**Lack of Diversity:** Homogeneous grouping void of persons reflective of the available workforce.

**Local Agency:** A unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has responsibility for planning, construction, operation or maintenance of, or jurisdiction over a transportation facility. The term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization (MPO), an expressway or transportation authority, a road and bridge district, a special road and bridge district, or a regional governmental unit.

**Local Agency Program:** The Local Agency Program or “LAP” is a procurement process where local towns, cities and counties develop, design, and construct transportation facilities with federal funds. FDOT is the steward of the federal funds and is responsible for oversight of funded projects on behalf of the [Federal Highway Administration \(FHWA\)](#). The LAP program is administered by a State LAP Administrator in Central Office. The LAP is administered in each District by a District LAP Administrator designated by the District Secretary.

**Minority (or Minorities):** Persons of Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native races. The term may mean these groups in the aggregate or an individual group.

**National Origin:** Pertains to one’s origin based on birthplace, ancestry, culture or linguistic characteristics common to a specific ethnic group. National origin may be expressed as a country (e.g. Nigeria, China, Jamaica or as a continent or geographical area such as African, Asian, Caribbean).

**NAICS Code:** (pronounced “nakes”) North American Industry Classification System (NAICS) a five to six-digit numerical coding system classifying businesses by industry (not product).

**Native Hawaiian or Other Pacific Islander (not Hispanic or Latino):** Persons having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

**Noncompliance (or Violation):** Failure to (a) conform to compliance related requirements of the contract; and/or (b) failure to meet the requirements of the FDOT Compliance program in the time period(s) required; and/or (c) timely submittals, which, upon review, evidence a lack of conformity with program requirements. Noncompliance pertains to EEO, DBE, OJT and payrolls/wages.

**Office of Federal Contract Compliance Programs (OFCCP):** OFCCP has the responsibility of assuring that employers doing business with the Government comply with the equal employment opportunity (EEO) and affirmative action provisions of their contracts. OFCCP is part of the USDOL’s Employment Standards Administration.

**Officials (Managers):** A job category on the FDOT EEO Report which includes personnel who set broad policies, exercise overall responsibility for the execution of these policies and direct individual departments or sections of a business’ operations. Typically includes, but may not be limited to officers of the company, executives, middle managers, FDOT managers, etc.

**One Stop Center:** A unit within the Department of Economic Opportunity (DEO) providing free job announcement and applicant screening services to employers and placement services to job seekers. See also Employ Florida Marketplace.

**Other Business Enterprises (OBE):** ~~All other business's that are not DBE. Sometimes referred to as non-dbe's.~~

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**Parity:** The percentage of minorities and women in the workplace mirrors the percentages of minorities and women in the available workforce for the county the project is being built as stated on the contract bid blank.

**Proficiency Demonstration:** The actual performance of work by a trainee in the presence of an FDOT/CEI observer and contractor's representative prior to graduation. Upon determination by the contractor that the trainee has reached journeyman/journeywoman status, the trainee should demonstrate a minimum of three (3) pre-established essential proficiencies for the classification in which training has occurred. The proficiency demonstration must occur prior to graduation and be evaluated ~~at a single demonstration~~ with at least one demonstration.

**Promotion:** A personnel action, which results in an employee moving to a position requiring higher skill, knowledge, or ability and usually involving greater pay or title.

**Project Workforce:** Employees working at the physical location of a construction project; employees working "on the site of work."

**Race:** A group of people united or classified together based on history, nationality, or geographical distribution.

**Recruitment Source:** Any person, organization, or agency used to refer or provide workers for employment consideration.

**Rehire:** Hiring an individual who was previously employed by the employer.

**Retaliation:** The act of discriminating against a person due to their filing of an employment discrimination charge or testifying, assisting, or participating in any manner in such a charge.

**Segregated Facilities:** These are facilities belonging to or used in the course of business by an employer which provide different or separate accommodations for members of one race or sex than those provided others. Separate lavatories, lockers, showers, and other personal facilities for men and for women are not considered segregated facilities.

**Sex Discrimination:** This is a type of discriminatory or disparate treatment of an individual based on gender.

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**Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors, and other written, verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment; (2) submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual; (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Sexual Harassment is inclusive of unwelcome heterosexual and homosexual advances.

**Show Cause Notice:** A written notification based on a determination of non-compliance with equal opportunity requirements as determined by the reviewer or other higher-level authority. The notice informs the contractor the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed.

**Special Provision:** Specific clauses adding to or revising the Standard Specifications, setting forth conditions varying from or additional to the Standard Specifications for a specific project.

**Supervisors:** Employees primarily responsible for the work of other employees.

**Supportive Services:** Those services provided in connection with approved OJT training programs for highway construction workers and highway contractors that are designed to increase the overall effectiveness of training programs through the performance of functions that are not generally considered as part of actual OJT craft training.

**Temporary Employment Agency (TEA):** A staffing agency that employs and places workers in temporary jobs at client work sites for a limited period of time.

**Termination:** When an employee leaves employment voluntarily or involuntarily.

**Terms and Conditions of Employment:** This phrase includes all aspects of the employment relationship between an employee and their employer including, but not limited to, compensation, fringe benefits, leave policies, job placement, physical environment, work-related rules, work assignments, training and education, opportunities for promotion, etc. and maintenance of a non-discriminatory working environment.

**Timetable:** A specified time frame, required in all affirmative action plans and programs within which an employer seeks to achieve specific commitments.

**Trainee:** A trainee is one who has not previously worked in or been paid as a journeyman in the classification for which they are to be trained and has not previously completed such a program.

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**Training Classification:** A craft in which a trainee receives OJT training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

**Training Completion:** A trainee enrolled in the OJT training program who has achieved no less than the specified minimum hours of training in the classification enrolled, has demonstrated proficiency in the standards established for the classification, and where the contractor has requested graduation in a timely manner.

**Training Special Provisions or TSP:** As defined by Appendix B to Subpart A of 23 CFR 230, TSP are the contract specifications a State DOT uses to ensure OJT Training of qualified participants, primarily females and minorities that have neither completed a training course nor worked as a journeyman in a particular job category. For the purposes of this manual, TSP refers to FDOT's specifications while OJT means the implementation of the requirements on a project.

**Two or More Races (not Hispanic or Latino)** A person who identifies with more than one of the other races i.e., White, Black, American Indian or Alaskan Native, Native Hawaiian or other Pacific Islander, and/or Asian.

**Unskilled Laborers:** An employee who works under close supervision and performs basic tasks that are learned in a few days or hours. Unskilled laborers lift, dig, load, pull etc., and do not operate equipment, or use any tools.

**USDOL (United States Department of Labor):** A department of the Federal Government responsible for promoting the working conditions of wage earners in the United States; USDOL issues Wage Determinations, responds to Additional Wage Requests and issues regulations, mandates and interpretive memorandum pertaining to the 180 federal wage related laws it administers.

**Wage Rate Decision:** Minimum hourly rate and fringe benefit rate for individual job classifications for a specified type of work.

**White (Not of Hispanic or Latino):** Person having origins in any of the original peoples of Europe, North Africa or the Middle East.

**Workforce:** The total number of people employed in a company.

**Working Day:** The period of time in a day during which the contractor is expected to work.

**Workplace:** A place where work is performed, may include, work sites, properties, buildings, offices, structures, automobiles, trucks, trailers or other means of conveyance (private or public, while engaged in performance of duties), and parking areas, whether owned, leased or rented.

## COMMENTS OR SUGGESTIONS FOR CCM REVISIONS:

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Any comments or suggestions on the **CCM** should be sent to the District CCM Coordinator. Comments from District personnel will be routed through the DCE for concurrence/comments before forwarding to the SCO-EOO CCM Coordinators in Tallahassee. CCM holders in the CO may send their comments directly to the SCO-EOO CCM Coordinators. Suggestions may also be emailed to the appropriate CCM Coordinator or submitted directly to the comments section of the SCO or EOO Website. As comments and suggestions are received at the SCO or EOO, they will be assigned for action by the SCO-EOO CCM Coordinators to the appropriate staff person.

New chapters or sections will be circulated for preliminary and executive review in accordance with **Section 5** of the FDOT's **Standard Operating System, Procedure No. 025-020-002**, and approved by the Executive Staff.

#### **REVIEW:**

The **CCM** is a dynamic document that will require periodic review. The CCM will be reviewed every two (2) years. The review will be in accordance to the procedures of the FDOT Policy Process Management Office and be reviewed through the Procedures Information Management System (PIMS). The SCO-EOO CCM Coordinators will route any comments received during the prior 24 months to the appropriate contact person for the bi-yearly review. The SCO-EOO CCM Coordinators or staff person assigned as the contact person will ensure that all comments received during the prior 24 months are reviewed, responded to and if appropriate, incorporated into any revision. The SCO-EOO CCM Coordinators will also make sure that any revisions involving substantive content changes to an existing section are reviewed by all District Contract Compliance Managers and/or District Engineers.

#### **TRAINING:**

Training in the use of this CCM is not required. Courses are available within the FDOT in individual subject areas. Contact the SCO or the EOO should more information about training be needed.

#### **FORMS:**

Forms will be listed on a chapter-by-chapter basis, with accessibility identified if not available from the [FDOT Forms Library](#).

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## CHAPTER 1: GENERAL INFORMATION

### 1.1 OVERVIEW

#### 1.1.1 Government Agency Responsibilities

Multiple government agencies have responsibilities for and an interest in the various elements of the Construction Contract Compliance Program.

The Federal Highway Administration (FHWA) approves the FDOT's 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.

#### 1.1.2 Nondiscrimination Assurance Required of Primes, Subcontractors, Rental Companies and Material Suppliers

As a recipient of federal funds, each contract FDOT executes with a prime contractor (and each subcontract the prime contractor signs with a subcontractor), must include the exact wording of the nondiscrimination assurance shown in *Example 1.1.2.1*.

**Example 1.1.2.1  
Nondiscrimination Assurance  
Required in Each Contract & Subcontract  
(49 C.F.R. 26.13)**

"The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of **49 C.F.R. Part 26** in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

#### 1.1.3 Contract Documents and the Equal Opportunity Construction Contract Compliance Manual (CCM)

Each executed FDOT construction contract contains multiple specifications and those vary depending on many factors including the contract's federal funding or nonfederal funding. Many specifications pertain specifically to the Construction Contract Compliance program and outline the contractor's general compliance requirements for that contract.

The **CCM** describes FDOT's approved program for contractor compliance reporting and monitoring to achieve a consistent, predictable, and repeatable (CPR) compliance program. It

provides a detailed explanation of the general compliance requirements, forms, record keeping, and analytical tools for reporting and monitoring compliance on Florida's construction and design build contracts.

**This *Manual* reflects the compliance monitoring program approved by the Federal Highway Administration (FHWA) for FDOT. 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.**

Chapters One through Six (1-6) of the **CCM** describe the compliance program requirements. Throughout the manual, there is reference to the [Department's Forms Library, Section 1.4](#), and the **CCM Reference Guide**. The **CCM Reference Guide** is a collection site for information, tables, and other references regarding this CCM.

Contract specifications are regularly revised for incorporation in newly executed contracts and this CCM is periodically updated to support those and other changes. **Table 1.1.3.1** summarizes the contract compliance specifications.

**Table 1.1.3.1  
 Compliance Related Documents Included in  
 FDOT Construction and Design Build contracts**

Documents	Included If federally funded	Included if Non-FAP/State funded
3-8 Audit of Contractor's Records	Yes	Yes
7-1.1 Laws to Be Observed	Yes	Yes
7-16 Wage Rates for Federal-Aid projects	Yes	No
7-24 DBE Program (including Nondiscrimination Assurance)	Yes	Yes
7-25 OJT Requirements	Yes	Yes (applies only in the event the contractor initiates voluntary OJT)
7- <del>276</del> Equal Employment Opportunity Requirements	<del>No</del> No	Yes
7- <del>298</del> E-Verify	Yes	Yes
FHWA 1273 Required Contract Provisions Federal-Aid construction	Yes	No
9-5.3.2 Payment-withholding payment	Yes	Yes
<del>CCM9-5.6 Prompt Payment &amp; Return of Retainage</del>	Yes	Yes

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#### 1.1.4 E-Verify

FDOT requires utilization of the [U.S. Department of Homeland Security's E-Verify system](#) to confirm the employment eligibility of all persons who perform employment duties or work pursuant to any FDOT contract within Florida. This requirement extends to all agreements entered into under an FDOT contract and all parties are advised to maintain records evidencing compliance with E-Verify.

#### 1.1.5 FHWA 1273 Required Contract Provisions Federal-Aid Construction

**FHWA 1273** (available in the **CCM Reference Guide**) is a collection of laws and regulations pertaining only to federally funded construction contracts. This CCM reflects Florida's specific compliance expectations regarding **FHWA 1273**.

#### 1.1.6 Audit of Subordinate Agreements

Within ninety (90) days of a Federal-Aid construction contract execution, the districts will issue to the prime a memorandum ("**Subject: Audit of Subordinate Agreements for FHWA 1273**") requesting complete copies of selected subcontracts and purchase orders for the purpose of verifying proper inclusion and/or reference to **FHWA 1273**. For Design Build contracts, this initial request will be made within ninety (90) days of the begin construction date. Regardless of execution date, all Federal-Aid construction and design build contracts are subject to this audit.

The requirement to include **FHWA 1273** in contracts Let August 10, 2012 and after, "in its entirety" is fulfilled by physically incorporating (not referencing) the full and complete document at any place in the agreement. It may not be shortened nor abbreviated. The **Required Contract Provisions** shall not be incorporated by reference in any case. **FHWA 1273** is available as a PDF file on the FHWA website or it may be used in another file format provided the text is verbatim and complete.

The requirement to reference **FHWA 1273** is fulfilled by including verbiage such as the following at any place in the agreement:

Note: This is for contracts Let prior to and including August 9, 2012 or for contracts for design services; purchase orders; rental agreements and other agreements for supplies or services.

"The contractor is advised of their obligation to comply with the requirements of **FHWA 1273, Required Contract Provisions, Federal-Aid Construction Contracts.**"

The contractor may submit the requested data electronically or by hard copy. Proprietary data may be redacted provided there is no impact on the ability to determine compliance for the specific contract.

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In the event **FHWA 1273** is not appropriately reflected in the collected document(s) the noncompliance communications described in **CCM Section 1.6** will be initiated in the timeframes specified and requests to review additional agreements will be issued.

The prime may resolve this noncompliance by providing the RCS a full and complete copy of an executed agreement(s) reflecting the necessary correction(s).

### **1.1.7 Prime Contractor Responsibilities**

The prime contractor is responsible for EEO, OJT, DBE, Prevailing Wage and Title VI compliance by any subcontractor or lower tier subcontractor.

All contractors are to implement and maintain, throughout the course of a contract, actions which comply with their contractual obligations. Records evidencing each aspect of required compliance are to be developed and maintained by all contractors for a minimum period of three years following the date of final payment of the contract for all work regardless if such records are or are not routinely collected by the FDOT during the contract.

### **1.1.8 Prime Contractor Compliance Process**

The prime is responsible for compliance on the contract. Implementation of the prime's compliance responsibility requires development of a process for reviewing and confirming their contractors' compliance with all aspects of EEO, DBE, OJT, and Wages.

A prime's process may entail any one of a multitude of approaches including, but not limited to: requiring documentation submissions, verification of data, etc. Relying solely on a subcontractor's affirmation of compliance may not be adequate.

The prime's compliance process should include a series of actions and sanctions aimed at overcoming subcontractor noncompliance and timeframes for taking such action. Noncompliance communications may include a series of verbal and written notices; sanctions may include the withholding of subcontractor progress payments, contract termination and/or denial of subsequent subcontracts.

The prime contractor, at the time of executing subcontracts, should discuss/review their compliance process. The prime's process should include communications to the subcontractor regarding record keeping, record submission, and timeframe requirements and a definition of how and when incidents of subcontractor noncompliance will be addressed by the prime. The FDOT is available to assist contractors in the development of their compliance process.

Prime contractors are encouraged to remain cognizant that subcontractors work for a variety of primes and, accordingly, may be subjected to multiple individual compliance processes. The collection of document copies versus originals should be allowed; primes can always ask a subcontractor for additional data if compliance appears questionable based on such documents.

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When a prime has a recurring contractual relationship with a subcontractor, the prime may wish to establish subcontractor compliance files in order to reduce duplication of subcontractor submissions.

### **1.1.9 Prime Contractor Compliance Records and FDOT Review**

Prime contractors are to ensure that records are developed, collected and maintained to retain compliance with requirements for a minimum period of three (3) years following the date of final payment. These records are to be made available for inspection by FDOT and FHWA representatives when requested.

#### **1.1.10 Default of the Prime Contractor**

In the event a prime contractor defaults on a contract and their contract compliance data is incomplete or incorrect, the Resident Compliance Specialist (RCS) will proceed with all noncompliance communications and actions such that the surety company and/or the successor contractor are fully aware of the conditions. A surety company is exempt from contract compliance reporting requirements but is responsible for ensuring that the successor contractor carries out the requirements.

#### **1.1.11 Compliance Training and Technical Assistance**

The District Construction Office and the Equal Opportunity Office (EOO) provide training to contractor personnel as well as compliance staff regarding the requirements of the FDOT Construction Compliance Program.

District Construction Office's will be responsible for training workshops for Contract Compliance procedures and FHWA 1273 requirements. The District Offices may combine training workshops by regional area. A minimum of one training workshop per year must include contractors. Additional training sessions should be held for all Resident Compliance Specialists and Local Agency Programs. The District may conduct further training sessions as needed. At the beginning of each Federal Fiscal Year by October 15<sup>th</sup> the EEO Contract Compliance Administrator will receive a tentative training schedule or itinerary from each District Construction Office. A list of completed training activities for the year must be submitted to the Equal Opportunity Office Contract Compliance Administrator by September 15<sup>th</sup> of the following year.

## **1.2 FDOT RESPONSIBILITIES**

### **1.2.1 Equal Opportunity Office (EOO)**

The EOO has the responsibility for setting policy, issuing guidance, providing training and technical assistance, and monitoring District compliance through District visits and **Quality Assurance Reviews**. In addition, the EOO will initiate all required reporting to FHWA. While the District offices will be required to provide information to the EOO for reporting, the Districts will not provide reports to FHWA.

The EOO will perform other specific activities, including setting FDOT's DBE goal, maintaining the Equal Opportunity Compliance System, DBE outreach initiatives and supportive services, **Title VI**, and various other programs.

### 1.2.2 State Construction Office (SCO)

The SCO is responsible for the administration of the **Davis-Bacon Act** requirements relating to wage rates, payrolls, and prompt payment. The SCO Prevailing Wage Rate Coordinator establishes policies and procedures pertaining to requirements relating to wages; RCSs are responsible for the day-to-day project administration of wages. (See **Construction Project Administration Manual, Topic No. 7000-000-000** for additional information).

### 1.2.3 District Construction Office

Under each District Construction Compliance Office (DCCO), a District Contract Compliance Manager (DCCM) is responsible for the day-to-day administration of the contract compliance program. The Resident Compliance Specialists (RCS's) monitor contract compliance at the project level.

The District Contract Compliance Manager is responsible for monitoring the contractor's EEO, DBE and OJT activities, providing training to Resident Compliance Specialists (RCS), local agencies, contractors, construction engineering and inspection firms, and providing annual and special purpose reporting to the EOO. ~~It is recommended that each DCCO have a DCCM and one or two RCS who are responsible for the activities of the DCCO.~~

Each DCCM schedules, conducts, and prepares compliance reviews of contractors as prescribed in Section 4.5. Each District is required to complete eight reviews annually. The DCCM shall also update and keep current the EOO SharePoint site of planned and completed contract compliance reviews. The review period is based on the federal fiscal year (October 1 to September 30) and the planned list of compliance reviews shall be entered into the SharePoint site by October 15<sup>th</sup>. The District is not limited to eight compliance reviews and is encouraged to exceed the required number of reviews. 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 should conduct a compliance review to assess compliance with federal provisions, even if the District has completed the required number of reviews. Each company reviewed, prime or subcontractor, is considered as one review. Reviews can be a mixture of project and area reviews, depending on the work program mix of the district. Follow-up reviews are generally not included in the required number of reviews. However, if a follow-up review requires an extensive amount of work and oversight, the follow-up review will be calculated in the overall number of required reviews and requires prior approval from the EOO. The project review will

cover the workforce for the entire contract and will include the prime contractor and all applicable subcontractors active on the project. In an area wide review, the contractor's entire workforce in a geographical area is reviewed. The geographical area is determined by the DCCM and should be clearly identified to the contractor.

The DCCM will perform the following functions:

1. Conduct eight (8) contract compliance reviews per federal fiscal year, by October 1<sup>st</sup> of each year.
2. Review and submit/reject DBE commitments and payments through EOC.
3. Provide technical assistance and training to local agencies and contractors regarding **FHWA 1273** and other federal authorities.
4. Conduct Construction Contract Compliance Administration Field Office Reviews or other audits of RCSs.
5. Provide training and review of compliance staff/consultants in monitoring responsibilities as identified in the EEO Construction Contract Compliance Manual.
6. Conduct and participate in investigations, reviews and audits as necessary.
7. Complete annual FHWA reports and special reporting.
8. Ensure retention of project records.
9. Coordinate with LAP Administrators to verify that Local Agency contracts have an assigned RCS who is trained in monitoring federally funded contracts.
10. Provide technical assistance to the District LAP Administrators regarding the Equal Employment Opportunity Contract Compliance Program.
11. Report timely and accurate data as scheduled or upon request.

Every six (6) months, or as often as necessary, the DCCO will conduct a **Construction Contract Compliance Field Office Review** of no less than 20% of the RCS' projects to determine if the EEO procedures are being followed. Project records (files) will be reviewed for accuracy and content to ensure contract compliance with EOC reporting requirements as well as EEO, OJT and DBE contract clauses and contract activities. The review and the closeout should be completed within seven (7) days.

A written report will be ~~prepared~~prepared, and review findings and recommendations will be forwarded to the Resident Engineer within seven (7) days of the closeout for further handling and/or distribution. Any deficiencies noted in the report should be corrected within fourteen (14) days of the dated formal report. If the District is unable to resolve any issues arising from the cited deficiency and the deficiency cannot be resolved, the issue will be forwarded to the EEO for resolution. The District Compliance Manager will provide a quarterly schedule of offices to be reviewed by the 15th day of the month preceding the scheduled quarter to the EEO. The final reports shall be kept at the DCCO and made available to the EEO upon request.

### 1.2.4 Resident Construction Office (RCO)

Resident Construction Offices have the responsibility of supporting the Contract Compliance Program through Resident Compliance Specialists (RCS). Duties vary by District based on

organizational preference. The RCO is responsible for reviewing, evaluating, ensuring the completion and review of certain workforce interviews and job site inspections, and assisting project administrators and the DCCOs as required.

When FDOT contracts with a consultant to manage a construction project, the consultant will have the responsibilities for all actions of the Resident Compliance Specialist. Depending on the experience of the consultant, the DCCO will be required to train the consultant's employees to perform the required compliance functions.

The Resident Compliance Specialist will:

1. Provide technical assistance to contractors and subcontractors.
2. Ensure contractors are entering DBE commitments and payments through EOC; submit/reject DBE commitments and payments through EOC; and monitor the progress of the contract and DBE participation.
3. Maintain the official compliance records for the project.
4. Assist the DCCO in compliance review activities.
5. Determine if DBEs are performing CUF.
6. Maintain all documents, conduct interviews, and monitor the contractors' compliance related to the OJT Program.
7. Notify the DCCO of specific concerns or issues regarding contractors' compliance with **FHWA 1273** and other federal authorities.

### 1.2.5 Preconstruction Conference

The RCS will ensure ~~that~~ information is presented regarding DBE participation, including verify submittal of DBE commitments in EOC before preconstruction conference; OJT, labor compliance, including certified payrolls, wage rates conformances, displaying of USDOL/FHWA bulletin board posters; prompt payment toof and retainage returnreturn of retainage for subcontractors/suppliers. to all subcontractors, subcontract rental agreements, and labor compliance as well as verify submittal of DBE commitments in the EOC before the preconstruction conference.

The contractor will be advised of the responsibility for monitoring the EEO compliance of their subcontractors. The RCS will also discuss sanctions for noncompliance if reporting requirements are not fulfilled (see **Construction Project Administration Manual, Topic No. 700-00-000**).

The District will conduct a Post Preconstruction Training Meeting with contractors and EEO Officers that are new to the FDOT and other contractors/EEO Officers as deemed necessary to discuss the EEO, DBE and OJT requirements.

### 1.2.6 Complaint Investigation

When a contractor's employee files a complaint of discrimination or harassment to any FDOT personnel, alleging discriminatory practices by the contractor, the complaint should be referred to the contractor for investigation. If requested by the contractor, the District Contract

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Compliance Manager, with the knowledge of the EOO, may assist the contractor with the investigation and resolution of a complaint.

When assisting in the contractor's investigation, the District Contract Compliance Manager must ensure that:

1. A prompt internal investigation is made by the contractor and documented.
2. A follow-up inquiry is made with the contractor to determine the outcome of the investigation. If the contractor's investigation determines that discrimination has taken place, appropriate corrective action within a reasonable time frame should occur. If the inquiry indicates that persons other than the complainant has been affected, corrective action should include such other persons.
3. The matter has been resolved. If the complaint has not been resolved the DCCM will notify the EOO and a decision will be made based on the information gathered during the follow-up inquiry. If unlawful discrimination has occurred, the Manager of the EOO will be responsible for bringing the matter to the attention of the FHWA.
4. The complainant is informed of their right to file a complaint with the FCHR or U.S. EEOC within 300 days of the date of alleged discrimination.

## 1.3 EQUAL OPPORTUNITY COMPLIANCE SYSTEM

### 1.3.1 Purpose

To provide a centralized reporting system for contractors and consultants to report and monitor payments and commitments made to Disadvantaged Business Enterprises (DBEs) and Minority Business Enterprises (MBEs) subcontractors and material suppliers.

### 1.3.2 Overview of the EOC System

The Equal Opportunity Compliance (EOC) system is an internet based system. The EOC System currently supports the FDOTs' Disadvantaged Business Enterprise (DBE) data collection and reporting requirement.

This is a statewide password secured application used by FDOT prime contractors and consultants to log in and submit Bidder Opportunity, DBE commitments, and DBE monthly payment data electronically.

### 1.3.3 Accessing the EOC System, Addressing System Problems, Technical Assistance and Training

The EOC System serves FDOT employees, consultants and contractors. The role played by a user and their business association determines how an individual user can obtain access to the EOC System. Refer to **Manual section 1.4** for additional information.

## 1.4 DIRECTORY OF COMPLIANCE WEBSITES & ADDRESSES

<b>WEBSITES</b>	
<a href="http://www.floridajobs.org/">Florida Dept. of Economic Opportunity</a>	<a href="http://www.floridajobs.org/">http://www.floridajobs.org/</a>
<a href="http://careersourceflorida.com/">Career Source Florida</a>	<a href="http://careersourceflorida.com/">http://careersourceflorida.com/</a>
<b>FDOT</b>	
Construction Compliance Manual Reference Guide by Chapter	<a href="https://www.fdot.gov/equalopportunity/contractcompliancemanual.shtm">https://www.fdot.gov/equalopportunity/contractcompliancemanual.shtm</a>
<a href="https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/">DBE Directory</a>	<a href="https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/">https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/</a>
<a href="https://fdotwp1.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance">DBE Payment Reporting</a>	<a href="https://fdotwp1.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance">https://fdotwp1.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance</a>
<a href="https://www.fdot.gov/equalopportunity">Equal Opportunity Office</a>	<a href="https://www.fdot.gov/equalopportunity">https://www.fdot.gov/equalopportunity</a>
EOC System: EOC Access information EOC system training	<a href="https://www.fdot.gov/equalopportunity/eoc.shtm">https://www.fdot.gov/equalopportunity/eoc.shtm</a>
<a href="http://www.dot.state.fl.us/equalopportunityoffice/Contract%20Compliance/dbepplan.pdf">Sample DBE/AA Plan</a>	<a href="http://www.dot.state.fl.us/equalopportunityoffice/Contract%20Compliance/dbepplan.pdf">http://www.dot.state.fl.us/equalopportunityoffice/Contract%20Compliance/dbepplan.pdf</a>
<a href="https://fms.fdot.gov/">Forms &amp; Procedures</a>	<a href="https://fms.fdot.gov/">https://fms.fdot.gov/</a>
<a href="http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm">FHWA Job Site Posters</a>	<a href="http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm">http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm</a>
<a href="http://www.fdot.gov/programmanagement/Specs.shtm">FDOT Specifications</a>	<a href="http://www.fdot.gov/programmanagement/Specs.shtm">http://www.fdot.gov/programmanagement/Specs.shtm</a>
<a href="http://www.dot.state.fl.us/construction/">State Construction Office</a>	<a href="http://www.dot.state.fl.us/construction/">http://www.dot.state.fl.us/construction/</a>
<a href="http://www.dot.state.fl.us/construction/Wage.shtm">Wage Information</a>	<a href="http://www.dot.state.fl.us/construction/Wage.shtm">http://www.dot.state.fl.us/construction/Wage.shtm</a>
<b>FHWA</b>	<a href="http://www.fhwa.dot.gov/">http://www.fhwa.dot.gov/</a>
U.S. Dept. of Labor	<a href="http://www.dol.gov/">USDOL Main Website</a> <a href="http://www.dol.gov/whd/regs/compliance/web/SCA_FAQ.htm">Wage Tables/Determinations</a>
<b>U.S. MAIL ADDRESSES</b>	
FDOT Equal Opportunity Office 605 Suwannee St., MS 65 Tallahassee, FL 32399	FDOT State Construction Office 605 Suwannee St. MS 31 Tallahassee, FL 32399
<b>E-MAIL ADDRESSES</b>	
EOC System Assistance	<a href="mailto:eoohelp@dot.state.fl.us">eoohelp@dot.state.fl.us</a>
Prevailing Wage Coordinator	<a href="mailto:Wd.conformance@dot.state.fl.us">Wd.conformance@dot.state.fl.us</a>
Contractor Submittals for Approval of <ul style="list-style-type: none"> <li>➤ DBE AA Plans</li> <li>➤ Notification to FDOT of EEO Officer (275-021-13)</li> </ul>	<a href="mailto:EEOfoms@dot.state.fl.us">EEOfoms@dot.state.fl.us</a>

## 1.5 CONTRACTOR COMPLIANCE REGISTER

### 1.5.1 Purpose

The Equal Opportunity Reporting System stores the basic identification and EEO compliance data of contractors in a file referred to as the “Contractor Compliance

Register.” Compliance staff (District and project) may read data stored in the Register. Prime contractors and subcontractors are included in the Compliance Register.

### 1.5.2 How a Contractor is added to the ~~Register~~ Equal Opportunity Gateway (EOG)

A company’s name and their Identification Number (FEID) may be added to the register by any of the following:

1. ~~The FDOT Transport System~~ Data Based Systems
2. Contractor’s submission of **“Notification to FDOT of EEO Officer” (Form 275-021-13)** to FDOT Equal Opportunity Office, Tallahassee.
3. Contractor’s submission of company’s DBE AA Plan to FDOT Equal Opportunity Office, Tallahassee

[Quick links](#) to a full listing of [EEO Officers](#) and [approved DBE/AA Plans](#) can be found on line at the [FDOT EEO website](#).

### 1.5.3 Data Reported in the Register (EOG)

The data reported in the register and the source of that data is shown in **Table 1.5.3.1**.

**Table 1.5.3.1**  
**Data Reported in the Register**

Section	Data	Where Data is Obtained
<b>Contractor</b>	Name of Company FEID number	Automatically supplied by the FDOT Transport System -or- input by EEO
<b>Summary of Deduction Authorization</b>	<del>Uniform Authorization Expiration Date and Other Authorized Deductions: Type of Deduction and Expiration Date</del>	<del>Updated by Prevailing Wage Rate Coordinator, Tallahassee, upon receipt of Authorization approval letter</del>
<b>EEO Officer</b>	Last name, first name, Title Phone/Fax numbers Email address	Notification to FDOT of EEO Officer (Form 275-021-13). Submitted to and updated by the Equal Opportunity Office.
<b>Corporate Official</b>	Last name, first name, Title Phone/Fax numbers, Email address	Notification to FDOT of EEO Officer (Form 275-021-13)
<b>DBE AA Liaison Officer</b>	Last name, first name, Title Phone/Fax numbers Email address	Contractor’s DBE AA Plan. Submitted to and updated by Equal Opportunity Office
<b>DBE AA Plan</b>	Expiration Date	Set by Equal Opportunity Office

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## 1.6 PERFORMANCE DEFICIENCY COMMUNICATIONS AND ACTIONS

### 1.6.1 Purpose

Describes the FDOT's sanctions, communications, and timeframes for informing prime contractors of instances where the prime contractor and/or subcontractor(s) do not fulfill compliance requirements and/or meet timeframe requirements.

### 1.6.2 Noncompliance; Consideration of Good Faith Efforts

Deficiency communications shall be issued to the prime from the DCCO or designated compliance staff, for the prime and/or subcontractor's noncompliance with compliance program requirements including the submission of required data in any element of the program:

1. Disadvantaged Business Enterprise (DBE)
2. Equal Employment Opportunity/Affirmative Action (EEO/AA)
3. OJT Training
4. Wage Rates and Payrolls.

A review of the contractor's good faith efforts to achieve compliance in any of the compliance areas (particularly for EEO, OJT and Wages) should be considered prior to issuance of noncompliance communications. Verifiable good faith efforts by the contractor which may include formal corrective action plans and evidence of efforts made to fulfill requirements and timeframes demonstrate a contractor's good faith efforts. Actual good faith efforts vary from situation to situation. Characteristics of good faith efforts are summarized in **Table 1.6.2.1**, Characteristics of good faith efforts.

**Table 1.6.2.1 Characteristics of Good Faith Efforts**

<b>Good Faith Efforts are not:</b>	<b>Good Faith Efforts are:</b>
A single action or "a hit and run effort"	Integrated activities designed to achieve objectives
Put in place and then abandoned	Evaluated and redefined to obtain better results, continuous effort and follow through
Unverifiable	Documented and verifiable actions
A haphazard collection of voluminous documents	Evidenced by organized documentation
Random	Planned and thought out to achieve objective(s)
Static	Redirected by an analysis of results being obtained
A gamble; a long-shot	Sincere and designed to achieve results

If the contractor requests that deficiency communications be waived due to their good faith efforts to achieve compliance, the written concurrence of the District Contract Compliance Manager is required.

### 1.6.3 Noncompliance Sanctions

Two (2) sanctions are concurrently applied when a performance deficiency exists:

1. Withholding of **Monthly Progress Estimate(s)**
2. Issuance of a **Performance Deficiency Letter(s)**

A project's **Monthly Progress Estimate** is withheld in its entirety for a performance deficiency. Subsequent **Monthly Progress Estimate(s)** are also withheld until the performance deficiency is satisfactorily resolved.

Upon the FDOT's receipt and verification of compliance with outstanding requirements, the withheld **Monthly Progress Estimate(s)** is released for payment processing. The FDOT's receipt and verification of compliance with outstanding performance deficiency requirements does not eradicate the Performance Deficiency. Continued performance warnings of performance deficiency may adversely affect the Contractor's Performance Rating on the project.

#### **1.6.4 Contractor's Past Performance Rating and Report**

Performance Deficiency warnings and notices are included in the FDOT's Contractor Performance Rating program. Refer to **Form 700-010-25, Contractor's Past Performance Report** for complete information. The following Performance Category is most applicable to the Construction Contract Compliance Program:

Category 3: Timely and Complete Submittal of Documents

The following Performance Categories may be cited for certain aspects of noncompliance:

Category 5: Coordination/Cooperation with CEI Personnel, Property Owners and Utilities

Category 8: Conformance with Contract Documents

#### **1.6.5 Noncompliance Communications**

All communications regarding performance deficiency are addressed with the Prime Contractor for resolution. Communications may be via traditional mail or electronically via email. **Table 1.6.5.1 "Summary of Noncompliance Communications"** identifies the Basis of Noncompliance Communications issued for each of the program areas (DBE, EEO, OJT, and Wages). A **Notification of Payroll Violation, Form 700-010-59**, shall be issued for noncompliance issues for the program area of wages.

A single Deficiency Warning and/or single Performance Deficiency letter addresses all deficiency conditions pertaining to all contractors on a project for one specific timeframe. Letters may include multiple performance rating categories and/or for multiple contractors.

One Notice of Noncompliance letter may be issued monthly summarizing noncompliance related to Disadvantaged Business Enterprises, Equal Employment Opportunity and OJT

Training. Initial communication of non-receipt of payroll or a payroll violation is communicated immediately; they are not grouped into the monthly Notice of Noncompliance letters.

Non-receipt of Payroll is cited in a Notice of Noncompliance letter which may be issued any day of the month and as many times as necessary; notification that payroll has not been received shall not wait and must be issued immediately. Likewise, **Payroll Violations (Form 700-010-59)** are issued throughout the month following each occurrence of a payroll violation.

In cases of blatant or severe noncompliance, a Performance Deficiency letter may be issued without a Notice of Noncompliance and/or without a Deficiency Warning letter.

**Table 1.6.5.2** "Issuance of Performance Deficiency Communications" summarizes the four levels of progressive written communication that are available. Distribution of those communications is not limited to those listed. **Chapter 1: CCM Reference Guide** provides examples of citing for noncompliance communications.

For format and content for each letter refer to the **Chapter 1 CCM Reference Guide** for each of the following:

- Example Letter A - Notice of Noncompliance**
- Example Letter B - Performance Deficiency Warning Letter for Contract Noncompliance**
- Example Letter C - Performance Deficiency Letter for Contract Noncompliance**
- Example Letter D - Examples of Citing for Noncompliance Notification of Payroll Violation, Form 700-010-59**

### **1.6.6 Recurring Notices of Noncompliance**

The Notice of Noncompliance, no receipt of payroll, or the payroll violation letters are the initial steps in the sanction process; it is not a routine reminder of compliance requirements.

Following consultation with the District Contract Compliance Manager, a performance deficiency letter may be issued due to recurring issuance of the notice of noncompliance letters and/or recurring issuance of payroll violations.

**Table 1.6.5.1 Summary of Noncompliance Communications**

		Basis of Noncompliance		
		column X	column Y	column Z
		<b>DBE-EEO-OJT: Noncompliance With Requirements</b>	<b>Non-Receipt <del>Of Payroll</del>Payroll Letter</b>	<b>Payroll Violation</b>
Row	<b>Issue What?</b>	Notice of Noncompliance Letter	<del>Non-Receipt of Payroll Letter</del> Payroll Letter	Payroll Violation Form (#700-010-59) Including Notice and Intent to Withhold
A	<b>Issue What?</b>	Notice of Noncompliance Letter	<del>Non-Receipt of Payroll Letter</del> Payroll Letter	Payroll Violation Form (#700-010-59) Including Notice and Intent to Withhold
B	<b>What is the Issue Date</b>	One Per Month (end of month suggested)	Any Day in the Month	Any Day in the Month
C	<b>Issue How Many Each Month?</b>	One	Any Number	Any Number
D	<b>What is the Due Date?</b>	Seven (7) Business days after Issue Date (B)	Seven (7) Business Days after Issue Date(B)	Twenty days following contractor's receipt of Payroll Violation
E	<b>Continued Non-Compliance</b>	↓	↓	↓
F	<b>Issue What?</b>	Performance Deficiency Warning Letter Including Notice of Intent to Withhold Monthly Progress Estimate		
G	<b>What is the Issue Date?</b>	First Business Day after "Due Date" (D)		
H	<b>Issue How Many Each Month?</b>	One		
I	<b>When is the "Due date?"</b>	Seven (7) Business days after "Issue Date" (G)		
J	<b>Continued Non-Compliance</b>	↓		
K	<b>Issue What?</b>	Performance Deficiency Letter for Contract Noncompliance		
L	<b>Issue When?</b>	First Business Day after "Data Due Date" (K)		
M	<b>Issue How Many Each Month?</b>	One		
N	<b>When is the data due?</b>	Contractor's discretion		
O	<b>When is Payment Released</b>	Upon receipt and verification of data		

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## 1.7 COMPLIANCE REQUIREMENT SUMMARY

### 1.7.1 Purpose

The contract compliance program for FDOT construction contracts consists of four program areas:

1. Disadvantaged Business Enterprises (DBE)
2. Equal Employment Opportunity/Affirmative Action (EEO/AA)
3. OJT Training
4. Wages and Payrolls (WAGES)

Two (2) offices in the FDOT, the EEO and the SCO, administer details pertinent to application of the Equal Opportunity Construction Contract Compliance program.

The following requirements administered by EEO and SCO impact the specific application of the Equal Opportunity Construction Contract Compliance program:

***Equal Opportunity Construction Contract Compliance Manual***  
FDOT DBE Program  
***Standard Specifications for Bridge and Road Work ("Specifications")***  
***Construction Program Administration Manual ("CPAM")***

There are other FDOT offices, at the State and District level, with responsibility regarding the execution and content of construction contracts including, but not limited to:

- Contract Administration Office(s): construction contracts administration including advertisement, bid opening and review, award and execution.
- Specification and Design Office(s): technical content of the construction contract.

### 1.7.2 Reference Statement

This section of the ***Construction Contract Compliance Manual*** is intended to serve as a summary to contractors and compliance personnel regarding the specific compliance program requirements.

The procedures and practices of multiple FDOT offices impact each construction contract and various special circumstances impact these procedures and practices on a temporary or permanent basis.

### 1.7.3 Construction Contract Characteristics Directing Compliance Requirements

The specific characteristics of an individual construction contract determining which of the contract compliance program areas apply include:

- Type of Work
- Contract Funding
- Original Contract Days
- Original Contract Dollars

These characteristics can be identified by reviewing the contract's Bid Blank and the contract's Specifications Package (which includes Standard Specifications, Special Provisions, and Technical Special Provisions).

When a project is funded with both Federal-Aid Project funds and state funds, the entire construction project is administered wholly under federally funded compliance requirements.

FDOT may on occasion, award emergency contracts for construction work related to government declared emergencies. Compliance reporting requirements on an emergency contract are determined at the time each contract is awarded.

#### **1.7.4 Subcontracts**

The prime contractor is responsible for assuring that all subcontractors are in compliance with the required Equal Employment Opportunity Special Provisions of the contract.

Prime contractors may accomplish the work of a project by entering into subcontract arrangements with written agreements ("subcontracts") containing the requirements and pertinent provisions of the prime's contract. Subcontractors may further subordinate their contract and such relationships are known as second tier, third tier, etc., subcontracts.

Subcontract documentation submitted to FDOT by the prime includes a **Certification of Sublet Work (Form 700-010-36)** and a **Schedule A** indicating the sublet items and contract amount. The Subcontract is furnished to FDOT upon request.

For further reference see **Table 1.7.4.1 Subcontract and Rental Agreement Summary** in the CCM reference guide.

#### **1.7.5 Agencies Supplying Craft and Labor Workers**

Prime contractors and subcontractors may elect to staff their project workforce with persons provided by staffing agencies. Staffing agencies that employ and place workers in temporary jobs at client work sites for a limited period of time are often referred to as Temporary Employment Agencies. Staffing agencies that employ and place workers in day to day jobs at client sites are often referred to as Day Labor Agencies.

At the job site, the contractor typically exercises supervisory control over agency workers. The contractor and the agency are joint employers of the temporary workers.

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Agencies are typically responsible for all personnel and payroll administration of the worker, including recruitment, hiring, payment of wages, payroll withholding, workers' compensation, etc.

The contractor or subcontractor using a staffing agency issues written communication to FDOT outlining their use of an agency prior to any of their temporary workers appearing on the project. **FDOT form 275-021-15, Notification for Use of Temporary Employment Agency/Day Laborers** is used by prime contractors and subcontractors to communicate to Resident Compliance Specialists their use of Temporary or Day Labor workers. **Form 275-021-15** is available in the [FDOT Forms Library](#) on our website.

The contractor or subcontractor using a staffing agency is encouraged to provide copies of the following documents to the staffing agency prior to use of their personnel on a project:

1. **Notification for Use of Temporary Employment Agency/Day Laborers, FDOT Form 275-021-15**
2. Contractor's EEO/AA Policy and Plan including EEO Officer
3. Project's Wage Table(s)

**FHWA 1273, Required Contract Provisions, Federal-Aid Construction**

### **1.7.6 Summary of Contract Compliance Reporting Requirements by Program Area**

The following tables summarize the requirements of each area of the compliance program:

- **Table 1.7.6.1 Summary of DBE Requirements**
- **Table 1.7.6.2 Summary of Company EEO Requirements**
- **Table 1.7.6.3 Summary of Project EEO Requirements**
- **Table 1.7.6.4 Summary of OJT Training Requirements**
- **Table 1.7.6.5 Summary of Payroll and Wage Requirements**

Refer to individual Compliance Manual Chapters for comprehensive information on these requirements.

**Table 1.7.6.1**

<b>Summary of DBE Requirements</b>		<b>FEDERALLY FUNDED</b>		<b>STATE FUNDED</b>	
		<b>P R I M E</b>	<b>Sub-contract (\$10,000+) Rental (\$10,000 +) with operator Suppliers or Subs (under \$10k) or Rental w/out operator Agencies supplying job site workers</b>	<b>P R I M E</b>	<b>Subcontract (\$10,000+) Rental (\$10,000 + ) with operator Suppliers or Subs (under \$10k) or Rental w/out operator Agencies supplying job site workers</b>
<b>PROGRAM ELEMENT</b>	<b>TIME FRAME</b>				
<b>DBE /AA Plan</b>	Initial submission before submission of bid	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>
<b>DBE Liaison Officer</b>	Initial appointment at time of DBE/AA Plan adoption and throughout the term of the contract	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>
<b>Bid Opportunity List</b>	Submitted using the EOC System.	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>
<b>DBE Commitments</b>	Initially submitted in the EOC System before the Preconstruction Conference. Maintained throughout the contract. Updates will automatically occur in the EOC system.	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>
<b>Actual Payments to DBE's</b>	Monthly entry of payments to DBEs in the EOC System	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>
<b>Commercially Useful Function Review (CUF)</b>		<b>YES</b>	<b>YES</b>	<b>NO</b>	<b>NO</b>
<b>Footnotes:</b>					
<b>Y E S</b>	Data is submitted in timeframe specified				

**Table 1.7.6.2**

Summary of Company EEO Requirements		FEDERALLY FUNDED				STATE FUNDED		
		P R I M E	Sub Contractor (\$10,000+)	Supplier	Agencies supplying job site workers	P R I M E	Subcontractor (\$10,000+)	Supplier
Rental Agreement (\$10,000 +) with operator	Sub Contractor (under \$10,000)		Subcontractor (under \$10,000)	Rental w/out operators			Agencies supplying job site workers	
<b>EEO/ AA Policy &amp; Plan</b>	Comply as Required by FHWA- 1273	Y E S	Y E S	NO	NO*	N O	NO	NO
<b>EEO Officer</b>	Initial appointment before 1 <sup>st</sup> work day	Y E S	Y E S	NO	NO*	Y E S	Y E S	NO
<b>Supervisory and Personnel Office EEO Meetings</b>	Initial Meeting prior to 1 <sup>st</sup> workday. Subsequent meetings at 6-month Intervals; new appointees within 30 days	Y E S	Y E S	NO	NO*	N O	NO	NO
<b>Company Wide EEO Report</b>	To be made available upon request for a compliance review or determination of OJT.	Y E S	Y E S	NO	NO*	N O	NO	NO
<b>Contractor Recruitment Program</b>	Initiate before 1 <sup>st</sup> workday. Records to be made available upon request of FDOT or FHWA.	Y E S	Y E S	NO	NO	N O	NO	NO
<b>Non-segregated facilities</b>	Throughout the term of the contract(s)	Y E S	Y E S	NO	Y E S	N O	NO	NO
<b>Analysis for Non-discrimination</b>	Throughout the term of the contract(s)	Y E S	Y E S	NO	NO*	N O	NO	NO
<b>Footnotes:</b>								
<b>Y E S</b>	Data is submitted in timeframe specified							
<b>Y E S</b>	Data is not routinely submitted to FDOT but records reflecting compliance are required.							
*	Covered under data of employing contractor							

**Table 1.7.6.3**

Summary of Project EEO Requirements		FEDERALLY FUNDED				STATE FUNDED		
		P R I M E	Sub Contractor (\$10,000+)	Supplier	Agencies supplying job site workers	P R I M E	Sub Contractor (\$10,000+)	Supplier
Rental Agreement (\$10,000 +) with operator	Subs (under \$10,000)		Rental w/out operator	Subcontractor (under \$10,000)			Rental w/out operators	Agencies supplying job site workers
<b>Job Site Bulletin Board</b>	In place on or before workers first appear on the project; removed when workers are no longer on the project.	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	<b>NO*</b>	<b>NO</b>	<b>NO</b>	
<b>Annual July EEO Report (FHWA 1391)</b>	Due by August 20 <sup>th</sup>	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	Included on Report of employing contractor if OJT the week reported	<b>NO</b>	<b>NO</b>	
<b>EEO Information to Project Personnel</b>	Routinely inform employees of EEO; no specified interval;	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	Included in communications of employing contractor	<b>NO</b>	<b>NO</b>	
<b>Project EEO Report(s)</b>	To be made available upon request.	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	Included on Report of employing contractor if OJT the week reported	<b>NO</b>	<b>NO</b>	
<b>Footnotes:</b>								
<b>Y E S</b>	Data is submitted in timeframe specified							
<b>Y E S</b>	Data is not routinely submitted for contracts let Jan. 2005 - August 2012 (i.e. Element is included in Certification of Compliance).							

**Table 1.7.6.4**

**Summary of  
 OJT Training Requirements**

		<b>FEDERALLY FUNDED</b> (Contract of at least \$2 million and 275 days)		<b>STATE FUNDED</b> OJT may be authorized on a voluntary basis for banking purposes provided the Contract is at least \$2 million and 275 days and an RCS is avail. To monitor	
		<b>P R I M E</b>	<b>Sub- contractor Enrolling &amp; Instructing a Trainee</b>	<b>P R I M E</b>	<b>Sub-contractor Enrolling &amp; Instructing a Trainee</b>
<b>PROGRAM ELEMENT</b>	<b>TIME FRAME</b>				
<b>Company Wide EEO Report</b>	Due as requested and/or at or before Training Evaluation Meeting	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>
<b>Post Pre-Construction Training Evaluation Meeting</b>	Conducted no more than 30 days prior to beginning construction or at another date agreeable to attendees.  Meeting minutes are distributed with 14 days of their finalization with initial minutes issued as soon as practical and 14 days provided for requests to revise	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>
<b>OJT Training Schedule</b>	Due or developed at or within ten days of the Training Evaluation Meeting. Schedule Revisions are due when events are missed by 14 or more days, the use of additional classifications is requested or trainees terminate.	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>
<b>Proficiency Statements for each Training Classification on the OJT Schedule</b>	Due or developed at or within ten days of the Training Evaluation Meeting for each training classification listed on the Schedule.  Proficiency statements for additional classifications accompany OJT Schedule Revisions.	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>
<b>Notification of Trainee Personnel Action</b>	Due within seven days of proposed effective date; Request to Graduate is due once minimum hours are accumulated and satisfactory observation occurs.	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>
<b>Request for Proficiency Observation</b>	First and second observation requests may be submitted based on trainee readiness and accumulation of at least minimum hours. Third and subsequent observation requests require accumulation of maximum hours.	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>
<b>Trainee Monthly Time Reports</b>	Due on the 10 <sup>th</sup> day of the month for each month following enrollment of the trainee up to graduation of trainee	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>	<b>Y E S</b>
Footnotes:					
<b>Y E S</b>	Data is submitted in timeframe specified				

**Table 1.7.6.5**

<b>Summary of Payroll &amp; Wage EEO Requirements</b>		<b>FEDERALLY FUNDED</b>				<b>STATE FUNDED</b>		
		<b>P R I M E</b>	Sub Contractor (all dollar amounts)	Supplier	Agencies supplying job site workers	<b>P R I M E</b>	Sub Contractor (all dollar amounts)	Supplier
<b>TIME FRAME</b>	Rental Agreement with operator (all dollar amounts)		Rental w/out operators		<b>Rental Agreement with operator (all dollar amounts)</b>		Rental w/out operators	Agencies supplying job site workers
<b>Employee Interview of craft and laborer Workers</b>	Conducted each month. This form is completed by FDOT or representative	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>
<b>Certified Payrolls</b>	Due 7 days after regular pay day for each week in which any contract work is performed	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>
<b>Additional classification Request</b>	As needed during the term of the contract and after contract award	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>
<b>Request to USDOL for Authorization of Payroll Deductions</b>	Prior to employing workers on the project and as needed to ensure continuity of authorization.	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>
<b>Supplemental Certified Payrolls submitted to resolve Payroll Violation(s)</b>	Due within twenty (20) calendar days following receipt of payroll violation notification (FDOT form 700-010-59)	<b>Y E S</b>	<b>Y E S</b>	<b>NO</b>	<b>Y E S</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>
Footnotes:								
<b>Y E S</b>	Data is submitted in timeframe specified							

### 1.7.7 Local Agency Program

FDOT has legislative authority to contract with Florida's Local Agencies to plan, develop, design, acquire right-of-way, and construct transportation facilities. FDOT reimburses these Local Agencies for services provided to the public. The formal name given to this program is the Local Agency Program (LAP). Authority for LAP is provided in **Sections 20.23(3)(a), 334.044(7), 339.05, and 339.12 of the Florida Statutes.**

A Local Agency is defined as a unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has responsibility for planning, construction, operation or maintenance of, or jurisdiction over, a transportation facility. The term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization (MPO), an expressway or transportation authority, a road and bridge district, a special road and bridge district, or a regional governmental unit.

FDOT's LAP projects are federally funded and therefore are, required to conform to **FHWA 1273, Required Contract Provisions of Federal-Aid Construction Contracts.**

LAP projects may not include funding from Federal-Aid Highway, the National Highway System or the State Highway System. In such cases there is no requirement to be in compliance with the **Davis-Bacon and Copeland Acts**, however there are certain exceptions.

Projects of the following types are subject to **Davis-Bacon and Copeland Act** prevailing wage requirements, notwithstanding that they may be located "off-system":

- Safe Routes to Schools projects;
- Non-motorized Transportation Pilot Projects; and
- High priority and other congressionally designated projects (unless the requirement is specifically waived in legislation).

The FDOT District LAP Administrator, District Contract Compliance Manager, Prevailing Wage Coordinator, or other compliance staff designee should be consulted prior to the start of construction in order to obtain written confirmation that a LAP or ARRA project is exempt from **Davis-Bacon** and **Copeland Act** payroll and reporting requirements.

Contractors of LAP projects may demonstrate compliance with **FHWA 1273 and Davis-Bacon** and **Copeland Acts** by adhering to either the forms and reporting requirements of the specific local agency or by conforming to the forms and requirements of the FDOT EEO Construction Contract Compliance Manual. The Local Agency informs contractors of the requirements to be followed.

The applicability of the DBE, EEO, Wages and OJT compliance for LAP projects is summarized in **Table 1.7.7.1**.

**Table 1.7.7.1  
 EEO Construction Contract Compliance Requirements for  
 Local Area Program (“LAP”)**

Contract Compliance Program Area	Project On State Highway System including  Federal-Aid Highways, National Highway System, State Highway System	Project on all other roads including  Rural Minor Collector Rural Local Urban Local Roads	
<b>DBE</b> (including Bid Opportunity List)	Yes *	Yes	
<b>EEO</b>	Yes **	Yes	
<b>Certified Payrolls/Wages</b>	Yes ***	Check with Prevailing Wage Rate Coordinator	
<b>OJT</b>	Yes **** if 275 or more days and \$2M or more and not an enhancement project No if enhancement project (regardless of contract days and/or dollars) No if less than 275 days and/or under \$2M	<table border="1"> <tr> <td align="center">                             Yes ****                              if 275 or more days and \$2M or more                              and not an enhancement project                              No                              if enhancement project                              (regardless of contract days and/or dollars)                              No                              if less than 275 days and/or under \$2M                         </td> </tr> </table>	Yes **** if 275 or more days and \$2M or more and not an enhancement project No if enhancement project (regardless of contract days and/or dollars) No if less than 275 days and/or under \$2M
Yes **** if 275 or more days and \$2M or more and not an enhancement project No if enhancement project (regardless of contract days and/or dollars) No if less than 275 days and/or under \$2M			
<u>Footnotes:</u>			
*	See Federally Funded columns on Table 1.7.6.1, Summary of DBE Requirements		
**	See Federally Funded columns on Table 1.7.6.2, Summary of Company EEO Requirements, and See Federally Funded columns on Table 1.7.6.3, Summary of Project EEO Requirements		
***	See Federally Funded columns on Table 1.7.6.5, Summary of Payroll & Wage Requirements		
****	See Federally Funded columns on Table 1.7.6.4, Summary of OJT Training Requirements		

## 1.8 GENERAL PROGRAM FORMS & DOCUMENTS

This is list of forms and documents referenced in this chapter. All forms may be accessed through the [FDOT Forms Library](#) and/or the Chapter One Reference Guide.

### NUMERICAL SEQUENCE

FDOT Form No.	Document Title	Manual Section
275-021-13	<i>Notification to FDOT of EEO Officer</i>	1.5.3
275-021-15	<i>Contractor Notification for Use of Temporary Employment Agency/Day Laborers</i>	1.7.5
700-010-25	<i>Contractor's Past Performance Rating</i>	1.6.4
700-010-59	<i>Notification of Payroll Violation</i>	1.6.5
n-a	<i>FHWA 1273, Required Contract Provisions, Federal-Aid Construction, May 1, 2012</i>	1.1.8

### ALPHABETICAL SEQUENCE

Document Title	FDOT Form No.	Manual Section
<i>Contractor's Past Performance Rating</i>	700-010-25	1.6.4
<u><i>Contractor Notification for Use of Temporary Employment Agency/Day Laborers</i></u>	<u>275-021-15</u>	<u>1.7.5</u>
<i>FHWA 1273, Required Contract Provisions, Federal-Aid Construction, May 1, 2012</i>	n-a	1.1.8
<del><i>Contractor Notification for Use of Temporary Employment Agency/Day Laborers</i></del>	<del>275-021-15</del>	<del>1.7.5</del>
<i>Notification of Payroll Violation</i>	700-010-59	1.6.5
<i>Notification to FDOT of EEO Officer</i>	275-021-13	1.5.3

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## CHAPTER 2: DISADVANTAGED BUSINESS ENTERPRISES

### 2.1 DISADVANTAGED BUSINESS ENTERPRISES OVERVIEW

#### 2.1.1 Purpose

The Florida Department of Transportation (FDOT) designed the Disadvantaged Business Enterprises (DBE) Program to assist small businesses owned and controlled by socially and economically disadvantaged individuals ~~with~~ participating on FDOT contracts. The objectives of the DBE Program are:

1. To ensure equal opportunity in the award and administration of FDOT contracts in FDOT's highway, transit, and airport construction programs;
2. To create a level playing field on which a DBE can compete fairly for FDOT contracts;
3. To ensure implementation is narrowly tailored in accordance with applicable law;
4. To ensure that only a firm that fully meets the eligibility standards is certified as a DBE;
5. To help remove barriers to a DBE's participation in FDOT contracts;
6. To assist in the development of firms that can compete successfully in the marketplace outside of the DBE program; and
7. To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs

#### 2.1.2 Scope

FDOT's DBE Program encompasses both federal- and state-funded highway and bridge programs and all projects and contracts associated with these programs. The scope of this section includes all of the requirements associated with how the FDOT implements these federal regulations. The State of Florida's DBE program mirrors the requirements of the federal program, but it is analyzed and reported separately.

#### 2.1.3 Training

The Equal Opportunity Compliance (EOC) system's **Computer Based Training (CBT)** provides an overview of the EOC system and the reports available in the system. It demonstrates how to gain access to the system, how to prepare a subcontractor list and a bidder's opportunity list, and how to create contractual agreements for sub-contractors and sub-consultants. It also explains how to input DBE commitments and DBE payments. This training is intended for FDOT staff, prime contractors, prime consultants, and Local

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Agency Program (LAP) Resident Compliance Specialists. The link for the CBT Training is located in **Section 1.4 Directory of Compliance Websites & Addresses**.

## 2.2 CERTIFICATION OF DBEs

### 2.2.1 General

The USDOT DBE regulations require state and local transportation agencies that receive federal assistance to establish a Unified Certification Program (UCP) that maintains goals and assistance for participation in the DBE program. The UCP provides “one stop shopping” for all firms seeking certification as a DBE in Florida.

Once a firm is certified as a DBE by a certifying member of the UCP, all agencies that receive USDOT assistance in Florida accept the certification. A certifying member is a recipient of funds from the USDOT who has a current DBE Program Plan approved by the appropriate USDOT operating administration that includes provisions for DBE certification in accordance with **49 C.F.R. 26 Subpart D and E** or **49 C.F.R. 23 Subpart C**.

Certification is done in accordance with **49 C.F.R. Parts 23 and 26**.

Businesses are certified as a DBE for specific types of work for which the business has the knowledge and resources to perform. Each DBE certification includes specific North American Industry Classification System (NAICS) Codes indicating the area(s) of work that FDOT may count toward DBE utilization. The areas a DBE is certified in can expand, as the business expands its expertise and ability.

FDOT can only report the participation of DBEs that are certified in FDOT’s DBE Directory. See **Section 2.5 and 2.6** for additional information on reporting requirements. If there are questions about a firm’s certification status, contact the certifying member. A list of certifying members is on the [FDOT Equal Opportunity Office \(EOO\) Website](#).

### 2.2.2 Florida UCP DBE Directory

FDOT maintains a single **DBE Directory** with a listing of the certified firms authorized to participate in Florida’s DBE program. The **DBE Directory** can be found on the [FDOT Equal Opportunity Office \(EOO\) Website](#).

## 2.3 DBE AFFIRMATIVE ACTION PLAN

### 2.3.1 General

FDOT requires a contractor to submit and maintain a record of a DBE Affirmative Action (AA) Plan to ensure that all subcontractors doing business with FDOT are not discriminating on the basis of race, color, religion, national origin, disability, sex, or age in the administration of contracts with the FDOT.

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### **2.3.2 DBE Affirmative Action Policy and Plan (DBE AA Plan)**

A sample *DBE AA Policy and Plan Form 275-030-11B (as referenced by 7-24.1 of the Florida Standard Specification of Road and Bridge Construction)* is available on the [FDOT website](#). The contractor's DBE AA Plan must include, at a minimum, the information contained in the sample. FDOT will not approve a plan that does not meet the mandatory requirements outlined in the sample.

The contractor must include a DBE policy statement in the DBE AA Plan. The DBE policy statement must express the contractor's commitment to using DBEs in all aspects of contracting. The DBE policy statement must outline various levels of responsibility, and states the objectives of the program. The contractor's DBE AA Plan should be circulated throughout the contractor's organization and may be used as a marketing tool at minority, female, and non-minority community and business organizations.

### **2.3.3 DBE Liaison Officer**

The DBE AA Plan shall include identification of an appointed DBE Liaison Officer who will be responsible for maintaining and monitoring the implementation of the DBE AA Plan. The DBE Liaison Officer will be the main contact for FDOT for all issues related to the DBE Program and must be available to supply any documents requested by FDOT. The DBE AA Plan must state the duties of the DBE Liaison Officer.

### **2.3.4 Submission, Expiration, and Renewal of DBE AA Plan**

A contractor that bids on an FDOT contract must have an approved DBE AA Plan on file with EOO before execution of a contract. EOO must receive the DBE AA plan along with the contractor's bid or prior to the award of the contract.

FDOT approves a DBE AA Plan for a three-year period; the contractor must update the plan prior to expiration or when there is a change in the DBE Liaison Officer, or the contractor official who signs the plan or both.

The contractor should email a completed and signed DBE AA plan to:  
[EEOfirms@dot.state.fl.us](mailto:EEOfirms@dot.state.fl.us).

FDOT will review the plan, update FDOT records, and issue a notification of approval or disapproval. FDOT will not return a copy of the submitted plan to the contractor.

### **2.3.5 Review and Compliance with DBE AA Plan**

The DBE Special Provisions included in an executed contract states that the DBE AA Plan and commitment to carry out the plan is incorporated into and becomes a part of the awarded contract. FDOT deems a contractor's failure to abide by the commitment as noncompliance with the contract specifications and treats the noncompliance as a breach of the contract.

FDOT will monitor contractor compliance with DBE specifications in the contract and the contractor's implementation of the DBE AA Plan through formal reviews including

contract compliance reviews. The DBE AA Plan is not a requirement for a local agency project; however, a local agency must comply with **49 C.F.R. Part 26**.

A contractor with low DBE participation will be subject to a DBE assessment to ensure that discrimination is not the basis for the lack of DBE utilization on an FDOT project.

A contractor will make all records available to FDOT upon request.

## 2.4 BID OPPORTUNITY REPORTING

### 2.4.1 General Information

Federal regulations require FDOT to create and maintain a bidder's list. The purpose of the bidder's list is to provide data related to DBE and ~~non-DBE~~**OBE** contractors and subcontractors who seek to work on federally-assisted contracts. The bidder's list can also be influential in establishing a triennial DBE goal. A DBE goal reflects the level of DBE participation expected each year. FDOT uses a Bid Opportunity List to determine the number of ready, willing, and able DBEs relative to all ready, willing, and able businesses as the method to help determine FDOT's annual DBE goal.

### 2.4.2 Bid Opportunity Data and Submission

All contractors bidding on construction, design-build contracts, or other types of contracts must provide information about the subcontractors that provided bids regardless of whether they were solicited or non-solicited. The information must contain the specific type of work for which the bid was requested or received.

All CONTRACTORS MUST enter their bid opportunity information in the Equal Opportunity Compliance (EOC) system within three business days of submission of the bid or proposal. The link to the EOC system is located in **Chapter 1 Section 1.4, Directory of Compliance Websites & Addresses**. For further information reference the DBE bid package information and *Form 275-030-11*. **Failure of bidders to enter Bid Opportunity List information is a violation of 49 C.F.R. 26.11 and grounds for compliance actions up to and including withholding of progress payments.**

**Note:** All unregistered primes submitting a bid will need to apply for an EOC user ID and password to gain access to the EOC system.

## 2.5 DBE PARTICIPATION COMMITMENTS

### 2.5.1 Purpose

A prime contractor must report to FDOT the names of DBEs, the type(s) of work or specialty code(s), and NAICS to be used, and the contract dollar amount of DBE subcontractors on specific contracts. FDOT reports this information to the Federal Highway Administration (FHWA). The report is the primary tracking mechanism for measuring FDOT's progress in achieving its annual DBE goal.

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## 2.5.2 DBE Participation Commitments: Initial Submission and Revisions

Prime contractors on federal- and state-funded construction, design-build, and other types of contracts are required to report and maintain information about planned and actual utilization of DBEs and the progress payments made to the DBEs.

FDOT requires the prime contractor to enter anticipated DBE commitments into the EOC system prior to the Preconstruction or Pre-Work Conference. Contractors shall update the EOC System monthly for any changes in commitments.

Data entered includes:

- DBE's company name
- Specialty Code(s) and NAICS code(s) reflective of work performed
- Total contract amount

Only work performed in the respective NAICS code that a DBE is certified in may be counted as DBE utilization; work performed in any area in which a DBE is not certified will not be counted.

If the prime contractor is not using any DBE subcontractors on the project, FDOT requires the prime contractor to report this information in the EOC system by clicking the zero DBE Utilization button under the DBE commitments tab. A prime contractor who is a certified DBE must report the portion of the contract that will be performed directly by the prime contractor with their own workforce. The prime contractor should also report all DBE subcontractors that the prime DBE contractor anticipates using.

## 2.5.3 Counting a DBE's Participation

DBE Certification does not guarantee that FDOT will count the firm's work on a project towards FDOT's DBE goal. In order for services performed by a DBE to count toward the FDOT goal, the firm must perform a "Commercially Useful Function" (CUF) and its work must be in the NAICS code for which the DBE is certified. In determining the portion of DBE work on a project that will count toward the DBE goal refer to **Table 2.5.3.1**. This table is not an exhaustive list; FDOT may request additional information from the prime contractor and or DBE firm to determine the portions of work FDOT will count as DBE participation. See [FDOT Standard Specification 7-24.5](#) for additional information related to counting DBE participation and commercially useful function.

**Table 2.5.3.1**  
**Determining What Portion of a DBE's Work**  
**May be Counted Toward the Goal**

1.	The DBE firm is performing a CUF.
2.	The work is in the NAICS code for which the DBE is certified.
3.	The work is performed by the DBE's own workforce.
4.	Supplies and equipment purchased or leased by the DBE that are not affiliated with the prime contractor.
5.	The cost of supplies and materials obtained by the DBE for the work is counted including purchases and leased equipment.
6.	Reasonable fees or commissions charged by a DBE for providing a bona fide service, or for providing bonds or insurance required for performance of a FDOT contract may be counted. Examples of bona fide services include professional, technical, consultant, or managerial services.
7.	The work a DBE subcontracts to others is counted only if the work is subcontracted to another DBE. Work subcontracted to <del>non-Other Business Enterprises-(OBEs)DBEs</del> does not count.

## 2.6 REPORTING ACTUAL PAYMENTS

### 2.6.1 General

**Title 49 C.F.R. Part 26** requires FDOT to track actual payments and commitments to a DBE. [FDOT's Standard Specifications](#) require the reporting of payments to DBE and Minority Business Enterprise (MBE) subcontractors in the EOC system.

### 2.6.2 Payment Reporting

FDOT requires a prime contractor to report in the EOC system payments ~~from each monthly estimate~~ to each DBE and MBE (at all tier levels), within 30 days of them being paid for the work performed by the DBE in their certified area(s) and mark the final payment checkbox when the prime contract has made the final payment. **Failure of contractors to monthly enter DBE payments monthly into EOC is a violation of 49 C.F.R. 26.11 and grounds for compliance action up to and including withholding of progress payments.**

Resident Compliance Specialists and local agency staff monitor payment reporting activity through the EOC system. Payment reporting is an element in determining the "prime contractor" past performance rating on internal FDOT construction contracts.

Only that portion of the payment associated with the performance of a CUF by a DBE performing work in the area(s) for which they are certified is to be reported. A prime contractor should not report the following payments:

- Work performed by the DBE in areas for which they are not certified

- Work subcontracted to ~~non-DBE~~OBE's

Payments submitted in the EOC system will be negatively offset if a CUF cannot be determined or if the DBE (excluding DBE trucking) does not self-perform a minimum of 30% of their contract. The prime contractor will enter a negative payment amount equal to the amount reported that is not counted for DBE credit.

### **2.6.3 End of Project Reconciliation**

**The contractor will ensure that commitments and payments balance at the end of the project. The EOC System may not automatically adjust any discrepancies.**

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## **2.7 MONITORING**

### **2.7.1 General**

A DBE performs a CUF when the DBE is responsible for execution of a distinct element of the work with the DBE's own workforce and the DBE carries out the DBE's responsibilities by actually performing, managing, and supervising the work involved. CUF monitoring reports must be completed, at a minimum, during a DBE's first three active months to determine if DBEs on federally funded contracts are performing a CUF.

FDOT may complete additional CUF monitoring reports or other special reviews on DBE prime contractors and DBE subcontractors. FDOT uses [FDOT Form 275-021-18 "Commercially Useful Function DBE Monitoring Report"](#) to record each observation and review.

### **2.7.2 District Responsibilities**

The District Contract Compliance Manager has oversight of the RCS's and compliance procedures as well as monitoring within the District. The RCS must monitor the progress of the DBE's work and DBE participation. This effort is accomplished in conjunction with the Project Administrator and Inspector who have daily contact with the contractor and subcontractors, monitoring monthly payments, and payroll documents, interviews with DBE subcontractors, employees, and observations by the Project Administrator and Inspector. The RCS will be able to determine if the prime is utilizing an identified DBE and if the DBE subcontractor is providing a commercially useful function as required by the DBE Standard Specifications and Section 26.55 Code of Federal Regulations. The RCS will utilize **Form No. 275-021-18, Commercially Useful Function DBE Monitoring Report (CUF Report)**, to document this process. If problems are identified, the RCS should discuss the problems with the Resident Engineer and the DCCM.

The RCS is responsible for the following:

- ~~1.~~ **Ensuring that a CUF Report is completed at a minimum of once and at the time of CUF the DBE subcontractor (excluding trucking companies) has performed at least**

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~~30% of the total value of the contract with payments reflecting the progress of the project. Ensuring that a **CUF Report** is completed once every month for each DBE within the first three active months. If a DBE subcontractor (excluding trucking companies) has not performed at least 30% of the total value of the contract at the end of the first three active months, a final CUF report must be conducted at the end of the project to assess performance.~~

~~1. Working in conjunction with the inspector or other qualified personnel to ensure that an observation of the DBE's work and workforce is completed. The inspector will transmit the CUF Report to the RCS within 5 business days of completion.~~

~~2. Utilize the information obtained in the CUF as well as the supporting documentation to determine that the DBE subcontractor is providing a commercially useful function. In doing so the RCS ensures the CUF is accurate against the Daily Work Report, certified payroll and sublet. The RCS should complete the review process within 10 business days of receiving the certified payroll corresponding to the CUF.~~

~~3. If errors or discrepancies are found, the RCS will contact the appropriate party (PA, inspector, or prime contractor) and give 72 hours to resolve. Additional actions that may be taken by the RCS to resolve include, but are not limited to: issuance of payroll violations, notices of noncompliance, obtaining copies of related records, etc.~~

~~4. The RCS should have a minimum amount of time from completion of the CUF until communication with the PA, inspector and/or prime contractor of 30 days. The RCS should have a maximum amount of time from completion of the CUF until communication with the PA, inspector and/or prime contractor of 45 days.~~

~~2. Sending the completed **CUF Report** to the District Contract Compliance Manager and the Project Administrator for review, and signature. Assisting the Project Administrator and/or DCCM with any follow-up research or additional reviews.~~

~~4.6. Verifying that all subcontractors reported into EOC as DBE Commitments are performing work in the area for which they have an active certification. If DBEs are performing work in an area they are not certified in, the prime contractor will not receive credit for DBE participation.~~

~~5.7. Ensuring that the **DBE Trucking Certification Form 275-030-14** is completed to assess performance for trucking companies. The DBE Trucking Certification should be completed monthly for every month that DBE trucking subcontractors are active on the project.~~

~~6.8. Ensuring Prompt Payment and Retainage Return for ALL Subcontractors. See Section 4.6.5.~~

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The RCS will review FDOT's EOC System to determine if the contractor has supplied the required subcontractor payment data and report any discrepancies to the District Contract Compliance Office. The RCS should notify the prime contractor ~~in writing~~ if payments have not been posted. The District Contract Compliance Office will advise the DCE and the EOC of any contractor refusing to report subcontractor payments as required by the contract.

~~Contractors should be contacted for verification that the DBE commitment reported in EOC is accurate.~~ Each District must review in EOC the final DBE commitments for the end of the Federal Fiscal Year by September 30<sup>th</sup> for inclusion in FDOT's annual report regarding DBE utilization on Federal and State funded highway construction contracts.

### **2.7.3 Counting the Value of Work**

When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted as DBE participation.

Only the portion of a construction contract that is performed by the DBE's workforce is counted. Also included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

The entire amount of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a FDOT-assisted contract, can be counted toward a DBE goal if the fees are reasonable and not excessive when compared with fees customarily allowed for similar services.

### **2.7.4 Considerations in Determining Commercially Useful Function**

Expenditures to a DBE contractor can be counted toward DBE goals only if the DBE is performing a CUF on that contract. Considerations in determining CUFs include the following:

1. A DBE performs a CUF when the DBE is responsible for execution of the work and is actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether a DBE is performing a CUF, FDOT must evaluate the amount of work subcontracted, industry practices, whether the amount the DBE is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

2. FDOT must presume a DBE is not performing a CUF if the DBE's role is limited to ~~that being~~ an extra participant in a transaction, contract, or project through which funds are passed in order to create the appearance of DBE participation. In determining whether a DBE is such an extra participant, FDOT must examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of the DBE's contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, FDOT must presume that the DBE is not performing a CUF. The 30% requirement does not apply to DBE trucking.
4. When a DBE is presumed not to be performing a CUF as stated in paragraphs 2 and 3, the DBE may present evidence to rebut this presumption. FDOT may determine that the DBE is performing a CUF given the type of work involved and normal industry practices.

### **2.7.5 DBEs Subcontracting Work to Others, Joint Ventures, and Use of Joint Checks**

When a DBE subcontracts part of the DBE's work to another firm, the value of the subcontracted work is counted only if the work is subcontracted to another DBE. Work that a DBE subcontracts to a ~~non-DBE/OBE~~ firm does not count toward DBE goals.

When a DBE performs as a participant in a joint venture, DBE credit will be counted only for work that is clearly defined in the contract that the DBE performs with the DBE's own workforce.

The following is FDOT's Joint Check provision as shown in the Standard Specifications 7-24.5(7) for FDOT's construction contracts:

Contractors wishing to use joint checks involving DBE credit must provide written notice to the District Contract Compliance Office prior to issuance of the joint check. The Contractor must also provide a copy of the notice to the DBE subcontractor and maintain a copy with the project records.

### **2.7.6 Commercially Useful Function of DBE Trucking Companies**

Considerations in determining whether a DBE trucking company is performing a CUF include the following:

1. The DBE will be responsible for the management and supervision of the entire trucking operation on a particular contract. A DBE is not performing a CUF under a contract if the contract is entered into for the purpose of creating the appearance of DBE participation.
2. The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates using drivers it employs.

4. If a DBE leases trucks (lessor) from another DBE (lessee), including an owner-operator who is certified as a DBE, the DBE lessor receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the DBE's consent, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the DBE's name and identification number.

### 2.7.7 Calculating DBE Utilization for Truckers

The DBE may also lease trucks from a ~~non-DBEOBE~~ or other business enterprise (OBE), including owner operators. The value of services from OBE trucking may be equal to or less than the value of services provided by all DBE trucks; the value of ~~non-DBEOBE~~ trucking cannot exceed the total value of DBE trucking.

Additional participation by ~~non-DBEOBE~~ owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease agreement.

A [DBE Trucking Certification \(Form 275-030-14\)](#) has been developed to capture this data with automated calculation capabilities.

An example of this approved methodology (percentage of fees or commissions versus the counting of trucks) is noted below:

Total Invoice Amount for DBE Trucking Firm ABC is \$12,060.

Total DBE Dollars	\$1,920
Total <del>non-DBEOBE</del> Dollars	\$9,130
DBE Commissions	\$1,010
Total DBE Dollars	\$1,920 (All DBE dollars)
Total <del>non-DBEOBE</del> Dollars	\$1,920 ( <del>Non-DBEOBE</del> dollars permitted-for matching)

Note: \$1,920 represents 21% of the OBE dollars, match cannot exceed DBE dollars ( $\$1,920/9,130 = .21$  or 21 %)

Total <del>non-DBEOBE</del> Commissions	\$798 (Included for DBE credit)
Note: $\$1,010 \times .79$ or 79% =	\$798

Since 21% of the ~~non-DBEOBE~~ transportation service was included in the match, 79% of the total fees and commission is counted for DBE credit, which replaces the need to count the number of trucks not used in the match.

DBE Credit Total	\$4,638
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DBE Trucking Credit- this amount is the total which appears in the EOC system.

### 2.7.7.1 DBE Trucking Certification

DBE utilization that includes off-site hauling requires the submission to the ~~RCS~~designated representative of a contractual document (sublet, subcontract, rental agreement etc.) describing the scope of trucking operations and the commissions/fee rate to verify DBE utilization calculations. Project staff ~~shall~~may utilize the **Trucker Observation & Verification Form 700-010-61** to verify both the owner-operator and the DBE status of individual trucks.

FDOT requires prime contractors reporting commitments for DBE trucking to submit each month a DBE Trucking Certification (Form 275-030-14) reflecting actual trucking operations. The report is due beginning with the first month of ~~the active hauling contract~~ and ending with the last month of ~~active hauling the contract; inactive months must be reported as such.~~

The DBE Trucking Certification, along with other records will provide a basis to confirm a CUF and the accurate calculation of DBE utilization as described in **Section 2.7.7**.

### 2.7.8 DBE Manufacturers and Suppliers

Considerations in determining if expenditures by a DBE for materials or supplies may be counted for DBE utilization include the following:

1. A manufacturer/fabricator produces merchandise for use or sale using labor and machines, tools, chemical and biological processing, or formulation. If the materials or supplies are obtained from a DBE manufacturer/fabricator, count 100% of the cost of the materials or supplies toward DBE participation.
2. A regular dealer is a DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the FDOT's Standard Specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE participation.
  - (a) To be a regular dealer, the DBE firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  - (b) A DBE firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.

- (c) Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not regular dealers.

### **2.7.9 Contractor Records for Commercially Useful Function Verification**

Project managers shall advise a contractor that the contractor is to maintain and make available to the FDOT when so requested, records substantiating the performance of a CUF by a DBE contractor and supplier as part of the contractor's compliance with [FDOT Standard Specification 3-8, "Audit of Contractor's Records"](#). Contractor records which may be reviewed to substantiate CUF include, but are not limited to:

- Contracts, subcontracts, or rental agreements
- Delivery tickets
- Invoices
- Lease agreements
- Hauling tickets
- Contractor's daily trucking record
- FDOT DBE Trucking Certification
- DBE trucking certification
- Canceled checks
- Bank records
- Equipment titles of ownership
- Material/supply agreements
- Payroll records

FDOT records which will be reviewed to confirm CUF include but are not limited to:

- EOC commitments
- Daily reports and project photos
- EEO subcontractor payments
- Commercially useful function monitoring reports
- Trucker observation and verification
- FDOT DBE Trucking Certification
- DBE trucking certification
- EEO/labor interviews
- Payroll records
- DBE Directory

In the assessment of a CUF, a district should request copies of invoices based on the following factors:

1. The DBE is a material supplier, manufacturer, or regular dealer on a project.
2. There is a concern that the DBE is not performing a CUF and invoices are needed for further verification.

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## 2.8 DBE FORMS & DOCUMENTS

The forms and documents referenced in this chapter may be found on the [FDOT Website Form Library](#).

## CHAPTER 3: COMPANY EEO/AA REQUIREMENTS

### NUMERICAL SEQUENCE

FDOT Form No.	Document Title	Manual Section
275-021-18	CUF DBE Monitoring Report	2.7
275-030-11	DBE Bid Package Information	2.0
275-030-11B	DBE Affirmative Action Plan	2.3
275-030-14	DBE Trucking Certification	2.7
700-010-61	Trucker Observation and Verification	2.7

### 3.1 GENERAL INFORMATION

#### ALPHABETICAL SEQUENCE

Document Title	FDOT Form	Manual Section
CUF DBE Monitoring Report	275-021-18	2.7
DBE Affirmative Action Plan	275-030-11B	2.3
DBE Bid Package Information	275-030-11	2.0
DBE Trucking Certification	275-030-14	2.7
Trucker Observation and Verification	700-010-61	2.7

#### 3.1.1 Purpose

Companies serving as contractors on FDOT contracts are required to comply with **FHWA 1273** "Required Contract Provisions Federal-Aid Construction Contracts." This Chapter explains the requirements that apply to a company's commitment to Equal Employment Opportunity and Affirmative Action (EEO/AA) and provides suggestions on how to comply.

#### 3.1.2 Scope

All primes and/or subcontractors, active on FDOT construction contracts are to conform to company EEO/AA requirements. The prime contractor shall be responsible for

compliance by any subcontractor, lower-tier subcontractors or service provider.

Refer to Table 1.7.6.2 “Summary of Company EEO Requirements” for an overview of company EEO/AA requirements.

## **3.2 EEO POLICY AND OFFICER NOTICE**

### **3.2.1 Purpose**

Contractors must establish and implement a company policy and procedure containing specified minimum commitments pertaining to nondiscrimination, Equal Employment Opportunity and Affirmative Action (EEO/AA) and designate an EEO Officer.

### **3.2.2 Overview**

At a minimum, contractors are required to implement the following:

#### **WRITTEN EEO POLICY & PROCEDURE**

Document and implement, through signature of company officer, an EEO Policy and Procedure and adhere to its requirements.

#### **SELECTION AND ANNOUNCEMENT OF EEO OFFICER**

Ensure continuous appointment of an EEO Officer and disseminate the officer’s name and contact data to FDOT.

#### **COMMUNICATION OF EEO POLICY, PROCEDURE AND OFFICER**

The EEO Officer will meet with supervisory and personnel office employees. The EEO policy and procedure must be brought to the attention of employees.

#### **RECORD KEEPING**

Maintain a continuous written record documenting policy, procedure, officer designations, programs, communications, disseminations, analysis, effectiveness assessments, etc.

### **3.2.3 EEO Policy and Procedure**

Typically, the duties of the EEO Officer are included in the EEO Policy and Procedure, but the actual name and contact information of the appointee is omitted. Contractors must notify FDOT of EEO Officer appointments and changes using *Form 275-021-13 Notification to FDOT of EEO Officer*. Contractors **do not** send their EEO Policy and Procedure to the Equal Opportunity Office; however, it shall be kept in the company EEO/AA file for review.

Contractors may adopt the model **EEO Policy** located on the **FDOT EEO Website**.

The completed model may be considered an official contractor policy and officer notice. These may be copied or otherwise duplicated for dissemination and communication, internally and externally. See referenced link in **Section 1.4** for an example of how a contractor documents adoption of the model EEO Policy Notice and Designation of

EEO Officer.

**Contractors do not send their EEO Policy and Procedure to the Equal Opportunity Office.**

All contractors are to ensure that only current information regarding their EEO Officer is disseminated with their EEO Policy and Procedure. When changes occur to the EEO Officer and/or their contact information, contractors must complete a new Officer Designation page (last page in model EEO Policy and Procedure) for use in dissemination of their policy. See **Section 3.2.5** for information on how to officially communicate EEO Officer changes to FDOT.

**3.2.4 Selection of EEO Officer**

The EEO Officer will have the responsibility for and must be capable of effectively administering and promoting an active EEO Program and be assigned adequate authority and responsibility to do so.

When selecting employees to serve as EEO Officer, contractors should consider several factors. Those appointed to serve should have knowledge and authority to effectively perform and:

- Be considered an official of the company (but not necessarily be an officer of the company).
- Have meaningful interaction with principals of the company.
- Have authority and responsibility for evaluating, recommending and implementing an effective program.
- Be accountable for the on-going execution, evaluation and re-direction of this area.
- Be capable of and willing to effectively administer and promote an active EEO/AA Program.

**3.2.5 Communicating EEO Officer Designation to FDOT**

Contractors must notify the FDOT Equal Opportunity Office of their EEO Officer by email submission of the **Notification to FDOT of EEO Officer Form 275-021-13** to: [eeoforms@dot.state.fl.us](mailto:eeoforms@dot.state.fl.us). This form is used by prime contractors and subcontractors to communicate to FDOT the appointment of an EEO Officer and to provide EEO Officer contact information. The form is also used to update that information in the event of new appointees, name changes or contact changes. The contractor will receive an email acknowledging that the EEO Officer information has been inputted into the Equal Opportunity Gateway System (EOG); a copy of the form will not be returned to the contractor.

This form and its directions are located in **EOO Forms & Procedures (For Website address see Manual Section 1.4)**

The Equal Opportunity Office will enter the contractor's EEO Officer in the EOG computer

system and will make this information available on the EOO Website.

### **3.2.6 Communication of EEO Policy and Procedure**

Communication and dissemination of the EEO Policy and Procedure is required as follows:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
3. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and woman.
4. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Communication used for employees should be broad based and verifiable and the methods may include meetings, employee handbooks, company newsletters, notices, bulletin board postings, websites, payroll stuffers, solicitations for employment and other appropriate means.

### **3.2.7 Record Keeping**

Contractors are to maintain and make available a written record documenting their EEO/AA Program and all activities associated with it. The model EEO Policy and Procedure plus contract document **FHWA-1273** delineates documentation requirements. The Equal Opportunity Office State Contract Compliance Manager and/ or a District Contract Compliance Manager may require additional documents on a case-by-case basis in order to confirm contractor compliance.

## **3.3 SUPERVISORY AND PERSONNEL OFFICE EEO MEETINGS**

### **3.3.1 Purpose**

Contract provisions and laws require that contractors routinely inform supervisory personnel and others involved in personnel matters of all aspects of their equal employment opportunity (EEO) obligations as a contractor on FDOT highway and bridge construction projects. This information is typically presented in group meetings and individual orientations.

### **3.3.2 Attendees**

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Two groups are targeted for attendance:

- Supervisory employees
- Personnel Office employees (other employees influencing personnel actions may also attend)

The supervisory group includes employees or agents of the contractor, working at project sites as well as in the offices, who are authorized to initiate, approve or otherwise influence one or more of the following types of personnel actions on any employee of the company:

- Hire
- Promote
- Supervise
- Discharge

Examples of persons typically included in the supervisory group are officers of the corporation, officials, directors, managers, supervisors, superintendents, and foremen/women.

The office group includes employees or agents of the contractor working in offices or at project sites who may influence personnel actions. Persons in this group may not be directly authorized to initiate or approve the personnel actions listed above. The duties of persons in this group may none the less influence, officially or unofficially, the personnel actions of one or more in the supervisory group. An example of one who is typically included in this group is the employee who has one or more of the following employment related duties: greet applicants, distribute applications, maintain the log of applicants, call applicants to schedule interviews, etc.

### **3.3.3 Timeframes**

Within thirty (30) days of hire or appointment, supervisory personnel and others involved in personnel matters are to be oriented in the required major topics and a record of that orientation (date, topics, etc.) is to be maintained. At six-month (6) intervals, meetings are to be held with all employees in the supervisory and office groups addressing required major topics. One or more meetings may be required in each time frame in order to include all who must attend. The company EEO Officer conducts this meeting.

### **3.3.4 Content**

Each of the following major topics may be addressed during individual orientations and EEO meetings:

- EEO Policy and Procedure
- Interviews by State /Federal Representatives
- Identification of EEO Officer

- Training Opportunities Workforce Diversity and Recruitment
- Wages and Payrolls
- Bulletin Boards
- Utilization of Disadvantaged Businesses

An outline of subjects that will typically be covered in each of the topics should be developed and used as the foundation for the contractor's development of full meeting scripts and individual orientation programs.

### **3.3.5 Record Keeping**

**Form 275-021-05, "Record of Supervisory and Personnel Office EEO Meeting or Individual Orientation"** can be used to document compliance.

This form and its directions are located on the **EEO Website**. Refer to **Section 1.4 Forms & Procedures**.

## **3.4 COMPANY-WIDE EEO REPORTS**

### **3.4.1 Purpose**

Chapter 4 of this CCM lists information that is needed during a Contract Compliance Review. A Contract Compliance Review involves reviewing the reasonable representation and utilization of minorities and women in each craft, classification or occupation for a project or projects in a specific area. If there is not a reasonable representation of minorities and women for the project, then a company-wide EEO report may be requested as evidence that the company's workforce is reasonably represented.

### **3.4.2 Reported Workforce**

Data is recorded in the format shown on the **Contractor's Company-Wide EEO Report Form 275-021-07**. All full-time and part-time employees who were employed in Florida during the specified payroll period must be accounted for by sex and race for each of the fifteen (15) job categories. The workforce reported includes those assigned to FDOT federally and non-federally funded highway and bridge construction projects.

### **3.4.3 Report Timeframes**

Reports should be based upon the pay period specified by FDOT or FHWA at the time of request.

### **3.4.4 FDOT Adoption of U.S. Equal Employment Opportunity Commission (EEOC) Race Codes and Job Categories**

FDOT has adopted, effective July 2009, the seven (7) category race codes and revised job categories developed by the **EEOC**.

Race codes include the following:

- 
- Two or More Races.
  - Asians.
  - Pacific Islanders
  - Black or African American.
  - Hispanic or Latino.

The Job Category “Clerical” has been renamed “Administrative Support Workers” on all related reports:

- ***Contractor Company- Wide EEO Report, Form 275-021-07***
- ***Contractor’s Project EEO Report, Form 275-010-12***
- ***FHWA 1391 (Contractor’s July Report)***
- ***Federal-Aid Highway Construction Summary, Form 275-020-01***

### **3.4.5 EEO Job Category of Classifications**

**Example 3.4.5 in the CCM Reference Guide** lists craft and labor classifications typical in highway and bridge construction. Not all of the classifications listed are routinely shown on published Wage Determinations (wage tables); many require submission of an **Additional Classification Request**.

Contractors report their workforce to FDOT on EEO Reports (***Company-wide EEO Report (275-021-07), Project EEO Report (275-010-12) and the FHWA 1391***).

On these EEO reports, the individual classifications of employees are assigned to broad EEO Job Categories. **Refer to Section 1.4, “Directory of Compliance Related Websites”** for the Forms and Procedures link to access the forms and their instructions.

The EEO category of a classification is the same regardless if the employee is a journeyman/woman, apprentice or an OJT Trainee. For example, a Rough Roller Trainee and a Rough Roller Operator would each be included in the job category of Equipment Operator.

## **3.5 CONTRACTOR RECRUITMENT PROGRAM**

### **3.5.1 Purpose**

**FHWA 1273** specifies the recruitment activities required of contractors.

Contractors operating under valid collective bargaining agreement(s) should contact the District Contract Compliance Manager(s) for guidance regarding the application of these recruitment requirements to that environment.

No provision may be included in any FDOT or Local Agency FHWA funded contract that encourages or mandates the use of local employment or local contracting. Such preferences are not allowable in contracts funded by FHWA.

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### **3.5.2 Scope of Recruitment Activities**

A contractor's collective and on-going fulfillment of the required recruitment activities is intended to produce a flow of qualified applicants of all races and sexes for employment consideration.

In addition to the recruitment related commitments contained in the adopted EEO Policy and Procedure, the following recruitment activities are required by contract:

- Announcement of Equal Opportunity
- Advertise in publications with a large minority circulation in the area where project work force is drawn
- Training of personnel involved in recruitment
- Direct and systematic recruitment programs
- Recruit through public and private referral sources
- Encourage referrals from current employees
- Analysis and updating
- Record Keeping (applicant logs)

### **3.5.3 Good Faith Efforts Required**

Compliance with the recruitment activities is evidenced by a contractor's "good faith efforts" to fulfill the contract and policy recruitment requirements and achieve the stated purpose. A contractor's total efforts, including taking corrective actions, add up to requirements for a good faith effort. Characteristics of good faith efforts include sincere, meaningful, and results oriented actions, evaluation, and redirection of redundant efforts to improve results.

### **3.5.4 Announce Equal Opportunity**

All advertisements for employment will include the announcement that the company is an "Equal Opportunity Employer." This requirement applies to broad employment advertisements as well as specific job announcements. All methods by which the contractor solicits applicants are subject to this requirement, including activities such as:

- Banners, boards or posters positioned on company vehicles, at job sites, at office locations, on billboards, bulletin boards, etc.
- Classified advertisements placed in newspapers, journals or other publications
- Job openings registered with "Employ Florida Marketplace"
- Radio and television advertisements and speeches pertaining to employment
- Written or verbal announcement of job opportunities to current employees
- Recruitment literature and fliers
- Internet communications pertaining to employment
- Business correspondence pertaining to employment opportunities

There are various styles for this required announcement; the one chosen should be the

one considered most understandable to the targeted audience. Styles include full statements (e.g. Equal Opportunity Employer, Equal Employment Opportunities, Equal Employment Opportunity/Affirmative Action Employer, Equal Opportunity/ Affirmative Action Employer) or abbreviations (e.g. EOE, EEO, EEO/AA, and EO/AA). Workforce pictures or visualizations announce equal opportunity by depicting both female and male workers of various races.

Advertisements for employment are to be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

### **3.5.5 Train Personnel Involved in Recruitment**

The contractor must ensure that personnel who are engaged in direct recruitment for the project are instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

### **3.5.6 Conduct Systematic and Direct Recruitment**

The Contractor will:

- Conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women.
- Identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and woman applicants may be referred to the contractor for employment consideration.

A systematic recruitment program is orderly, arranged, regular, and methodical. It is not hit-or-miss, haphazard, irregular or erratic. A Direct Recruitment program is straightforward and immediate, occurring without intervening persons/parties. It is not evasive or nonspecific in content, nor seeking unstated results in distant or vague timeframes.

### **3.5.7 Use Public Employee Referral Source(s)**

Public referral sources announce job opportunities to everyone; their announcements of employment opportunities are not private, secret or available only to select persons. The Employ Florida Marketplace is part of the State of Florida Agency known as the "The Florida Department of Economic Opportunity." The Employ Florida Marketplace links all of Florida's state and local workforce services and resources through partnership with the Florida Dept. of Economic Opportunity and Workforce Development. Public referral services can be found at [employflorida.com](http://employflorida.com)

Also, refer to **Section 1.4, Directory of Compliance Websites** for the address containing detailed information regarding the Employ Florida Marketplace.

Contractors are encouraged to consult the website regularly for updated information regarding that Agency and its services and to also establish business relationships with

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Career Source Florida and staff.

Compliance with use of public referral sources can reflect at least the following:

- Issuance of Job Orders stating informative data for each classification for which the contractor is hiring and/or seeking applicants. (e.g. Job Title, minimum pay rate, job site location, candidate requirements, work place conditions such as drug free, how and where to apply, announcement of EEO, etc.)
- Placement of Job Orders at Career Source locations where candidates may likely be found
- Ensuring that Job Orders are open (active) during periods in which applicants are sought
- Periodic follow up with Career Source staff regarding the referrals such as suitability, availability, volume of candidates, etc.

### **3.5.8 Development of Private Employee Referral Sources Likely to Yield Qualified Applicants**

Private employment referral sources announce job opportunities to a selected or targeted segment of the population. Private referral sources are often associated with nonprofit, social service, religious or special purpose organizations. For example, a religious organization operating a food bank for needy persons may also communicate employment opportunities to those recipients. Classified advertisements, employment agencies, and other for-profit companies, which charge candidates and/or employers a fee, are also considered private referral sources.

The employment referral methods of a private source may range from simple posting of job openings to a more comprehensive matching of constituent's abilities and needs to the specific requirements of an employer. Some private sources offer job readiness programs or other services designed to assist those they seek to serve securing employment.

Contractors identify and update private employee referral sources through an ongoing process of research and inquiry aimed at identifying those sources most likely to assist in the referral of candidates who meet hiring requirements.

While any one private referral source may yield candidates of one race and or sex, a cumulative review of referrals from private sources should reflect diversity of races and sexes.

Compliance with development of private referral sources can reflect at least the following:

- Contact and follow up with a variety of sources in various locations where the Company accepts applications and where candidates may likely be found
- Development of referral process for getting each source's referrals into the contractor's employment process

- Timely issuance of informative and specific job opening data for each classification for which the contractor is hiring and/or seeking applicants. (e.g. Job Title, minimum pay rate, job site location, candidate requirements, work place conditions such as drug free, how and where to apply, announcement of EEO, etc.)
- Ensuring that job announcements are open (active) during periods in which applicants are sought
- Regular review of results obtained from sources; addition, deletion, modification of sources and job communication methods in order to improve flow of qualified applicants

### **3.5.9 Establish Source Procedures for Referring Candidates**

Contact is to be made with public and private referral sources and effective communication methods established announcing job openings and receiving specific referrals. The mere listing of a source or mere issuance of job announcements to them does not suffice.

### **3.5.10 Encourage Referrals from Current Employees**

A contractor's current workforce is to be encouraged to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees. Referrals can be a topic in the Project EEO Meeting and it may also be communicated through bulletin board posters, payroll stuffers, special incentive programs, newsletter articles, etc.

### **3.5.11 Contractor's Recruitment Report**

Contractors can document and summarize construction craft and laborer hiring activity for one or more months on **Form 275-021-21 Contractor's Recruitment Report**. The Report is designed to facilitate auditing a contractor's recruitment program for compliance with **FHWA 1273** requirements. Primes and subcontractors are encouraged to use the form for self-assessment and redirection of their recruitment program prior to official department reviews (contract compliance reviews) where the report will also be collected.

Directions for Completing and the **Contractor's Recruitment Report Form 275-021-21** can be found in **Section 1.4 Forms & Procedures**.

### **3.5.12 Record Keeping**

Contractors are to maintain, retain, and make readily available records documenting all recruitment activities at all company locations where recruitment or hiring occurs for the Florida construction workforce. The contractor's recruitment records and associated analysis are to be well organized and ready for presentation in a manner that reflects compliance with all elements of the required compliance program.

## **3.6 NONSEGREGATED FACILITIES**

### **3.6.1 Purpose**

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Contractors are to ensure that working conditions and facilities used or provided in association with employment are not discriminatory.

### **3.6.2 Scope**

Segregated facilities, as used in this clause, includes any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of policies, written or oral, or employee custom. Separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes are not deemed segregated facilities in this context.

Segregated working conditions may be evidenced by both their physical appearance and by non-observable conditions such as values, judgments, or beliefs.

An example of physical appearance in working conditions is a sign on a break-room restricting its use to employees of a certain race.

An example of non-observable working conditions is the supervisory sharing of a value system whereby the hardest and/or most distasteful tasks of any job are assigned to employees of one race.

The voluntary association of employees should be analyzed to ensure that they do not result in segregated facilities, patterns of segregated use, or segregated access.

### **3.6.3 Inspection**

Periodic inspections of project sites are to be conducted by contractors to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

Contractors are to affirm that they do not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under their control where segregated facilities are maintained.

### **3.6.4 Record Keeping**

*Form 275-030-13, Certification of Non-segregation and Non-discrimination* may be used to document compliance for this purpose.

## **3.7 ANALYSIS FOR NONDISCRIMINATION**

### **3.7.1 Purpose**

Contractors are to evaluate recruiting, hiring, interviewing, placement, promotion, termination, and compensation practices continually for potential violation of equal

opportunity and affirmative action requirements.

Routine analysis is undertaken by the contractor to ensure a lack of discriminatory practices, confirm evidence of equal opportunity and ensure adequate and effective implementation of affirmative action.

### **3.7.2 Scope**

Each aspect of the contractor's EEO/AA Policy and Plan, including the contractor's program, has been put in place to implement that policy and plan and are to be routinely reviewed and analyzed for effectiveness and their impact on their achievement of equal opportunity and affirmative action.

This includes each element in the four parts of the compliance program (Disadvantaged Business Enterprise utilization, Equal Employment Opportunity (Company and Project), OJT Training, and Wages).

Various analytical techniques, some of which are statistical, may be appropriate. Topics pertinent to a contractor's operation should be identified and included in Nondiscrimination analyses. Suggestions include but are not limited to:

- Attendance at supervisory EEO/AA meetings and related training
- Recruitment and placement practices; review and monitor to assure no discrimination practices exist
- Applicant flow, selection of applicants, placement into positions, starting pay
- Interviewing, selection criteria and reasons actual applicants are selected or rejected for employment
- Criteria and timing of promotions and pay actions; criteria for merit basis and absence of factors which may lead to the "selection out" of employees, applicants, particular minorities or women who traditionally lack access to better jobs
- Placement of employees and crew assignments to ensure nondiscriminatory assignment of work and assembly of diverse crews
- Criteria for deciding when an employee shall be terminated demoted, disciplined, laid off or recalled; review for like treatment among all employees
- The effect of "neutral" personnel decision making criteria to determine if they have a disparate effect on minorities or females (for example if more minorities or females are being laid off because they were the last hired, then adjustments should be made to ensure that minority and female ratios do not decrease because of these actions), transportation to the job site, assignment of safety devices and tools; ensuring that employees are not intentionally or unintentionally segregated or treated differently due to race
- Performance appraisals and merit pay; review and monitor for objectivity and effectiveness
- Processing and reviewing of complaints, including discrimination; ensuring that reviews are adequate, timely and unbiased and absent of retaliation
- Employee benefits including payroll loans; review for equal availability of benefits

to all employees

- Training and career development opportunities; review for like treatment of all employees
- Analysis of career development plans for employees in lower classifications who demonstrate potential for advancement

### 3.7.3 Record Keeping

Contractors are to maintain and make available written records documenting their analysis for nondiscrimination and the good faith actions they are taking to overcome any unfavorable findings. **Form 275-030-13, Certification of Non-segregation and Non-discrimination** may be used to record a contractor's commitment to non-segregation and non-discrimination. The contractor should maintain additional records evidencing actions, inspections, reviews etc. undertaken to implement their commitment to non-segregation and nondiscrimination. The Certification of Non-segregation and Nondiscrimination is only required for contracts that include the version of **FHWA 1273 Required Contract Provisions Federal-Aid Construction Contracts** dated March 10, 1994. This certification is not required in contracts that contain the **FHWA 1273 Required Contract Provisions Federal-Aid Construction Contracts** dated May 1, 2012.

## 3.8 COMPANY EEO/AA FORMS & DOCUMENTS

This is a list of forms and documents referenced in this chapter. Refer to **Section 1.4 Directory of Compliance Websites & Address.**

### NUMERICAL SEQUENCE

FDOT Form No. <a href="#">Forms Link</a>	Document Title	Manual Section
275-021-05	Record of Supervisory and Office Personnel EEO	3.3
275-021-07	Contractor's Company Wide EEO Report	3.4
275-021-13	Notification to FDOT of EEO Officer	3.2.5
275-021-21	Contractor's Recruitment Report	3.5
275-030-13 <a href="#">FDOT Equal Opportunity Office Website</a>	Certification of Non-Segregation and Non-Discrimination EEO/AA Policy	3.6, 3.7 3.2

### ALPHABETCAL SEQUENCE

Document Title	FDOT Form No. <a href="#">Forms Link</a>	Manual Section
Certification of Non-Segregation and Non-Discrimination	275-030-13	3.6, 3.7
Contractor's Company Wide EEO Report	275-021-07	3.4
Contractor's Recruitment Report	275-021-21	3.5

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EEO/AA Policy and Plan	<a href="#">FDOT Equal Opportunity Office Website</a>	3.2
Notification to FDOT of EEO Officer	275-021-13	3.2.5
Record of Supervisory and Office Personnel EEO Meeting	275-021-05	3.3

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## CHAPTER 4: PROJECT EEO/AA REQUIREMENTS

### 4.1: GENERAL INFORMATION

#### 4.1.1 Purpose

The prime contractor and subcontractors on construction projects are subject to various requirements regarding EEO/AA. Project EEO/AA requirements are specific to one project.

#### 4.1.2 Scope

*Refer to Manual Section 1.7, "Compliance Requirement Summary"* for an overview of Project EEO/AA Requirements. Additional sections in **Chapter 4** provide details regarding each Project EEO/AA element. This section covers the project EEO requirements.

### 4.2 JOB SITE BULLETIN BOARD

#### 4.2.1 Purpose

Prime contractors are responsible for the job site installation and maintenance of a fixture for the display of information on various rights, protections and appeals to all workers and the public. The phrase "job site bulletin board" includes the fixture and its contents.

#### 4.2.2 Location

The job site bulletin board will be in a prominent, safe, maintained accessible site within the limits of the project. This site will be readily and safely accessible to the employees of every contractor on the project; walk up access to the display area will be maintained. Over the course of the project, work conditions may necessitate relocation of the bulletin board.

The number of boards may be dependent on the length of the project and whether there is a central location for workers to report. Multiple boards must be maintained consistently.

Placement of the job site bulletin board outside of project limits requires prior approval of the District Contract Compliance Manager.

#### 4.2.3 Timeframe

~~The job site bulletin board will be in place during the life of a project while there are workers on the project.~~ The Job Site Bulletin Board is not to be removed until the job is final accepted. Workers may not be on the project and the job may be presumed complete yet additional findings may cause them to return to the project for additional work.

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<b>Installed</b>	<b>Removed</b>
<b>On or before workers first appear at the project.</b>	<b>When workers are no longer on the project.</b>
<b>This is usually the project begin work date</b>	<b>This is usually the project conditional or final acceptance date</b>

#### **4.2.4 Fixture**

The prime contractor determines the size and style of the fixture. There is no minimum required display space or standard style. The size of the posting area, however, should be sufficient to allow for single layout (versus overlap) of documents. The fixture may be ready-built or custom made. **Example 4-2-10** contains Project Site Bulletin Board Sample Layouts and Dimensions.

A clear, break-resistant protective cover should be placed over the documents to minimize fading, water damage, and vandalism. Document covers, which are easily removable, facilitate document changes and the replacement of damaged covers will be used.

#### **4.2.5 Content**

Posters are required by different authorities. A summary of the job site bulletin board is shown in **Table 4.2.5**. Contractors are encouraged to display where feasible the non-English versions of the posters.

**Table 4.2.5  
 Content of Job Site Bulletin Boards**

<b>Authority</b>	<b>Required Poster</b>
FHWA 1273	Notice of Federal-aid project (FHWA-1022)
FHWA 1273	Employee Rights under the <b>Davis-Bacon Act</b>
FHWA 1273	Wage Determination Appeal Process
FHWA 1273	EEO Policy & Officer
FHWA 1273	Wage Rate Decisions
FHWA 1273	Additional Wage Determinations
U.S. Equal Employment Opportunity Commission	EEO is The Law
Required by Executive Order 11246, as amended by Executive Order 13665 (April 8, 2014)	"EEO is the Law" Supplement Poster
Florida Commission on Human Relations	Florida Law Prohibits Discrimination
U.S. Department of Labor	Employee Rights & Responsibilities under Family & Medical Leave Act
U.S. Department of Labor	OSHA: Safe and Healthful Workplace Rights
U.S. Department of Labor	Employee Polygraph Protection
The American Recovery and Reinvestment Act of 2009	Whistleblower Know Your Rights (Required for ARRA projects only)

The completion and maintenance of data on project specific posters is the prime's responsibility. Lamination or plastic page protectors are recommended for each document.

There are three (3) nonstandard bulletin board documents that are customized to the project: (a) EEO Policy and Officer's name and contact information, (b) the prevailing wage table(s) for the project, and (c) additional wage decisions obtained for the project. Each of these documents may be more than one-page long.

**Refer to Section 1.4, "Directory of Compliance Related Websites"** for the FDOT Equal Opportunity Office website where the posters are available for downloading. Several of these posters are also available from other organizations in different sizes, formats and languages.

Contractors are advised that the USDOL and other federal, state, or local government agencies may require employers to post additional documents at their offices and/or work sites.

The job site bulletin board may also be used to display other documents of general relevance to the project and its employees such as environmental permits, worker's compensation rights, safety, etc.

#### 4.2.6 Poster of EEO Policy and Officer

A sample poster of the EEO Policy and Officers has been developed for the contractor's use (**Form 275-020-28**). It includes a brief statement of the EEO Policy adopted by the contractors, advises that the policy may be obtained by contacting the companies, and identifies to workers the EEO Officer for the prime and each subcontractor having a subcontract of \$10,000 or more. The EEO Officer information is to be kept up-to date during the term of the project.

#### 4.2.7 Wage Rate Decision Poster(s)

General Wage Determinations (also known as "wage tables" and/or "wage rate decisions") are documents issued by the USDOL stating the minimum hourly rate (and fringe benefit rate if applicable) for individual job classifications for a specified type of work within specified county(ies) of the project.

The contract document section titled "**Wage Rates For Federal-Aid Projects**" cites the specific wage rate decision number(s) and states that the version of the wage rate decision in effect is the one whose "modification date" is ten or more days prior to the opening of bids (also known as the contract letting date). Some contracts may state more than one wage rate decision number; each wage rate decision is posted. Wage decisions should be posted exactly as downloaded.

Refer to ~~Manual Section 1.4 Directory of Compliance Related Websites for the U.S. Department of Labor website where the wage rate decisions are available for downloading-executed contract for applicable Wage Determinations.~~

#### 4.2.8 Additional Federal Wage Decisions Poster

**Additional Federal Wage Rate Decisions poster (Form 700-010-67)** records the minimum hourly rate (and fringe benefit rate if applicable) for each additional job classification requested on the project. It includes the decisions obtained by all contractors on the project and it is to be maintained during the term of the project. This poster eliminates the need to post individual U.S. Department of Labor wage rate decision letters.

The prime contractor is responsible for completing this form for the project and posting it on the jobsite bulletin board. **Refer to Section 1.4, "Directory of Compliance Related Websites"** for the Forms & Procedures link to access the form and its instructions.

#### 4.2.9 Wage Determination Appeals Poster

Information on how to file an appeal to a wage decision is included at the end of each wage rate decision. This information has been recreated as a separate poster. When the

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poster is displayed; the appeal information may be deleted from the individually posted wage rate decisions.

#### **4.2.10 Inspecting Bulletin Board Content and Condition**

Periodic inspections of the job site bulletin board are performed during the term of the project. Content and condition factors are reflected in the FDOT form titled ***“Inspection Report for Job Site Bulletin Board (Form 275-021-10).”***

**Example 4-2-10  
 Job Site Bulletin Boards: Sample Layouts & Dimensions**

**Example 1: Project with Multiple Wage Decisions**

The following layout requires a minimum display space 48" wide and 48" high. Documents are displayed in four rows with each of the five standard posters placed on the top row. One-half inch is allowed around each side of the document. This sample shows two wage decisions (Highway and Heavy) each with two pages. There is space for at least five optional documents. The wide bold lines denote the actual bulletin board posting space.

←BOARD WIDTH: 48"→						
↑ <b>BOARD                      HEIGHT:                      48                      INCHES</b> ↓	STANDARD POSTERS→	EEO IS THE LAW & SUPPLEMENT	FL LAW PROHIBITS DISCRIMINATION	NOTICE	EMPLOYEE RIGHTS UNDER DAVIS-BACON	WAGE DETERMINATION APPEALS
	PROJECT SPECIFIC→ POSTERS	POSTER OF EEO POLICY & OFFICERS PG 1	POSTER OF EEO POLICY & OFFICERS PG 2	HIGHWAY DECISION PG 1	HIGHWAY DECISION PG 2	ADDITIONAL DECISIONS (FDOT FORM) PG 1
	PROJECT SPECIFIC→ POSTERS	HEAVY DECISION PG 1	HEAVY DECISION PG 2	WATER SEWER DECISION PG 1	WATER SEWER DECISION PG 2	WHISTLE BLOWERS (ARRA PROJECTS ONLY)
	U.S.DOL POSTERS→	EMPLOYEE RIGHTS/RESP FAMILY & MEDICAL LEAVE	OSHA SAFE & HEALTHFUL WORKPLACE	EMPLOYEE POLYGRAPH PROTECTION		

**Example 2: Project with One Wage Decision**

The following layout requires a display space 48" wide and 36" high (or 48" on ARRA funded projects). Documents are displayed in three rows with each of the five standard posters placed on the top row. One-half inch is allowed around each side of the document. The sample shows one wage decision on two pages. There is space for at least five optional documents. The wide bold lines denote the actual bulletin board posting space.

←BOARD WIDTH: 48"→						
↑ <b>BOARD                      HEIGHT:                      36                      INCHES</b> ↓	STANDARD POSTERS→	EEO IS THE LAW & SUPPLEMENT	FL LAW PROHIBITS DISCRIMINATION	NOTICE	EMPLOYEE RIGHTS UNDER DAVIS-BACON	WAGE DETERMINATION APPEALS
	PROJECT SPECIFIC→ POSTERS	POSTER OF EEO POLICY & OFFICERS PG 1	POSTER OF EEO POLICY & OFFICERS PG 2	HIGHWAY DECISION PG 1	HIGHWAY DECISION PG 2	ADDITIONAL DECISIONS (FDOT FORM) PG 1
	U.S.DOL POSTERS→	EMPLOYEE RIGHTS/RESP FAMILY & MEDICAL LEAVE	OSHA SAFE & HEALTHFUL WORKPLACE	EMPLOYEE POLYGRAPH PROTECTION		WHISTLE BLOWERS (ARRA PROJECTS ONLY)

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## 4.3 EEO INFORMATION FOR ~~PROJECT~~ PERSONNEL

### 4.3.1 Purpose

Contractors will routinely inform ~~their project~~ employees of their EEO civil rights, contractor's policies, procedures, and various wage/payroll protections. This information is presented in meetings, and through other appropriate means such as employee handbooks, notices, and posters.

### 4.3.2 Means of Communication

Contractors may present information to ~~project~~ personnel regarding the EEO policy and procedures in one or more of a variety of means:

- Issuance of employee handbooks that include the EEO policy and procedure
- Placement of notices or posters describing the EEO policy and procedure
- Conducting meetings describing the EEO policy and procedures
- Other communication methods.

In selecting communication methods, contractors are encouraged to consider the rapidity with which their workforce turns over, the primary and secondary language of project personnel, average reading levels of personnel, and any need for addressing project specific information, such as wage rates and job site bulletin boards, etc.

### 4.3.3 Who is Included in ~~Project~~ Contractor Personnel

~~Project~~ Contractor personnel include all of the contractors' full time and part time craft and laborer employees working on the project. Temporary workers and workers from a staffing firm who are working as craft or laborer employees for the contractor are considered project personnel and communications are to be extended to them.

Persons classified as journeymen/women, OJT trainees and apprentices and working foremen/women in any of the following job categories are included in the meeting:

equipment operators	mechanics	truck drivers
ironworkers	carpenters	cement masons
electricians	pipe fitters/plumbers	painters
semi-skilled laborers	unskilled laborers	

### 4.3.4 ~~Project~~ Personnel EEO Meetings

Informational meetings conducted at the project site have served as the traditional means of communicating EEO policy and procedure information to ~~project~~ personnel. The meeting leader will be the person who is knowledgeable in the topics to be addressed and who has attended their company's most recent Supervisory and Office Personnel EEO Meeting.

The following major topics are addressed at a **Project EEO Meeting**:

- EEO Policy and Affirmative Action Plan
- Identification of EEO Officer
- Workforce Diversity and Recruitment
- Wages and Payrolls
- Location & Content of Bulletin Boards
- Interviews by State and Federal Representatives
- Training Opportunities
- Complaints
- Utilization of Disadvantaged Businesses

Meeting leaders are encouraged to develop an outline of subjects that will typically be covered in each of the topics; this can form the foundation for the contractor's development of full meeting scripts and fosters full coverage of each topic.

#### **4.3.5 Recordkeeping**

Contractors are to maintain records evidencing compliance with EEO communication requirements for all employees. **Form 275-021-06, Record of Project EEO Meeting**, may be used to document project personnel communications by means of meetings or alternative record keeping methods for other types of communications may be developed. Records should document changes in the contractors' workforce.

**Refer to Section 1.4, "Directory of Compliance Related Websites"** for the Forms & Procedures link to access the form and its instructions.

## **4.4 ANNUAL JULY EEO REPORT**

### **4.4.1 Purpose**

Annually, the Federal Highway Administration (FHWA) submits a report on the status of the Equal Employment Opportunity program to the U.S. Senate. July is the reporting period due to generally good weather nationwide. FDOT creates one cumulative report from the individual contractor reports. This represents the total employment on all Federal-Aid highway projects in Florida as of July 31 and the report is therefore known as the **"July Report."**

### **4.4.2 Scope**

All FDOT construction projects active in July that receive Federal-Aid participation (FAP) are included in Florida's July Report. All construction contractors having a contract of \$10,000 or more and who were active one or more days between July 1 and July 31 prepare a report.

### 4.4.3 Content

All full-time and part-time employees employed on the specific FAP project during the selected July pay period must be accounted for by sex and race for each of the fifteen job categories. Note that Officials (Managers), Supervisors, Foremen/women and Clerical who are assigned primarily to the project are included in this report.

Employment data is reported on the Contractor's Annual FHWA 1391 Report.

### 4.4.4 Pay Period Reported

Employment data is collected for a very specific time frame. The contractor's report is based on their final July pay period which is the last active pay week which falls fully within July. (The report is not based on the contractor's peak week of employment during the month of July.)

The pay period on which a contractor's report is based must fall fully in July; the pay period must have start and end dates between July 1 and July 31.

Selecting which pay period to base the report on depends on the contractor's activity during July.

If the Contractor is	Base the July Report on
Both active and inactive during July	The last pay period (*) that falls fully within July for which they were active on the project.
Active throughout July	The last pay period (*) that falls fully within July.
Inactive between July 1-31	No report is required.
*The pay period must have start and end dates between July 1 and July 31.	

### 4.4.5 Report Submission

On or before August 20, contractors submit the Contractor's Annual FHWA 1391 Report data by submitting a copy of the completed form to the Resident Compliance Specialist (RCS) of that project.

### 4.4.6 Florida's July Report Cycle

Contractor reports are compiled into project reports (including Local Agency project reports); project reports are compiled into District reports; District reports are compiled into the State report.

Timely submission of data on the proper form is essential to both meeting FHWA's deadline and FDOT statistical analysis to determine parity. **Table 4.4.6.1** summarizes Florida's July Report Cycle and report due dates. In the event a due date falls on a Saturday or Sunday, that report is due on the preceding Friday.

**Table 4.4.6.1: Florida’s July Report Cycle**

<u>Who is Reporting?</u>	<u>What is the FDOT form Number reported on?</u>	<u>Name of Form:</u>	<u>What data is reported?</u>	<u>What is the Due Date* (Or preceding Friday if date is a Saturday or Sunday?)</u>	<u>Who is the report sent to?</u>
Contractors (contract of \$10,000 or more)  (Includes contractors on Local Agency Projects)	N/A	FHWA 1391	Contractor’s workforce on a project per the last active week falling fully in July	Aug 20	Compliance Specialist
Resident and Local Agency Compliance Specialists	275-020-01 or FHWA 1391	“Federal-Aid Projects: Summary Employment Data for July” or FHWA 1391	Project total workforce (sum of all contractor reports for a project)	Sept. 1	District Contract Compliance Office
District Contract Compliance Office	N/A	Electronic submission of Federal-Aid FHWA 1392 Data	District Project Total Workforce one Report, Sum of LAP & regular work program	Sept. 8	State Contract Compliance Administrator, FDOT Equal Opportunity Office
FDOT Equal Opportunity Office	N/A	FHWA Form 1392, Federal-Aid Highway Construction, Summary of Employment Data thru FHWA Civil Rights Connect System	LAP & regular work program Statewide Total for of all Districts	Sept. 15	FL FHWA Civil Rights Specialist

**Refer to Section 1.4, “Directory of Compliance Related Websites”** for the Forms & Procedures link to access the form and its instructions.

See below Table 4.4.7 for race and gender abbreviations. If race and gender are not provided on the payroll, then the contractor shall maintain records that document the race and gender of every covered worker and shall provide them upon request to the Department.

<b>Table 4.4.7 Race and Gender Abbreviations</b>	
<u>Gender &amp; Race Categories</u>	<u>Accepted Abbreviations for FDOT Reporting Purposes</u>
<u>Male</u>	<u>Male</u> <u>M</u>
<u>Female</u>	<u>Female</u> <u>F</u> <u>Fem</u>
<u>White ( Not of Hispanic Origin)</u>	<u>White</u> <u>W</u> <u>Wh</u> <u>C</u> <u>Ca</u>
<u>Black ( Not of Hispanic Origin)</u>	<u>Black</u> <u>B</u> <u>Bl</u>
<u>Hispanic</u>	<u>Hispanic</u> <u>H</u> <u>Hisp</u>
<u>American Indian or Alaskan Native</u>	<u>American Indian or Alaskan Native,</u> <u>AI-AN</u> <u>Amer Ind -Ala Nat</u>
<u>Asian</u>	<u>Asian</u> <u>As</u>
<u>Native Hawaiian or Other Pacific Islander</u>	<u>Native Hawaiian or Other Pacific Islander</u> <u>Nat Hi/PI</u> <u>HI/PI</u> <u>HI-PI</u>
<u>Two or More Races( not of Hispanic origin)</u>	<u>Two or More Races</u> <u>Two/More</u> <u>2+</u>

## 4.5 TRAINING ASSESSMENTS

### 4.5.1 Purpose

To assess the level of experience and comprehension of a Contractor's Compliance Staff with the requirements of FHWA 1273 for Federal-Aid contracts. The training assessment is to identify areas where the Compliance Staff or Contractor may need additional training

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and may be used as a factor in determining the schedule for official Contract Compliance Reviews as described in Section 4.6.

#### **4.5.2 Training Assessment Meeting**

The RCS or District EEO Compliance personnel will meet with the designated compliance staff of the Prime Contractor on every federally funded contract ~~at the preconstruction meeting or Contractor's location~~ to conduct a training assessment. ~~An assessment may be conducted via teleconference only in the event of out of state Compliance Staff or by written request to the Central Office EEO Compliance Administrator.~~ In addition, a training assessment will be conducted for all new prime contractors and may also be conducted with Subcontractors and relevant compliance staff.

The DCCM can waive the assessment on the prime contractor if the Contractor has received a 90% rating on previous assessments or were found to be in substantial compliance, as determined by a DCCM, during a compliance review. The training assessments and compliance reviews used in this determination must have been conducted within the last three (3) years. The DCCM should consider when making the determination to waive an assessment, the contractor's staff from District to District to ~~insureensure~~ training in the requirements of FHWA-1273 is consistent throughout the contractor's workforce. This will ~~insureensure~~ training is provided where needed.

#### **4.5.3 Federal-Aid EEO Checklist**

Part A of the Federal-aid EEO Checklist found in Chapter 4 of the CCM Reference Guide will be completed during the training assessment meeting. Part B is to be completed during an on-site review of the job site. During the on-site review, the bulletin board should be reviewed and five (5) employees should be interviewed if available. After all the questions have been marked, the RCS will add up the number of boxes marked yes and divide by the total number of questions. The resulting percentage will be entered at the bottom of the Checklist.

#### **4.5.4 Training Schedule**

The DCCM can provide the additional training to the Contractor based on the assessment results. The training schedule will identify the areas that need training along with the time and place of the training being provided. The training can be provided individually or in a group setting.

#### **4.5.5 Follow up Assessment Meeting**

If necessary, the DCCM will conduct a follow up assessment meeting after the training has been provided and can revise/update the Federal-aid EEO Checklist.

#### **4.5.6 Database for Checklist**

When the Federal-Aid EEO checklist has been completed, the DCCM will enter the results of the checklist (the rating percentage) in the Contract Compliance database along with

other required information, such as the company being assessed, the date, person conducting the assessment, etc., within five (5) working days of completing the assessment.

## **4.6 PROJECT CONTRACT COMPLIANCE REVIEWS**

### **4.6.1 Purpose**

The Federal Highway Administration (FHWA) requires FDOT as a contracting agency to assure compliance of contractors with the requirements of Federal-Aid construction contracts including the EEO, DBE and OJT requirements.

The following procedural steps have been taken from **23 C.F.R. Part 230.409** and modified for this procedure. The definitions in **23 C.F.R. Part 230.407** are incorporated by reference.

### **4.6.2 Review Scheduling**

Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor's workforces:

1. Which hold the greatest potential for employment and promotion of minorities and females (particularly in higher skilled crafts or occupations);
2. Working in areas that have significant minority and female labor forces within a reasonable recruitment area;
3. Working on projects that include training special provisions;
4. Where the contractor's compliance with Equal Opportunity is questionable based on a review of employment data, previous compliance reviews, on-site visits, and certified payrolls;
5. Where there is evidence that the contractor may have engaged in, or tolerated alleged discriminatory practices.

In addition, the following considerations shall apply:

1. Reviews requested by FHWA shall receive priority scheduling;
2. Contractors with an overall training assessment rating below 80% shall receive priority scheduling;
3. Where practicable, a review should be conducted prior to or during peak employment periods;
4. Do not review a home office workforce of less than 15 employees unless requested and approved by FHWA headquarters Office of Civil Rights;

5. Do not review a contractor that has completed or fulfilled his work on the project and has been paid in full for his participation except for the retainage allowed to be held by the prime.

For compliance reviews based on an area workforce, the DCCO shall define the applicable geographical area by considering the following:

1. Union geographical boundaries;
2. The geographical area from which the contractor recruits their employees, i.e., reasonable recruitment area;
3. SMSA or census tracts; and
4. The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

#### 4.6.3 Contractor Notification

The DCCO should provide written notification to the contractor of the pending compliance review at least two (2) weeks prior to the scheduled on-site review. This notification shall include the purpose, scope, date, and time of the review. The notice should include the contractor's responsibility for providing pertinent documentation and information as requested, an outline of the mechanics and basis of the review, requisite interviews, and documents required.

The contractor shall be requested to supply to the DCCO prior to the onsite verification and interviews the following information:

1. Current EEO Report developed from the most recent payroll;
2. Copies of purchase orders and subcontracts containing the EEO clause;
3. Copies of all current bargaining agreements;
- ~~4.~~ A list of recruitment sources available and utilized;
- ~~4.~~
5. A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC), FCHR, any local agency, or internally regarding the contractor or from present or past employees;
- ~~5-6.~~ A list of promotions made during the past six (6) months, to include race, national origin, sex of employee, previous job held, job promoted into, and corresponding wage rates;
- ~~6-7.~~ A certified payroll to show job categories, race, sex and date of hire;
- ~~7-8.~~ A list of minority-owned or female-owned companies contacted as possible subcontractors, vendors, material suppliers, etc.;
- ~~8-9.~~ EEO Policy Statement and DBE Affirmative Action Plan; and

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~~9.10.~~ Any other necessary documents or statements requested by the DCCO for review prior to the actual onsite visit.

For a project review, the DCCO shall hold the prime contractor responsible for ensuring that all active subcontractors are present at the on-site meeting and have supplied the required documentation.

#### **4.6.4 Preliminary Analysis and Initial Meeting**

Before the onsite verification and interviews, the DCCO shall analyze the employment patterns, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to:

1. The contractor's current workforce;
2. The contractor's relationship with referral sources, e.g., unions, employment agencies, community action agencies, minority and female organizations, etc.;
3. The minority and female representation of sources;
4. The availability of minorities and females with requisite skills in a reasonable recruitment area based on U.S. Census data or U.S. Department of Labor Statistics;
5. Any pending EEOC, FCHR, Department of Justice cases or local cases which are relevant to the contractor; and
6. The related project (and/or contractor) file to obtain current information relating to the status of the contractor's project(s), value, scheduled duration, written corrective action plans, EEO Reports, training requirements, previous compliance reviews, certification of payment to subcontractors, information submitted in the Equal Opportunity Reporting System, and other pertinent correspondence and/or reports.

The review must include at least one (1) construction site visit. During this meeting with the contractor, the following topics shall be discussed during the visit:

1. The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and
2. Arrangements for the site tour and employee interviews. The initial meeting may be held at any appropriate location convenient to the review area and agreed upon by the contractor.

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#### **4.6.5 Onsite Verification and Interviews**

After the initial meeting and preliminary analysis, the DCCO shall make a physical tour of the employment site(s) to determine that:

1. EEO posters are displayed in conspicuous places in a legible fashion;
2. Supervisory and personnel office employees have been oriented to the contractor's EEO commitments;
3. The employee referral source system is being implemented;
4. Reported employment data is accurate;
5. Meetings or other methods of communication have been used to disseminate the EEO policy particularly new employees; and
6. Employees are aware of their right to file complaints of discrimination.

The DCCO shall:

1. Interview at least one (1) minority, one (1) non-minority, and one (1) female in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.
2. Determine the union membership status of union employees on the site (e.g. whether they have permits, membership cards, or books, and in what category they are classified [e.g., A, B, or C] based on a sampling of the organization's members.)
3. Determine the method utilized to place employee's OJT and whether equal opportunity requirements have been followed.
4. Verify that all DBE subcontractor payments entered into the Equal Opportunity Reporting System are accurate and up-to-date.
5. Assurance of Prompt Payment- The 30-day time period for payment is required at every tier (49 CFR 26.29 (a)). A contract provision must exist in every contract that requires contractors and subcontractors to pay for satisfactory performance of their contract (completion and acceptance) no later than 30 days from their receipt of payment. The RCS should obtain copies of the contractor's last two "Certification Disbursement of Previous Periodic Payment to Subcontractors" (Form 700-010-38). These forms can be pulled from the Electronic Document Management System (EDMS). Verify proof that payment was made to subcontractor within 30 days of receiving payment from FDOT. Proof can be in the form of canceled check or receipt of payment. This includes all subcontractor or material suppliers. Subcontractors should also pay lower tier subs within 30 days of receiving their payment from the prime and so forth. The previous two month's Certifications (Form 700-010-38), should be verified. (Make sure that at least one DBE and one non-

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DBE is a part of this Certification review, if applicable. Submit any and all deficiencies found in this section to FDOT's State Construction Compliance Manager for action.

6. Request any other documentation deemed necessary to ensure contractor compliance.

The DCCO shall make the following determinations in the review report:

1. Is there reasonable representation and utilization of minorities and females in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and females?
2. What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?
3. Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and females?
4. Is there impartiality in treatment of minorities and females?
5. Are affirmative action measures of an isolated nature or are they continuing?
6. Have the contractor's efforts produced results?
7. The DCCO should interview or survey subcontractors to determine compliance with prompt payment requirements.

The DCCO should determine if the contractor is complying with its DBE Affirmative Action Plan by the following:

1. What is the contractor's DBE utilization?
2. Does the contractor have bid files and efforts of documentation to solicit quotes from DBEs?
3. What are the duties of the DBE Officer?

#### **4.6.6 Exit Conference**

Before concluding the review process, the DCCO should schedule an exit conference with the contractor. The following topics shall be discussed: Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

1. The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews);
2. Any other matters that could be resolved before concluding the onsite portion of the review.

Voluntary corrective action plans may be negotiated at the exit conference.

The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of noncompliance, particularly if deficiencies not addressed by the plan are uncovered during the final analysis and report writing. A voluntary corrective action plan should be accepted with the understanding that it only addresses those problems uncovered prior to the exit conference.

#### **4.6.7 Compliance Determinations**

Based on information obtained through the compliance review, the DCCO conducting the review shall determine the contractor's compliance or noncompliance with contractual provisions and include written documentation to support the review findings.

The compliance determination will include consideration of the contractor's efforts in the following areas:

1. The contractor's EEO policy;
2. Dissemination of the policy and education of supervisory and personnel office employees concerning their responsibilities in implementing the EEO policy;
3. The authority and responsibilities of the EEO officer;
4. The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;
5. The extent of utilizing minorities and females in training programs;
6. The contractor's review of personnel actions to ensure equal employment opportunities;
7. The contractor's participation in training;
8. The contractor's relationship (if any) with unions and minority and female union membership;
9. The contractor's procedures for monitoring subcontractors' utilization of minorities and females in the subcontractors' workforces;
10. The adequacy of the contractor's records and reports.

A contractor shall be considered to be in compliance when the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to achieve this goal shall be

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result-oriented, initiated and maintained in good faith, and emphasized as any other vital management function.

A contractor shall be considered not to be in compliance when:

1. The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment; or
2. The contractor fails to provide evidence of every good faith effort to provide equal opportunity.

#### **4.6.8 Show Cause Procedures**

Once the onsite verification and exit conference have been completed and a compliance determination has been made, the contractor shall be notified in writing of the compliance determination. This written notification shall be sent to the contractor within 15 days following the completion of the onsite verification and exit conference. If a contractor is found to be in noncompliance, efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice. The notice shall advise the contractor to show cause within thirty (30) days why sanctions should not be imposed. The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause process.

A show cause notice must be issued when a determination of noncompliance is made based upon:

1. The findings of a compliance review; or
2. The results of an investigation that verifies the existence of discrimination.

Show cause notices will normally be issued to federally assisted contractors when a Department has made a determination of noncompliance, or when FHWA has made such a determination and has requested the State to issue the notice when circumstances warrant. FHWA may exercise primary compliance responsibility by issuing the notice directly to the contractor.

The show cause notice must:

1. Notify the contractor of the determination of noncompliance and provide the basis for the determination of noncompliance;
2. Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;
3. Schedule (date, time, and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;

4. Advise the contractor that the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies;
5. Advise the contractor of the availability and willingness of the DCCO to conciliate within the time limits of the show cause notice.

In preparing and processing the show cause notice, the DCCO shall:

1. Develop complete background data for the issuance of the show cause notice.
2. Forward the background data and the final draft notice for review by the General Counsel's Office and provide the EOO with a copy of the correspondence.
3. Deliver the notice to the contractor by personal service, certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.
4. Issue the 30-day show cause notice directly to the noncompliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.
5. Ensure the show cause is issued by the DCCM.

Conciliation efforts during show cause period:

1. The DCCM is required to attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts shall be directed toward correcting contractor program deficiencies and initiating corrective action that will maintain and ensure equal opportunity. Records shall be maintained in case files indicating actions and reactions of the contractor, a brief synopsis of any meetings with the contractor, notes on oral communication and written correspondence, requests for assistance or interpretations, and other relevant matters.
2. In instances where a contractor is determined to be in compliance after a show cause notice has been issued, the show cause notice will be rescinded and the contractor formally notified of compliance.

#### **4.6.9 Corrective Action Plans**

The following procedural steps have been taken from **23 C.F.R. Part 230.409** and modified for this procedure. The definitions in **23 C.F.R. Part 230.407** are incorporated by reference.

1. When a contractor is required to show cause and the deficiencies cannot be corrected within the 30-day show cause period, a written corrective action plan may be accepted. The written corrective action plan shall specify clear unequivocal action by the contractor with time limits for completion. Token actions to correct cited deficiencies will not be accepted.
2. When a contractor submits an acceptable written corrective action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports.
3. When an acceptable corrective action plan is not agreed upon and the contractor does not otherwise show cause as required, a recommendation to withhold funds should be made to the DCE.
4. When a contractor, after having submitted an acceptable corrective action plan and being determined in compliance is subsequently determined to be in noncompliance based upon the contractor's failure to implement the corrective action plan, a recommendation to withhold funds should be made to the DCE. There are no provisions for reinstating a show cause notice.
5. When a contractor operating under an acceptable corrective action plan carries out the provisions of the corrective action plan but the actions do not result in the necessary changes, the corrective action plan shall be immediately amended through negotiations. If, the contractor refuses to amend the corrective action plan appropriately, a recommendation to withhold the monthly estimate for the project should be made to the DCE.
6. A contractor operating under an approved voluntary corrective action plan entered into prior to the issuance of a show cause must be issued a 30-day show cause notice when it fails to implement an approved corrective action plan or the agreed upon corrective actions fail to result in necessary changes.

#### **4.6.10 Follow-up Reviews**

A follow-up review is an extension of the initial review process to verify the contractor's performance of corrective action and to validate progress report information. Therefore, follow-up reviews shall only be conducted on those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

Follow-up reviews shall be reported as a narrative summary referencing the initial review report. The report will assess the adequacy of the contractor's corrective actions in addressing any deficiency.

#### **4.6.11 Review Reports**

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The DCCO shall maintain detailed notes from the beginning of the review on which a comprehensive compliance review report can be developed.

The completed compliance review report shall contain documentary evidence to support the determination of a contractor or subcontractor's compliance status. The report must be submitted within 15 days of completion of the review to the EOO.

Findings, conclusions, and recommendations shall be explicitly stated and supported by documentary evidence.

The compliance review report must be completed on **Form 275-021-09, Compliance Data Report**, and contain the following information:

1. Complete name and address of contractor.
2. Project(s) identification.
3. Basis for the review, i.e. area workforce or project workforce.
4. Identification of federal or federal-aid contract(s).
5. Date of review.
6. Employment data by job craft, classification, or occupation by race and gender. This data must be verified during the onsite.
7. Identification of local unions involved with contractor, when applicable.
8. Determination of compliance status: compliance or noncompliance. The determination of compliance should include documentation to support the findings for each standard on the **Compliance Data Report**.
9. Copy of show cause notice or compliance notification sent to contractor.
10. Name and title of the staff who conducted the review.

Each contractor (a joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor. Each review level is responsible for ensuring that required information is contained in the report.

When a project review is conducted, the project workforce must be reported. During an area wide review (all federal-aid or federal projects in an area), area wide workforce must be reported.

#### **4.6.12 Reported Workforce**

Data is recorded in the format shown on the **Project EEO Report (Form 275-010-12)**.

All full-time and part-time construction craft and laborer employees working on the project during the specified payroll period must be accounted for by sex and race for each of the

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fifteen (15) job categories. Classifications are recorded in the same EEO categories as those used for the **Company EEO Report (Form 275-021-07)**. Refer to **Section 3.4** and **Example 3.4.5** for the **EEO Job Category of Classifications**.

Employees working in more than one job classification during the pay period are to be included in the one EEO category associated with the majority of their project work hours.

If the contractor has employed an agency for supplying job site workers, the agency's workers are included in that contractor's Project EEO Report if they are OJT the week reported.

#### **4.6.13 Pay Period Reported**

The Project EEO Report is based on a single weekly pay period and that period is specified by FDOT or FHWA at the time of request.

Directions for completing the **Project EEO Report Form 275-010-12** can be found in **Section 1.4 Directory of Compliance Websites & Addresses, Forms and Procedures**.

### **4.7 PROJECT EEO FORMS & DOCUMENTS**

This is a list of forms and documents referenced in this chapter that are listed in numerical sequence and alphabetical order.

Refer to **Section 1.4 Directory of Compliance Websites & Addresses**.

<b>NUMERICAL SEQUENCE</b>		
<b>FDOT Form No.</b>	<b>Document Title</b>	<b>Manual Section</b>
275-010-12	Contractor's Project EEO Report	4.5
275-020-01	Federal-Aid Projects: Summary Employment Data for July	n-a
275-020-28	Poster of EEO Policy and Officers	4.2
275-021-06	Project Personnel EEO Meeting Record	4.3
275-021-10	Inspection Report for Job Site Bulletin Board	4.2
700-010-67	Additional Federal Wage Rate Decisions	4.2
FDOT Equal Opportunity Office Website	EEO Is the Law (Poster)	4.2
FDOT Equal Opportunity Office Website	Employee Rights & Responsibilities Under the Family & Medical Leave Act (Poster)	4.2
FDOT Equal Opportunity Office Website	E-Verify	4.2
FDOT Equal Opportunity Office Website	Florida Law Prohibits Discrimination (Poster)	4.2
FDOT Equal Opportunity Office Website	Important (Poster)	4.2
FDOT Equal Opportunity Office Website	Job Safety & Health It's the Law (OSHA) (Poster)	4.2
FDOT Equal Opportunity Office Website	Notice Employee Polygraph Protection (Poster)	4.2
FDOT Equal Opportunity Office Website	Notice –FHWA Highway Construction (Poster)	4.2
FDOT Equal Opportunity Office Website	Wage Determination Appeal Process (Poster)	4.2
FDOT Equal Opportunity Office Website	Whistleblowers Know Your Rights (Poster-ARRA projects only)	4.2

<b>ALPHABETICAL SEQUENCE</b>		
<b>Document Title</b>	<b>FDOT Form No.</b>	<b>Manual Section</b>
Additional Federal Wage Rate Decisions	700-010-67	4.2
Contractor's Project EEO Report	275-010-12	4.5
EEO Is the Law (Poster)	FDOT Equal Opportunity Office Website	4.2
Employee Rights & Responsibilities Under the Family & Medical Leave Act (Poster)	FDOT Equal Opportunity Office Website	4.2
Federal-Aid Projects: Summary Employment Data for July	275-020-01	4.4
Florida Law Prohibits Discrimination (Poster)	FDOT Equal Opportunity Office Website	4.2
Important (Poster)	FDOT Equal Opportunity Office Website	4.2
Inspection Report for Job Site Bulletin Board	275-021-10	4.2
Job Safety & Health It's the Law (OSHA) (Poster)	FDOT Equal Opportunity Office Website	4.2
Notice Employee Polygraph Protection (Poster)	FDOT Equal Opportunity Office Website	4.2
Notice –FHWA Highway Construction(Poster)	FDOT Equal Opportunity Office Website	4.2
Poster of EEO Policy and Officers	275-020-28	4.2
Project Personnel EEO Meeting Record	275-021-06	4.3
Wage Determination Appeal Process (Poster)	FDOT Equal Opportunity Office Website	4.2
Whistleblowers Know Your Rights (Poster-ARRA projects only)	FDOT Equal Opportunity Office Website	4.2

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## CHAPTER 5: OJT TRAINING PROGRAM

### 5.1 THE FDOT OJT TRAINING PROGRAM

#### 5.1.1 Purpose of OJT Training Program

The Federal Highway Administration (FHWA) as directed by the United States Code of Federal Regulations (USC), Title 23 requires all state highway agencies to establish and utilize OJT Training (OJT) on federally funded construction projects.

FDOT's OJT program is established in accordance with Federal Regulations (23 C.F.R. 230 as authorized under 23 USC 140(a)) and it is detailed in FDOT Standard Specification for Road and Bridge Construction number 7-25, "OJT Requirements."

The primary objective of this program is to train and upgrade minorities, women, and disadvantaged persons toward journey level status to ensure that a competent workforce is available to meet highway construction hiring needs, and to address the historical under-representation of members of these groups in highway construction skilled crafts.

Contractors are to make every effort to staff their trainee positions with men and women of all races, to maintain and advance diversity in their company's Equal Employment Opportunity (EEO) Job Categories, while ensuring that there is no discrimination against any candidate for training, regardless of race or sex.

This chapter outlines the forms and procedures required for achieving compliance with the OJT Special Provisions.

#### 5.1.2 OJT Training Requirements

The District Compliance Office (DCO) conducts a Training Evaluation Meeting (TEM) with the prime contractor prior to the start of construction to identify opportunities to apply the OJT program for improving workforce diversity, finalize the required number of trainees for the project, identify training classifications, develop proficiencies to be performed for graduation, and establish the initial OJT schedule.

1. Trainees are not required for contracts with an original contract time allowance of *less than* 275 calendar days or a construction dollar amount less than \$2 million dollars.
2. If the original contract time allowance is 275 calendar days or more and the construction dollar amount is equal to or above \$2 million, the number of trainees is established in accordance with the estimated contract amount. (See Table 5.1.2).
3. Trainees are not required on contracts where no federal funds are assigned.

Table 5.1.2, Number of Required Trainees Based on Estimated Contract Amount, assigns the maximum number of trainees for various contract amounts. The "Estimated Contract

Amount” may vary from the contract award amount due to the elimination of non-trainable pay items.

**Table 5.1.2 Number of Required Trainees Based on Estimated Contract Amount**

<b>Estimated Contract Amount</b>	<b>Trainees Required</b>
\$2,000,000 or Less	0
Over \$2,000,000 to \$4,000,000	2
Over \$4,000,000 to \$6,000,000	3
Over \$6,000,000 to \$12,000,000	5
Over \$12,000,000 to \$18,000,000	7
Over \$18,000,000 to \$24,000,000	9
Over \$24,000,000 to \$31,000,000	12
Over \$31,000,000 to \$37,000,000	13
Over \$37,000,000 to \$43,000,000	14
Over \$43,000,000 to \$49,000,000	15
Over \$49,000,000 to \$55,000,000	16
Over \$55,000,000 to \$62,000,000	17
Over \$62,000,000 to \$68,000,000	18
Over \$68,000,000 to \$74,000,000	19
Over \$74,000,000 to \$81,000,000	20
Over \$81,000,000 to \$87,000,000	21
Over \$87,000,000 to \$93,000,000	22
Over \$93,000,000 to \$99,000,000	23
Over \$99,000,000 to \$105,000,000	24
Over \$105,000,000 to \$112,000,000	25
Over \$112,000,000 to \$118,000,000	26
Over \$118,000,000 to \$124,000,000	27
Over \$124,000,000 to \$130,000,000	28
One additional trainee per \$6,000,000 of Estimated Contract Amount over \$130,000,000	

### 5.1.3 Approved Training Classifications

Each OJT classification has a curriculum of typical topics that the trainee is to learn/accomplish in order to reach a minimum level of capable performance in the classification as demonstrated through their performance of classification specific, pre-defined proficiencies. With approval from FDOT, contractors may modify the typical curriculum topics in the Training Classifications to better address their workplace and skill needs, however the specified number of hours required for training will remain unchanged.

Graduation requires the accumulation of a specified number of qualifying project work hours and the successful performance of predefined proficiencies. The District Contract Compliance Manager (DCCM) with the assistance of the Resident Compliance Specialist (RCS) or their delegate will monitor adherence to OJT schedules, verify accumulation of OJT hours using certified payrolls ~~and daily work reports~~, schedule proficiency observations and process graduation.

<b>Training Classification</b> <b><u>Monthly Time Report FDOT</u></b> <b><u>Form No. 275-030-30</u></b>	<b>Minimum Total hours</b>	<b>Maximum Total hours</b>
Antennae & Transmission	150	300
Asphalt/Bridge Deck Screed Operator	200	400
Asphalt Distributor	250	500
Asphalt Luteman/Raker	200	400
Asphalt Paving Machine Operator	200	400
Asphalt Plant Drier Operator	250	500
Asphalt Shuttle Buggy Operator	250	400
Backhoe Operator	250	500
Bulldozer Operator	350	500
Carpenter-Highway or Bridge	350	700
Concrete Curb/Sidewalk Machine Oper.	275	400
Concrete Finisher ( Highway)	275	400
Concrete Paving Finishing Machine	275	400
Concrete Paving Machine/Spreader	275	400
Concrete Paving Sub Grade Operator	275	400
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	500	850
Deckhand	250	450
Equipment Maintenance Technician	360	700
Earth Wall Erector	300	500
Electronics Installer	275	400

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<del>Erosion Control Specialist</del>	<del>250</del>	<del>350</del>
<del>Form/Curb and Gutter Builder</del>	<del>300</del>	<del>500</del>
<del>Front End Loader Operator</del>	<del>250</del>	<del>500</del>
Grade Checker	250	400
<del>Front End Loader Operator</del>	<del>250</del>	<del>500</del>
Guardrail Erector	200	400
Installer/Tester –Antenna/Transmission	150	300
Instrument Person	250	400
Ironworker, Reinforcing -Hwy/bridge	300	600
Ironworker, Structural –Hwy/ Bridge	300	600
Landscape Worker	200	300
Mason	275	400
Mechanic	360	700
Milling Machine Operator	200	350
Mixer Operator	250	500
Motor Grader Operator	400	750
Painter, Highway or Bridge	200	400
Pavement Marking Machine Operator	250	400
Pile Driver	500	700
Pile Driver Leadsman	200	400
Pipe layer	250	400
Roller Operator (Rough or Finish)	250	400
Scraper/ Pan Operator	250	400
Sign Erector	250	350
Sound Wall Erector	300	400
Stone and Aggregate Spreader Operator	150	300
Sweeper Operator	250	360
Tractor Operator	250	350
Traffic Control Specialist	250	350
Traffic Signalization Installer/Mechanic	300	500
Trenching Machine Operator	250	500
Truck Driver	250	350
<del>Erosion Control Specialist</del>	<del>250</del>	<del>350</del>
<del>Form/Curb and Gutter Builder (structures)</del>	<del>300</del>	<del>500</del>

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#### 5.1.4 Requesting Approval for Additional Training Classifications

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Contractors may request additional OJT classifications that are supported by the work on their projects. A contract's work and/or the equipment to be used, provides the opportunity to train in classifications other than the standard approved classifications. Additional training classifications may be approved for use on a contract under the following conditions:

1. FDOT's project administrator concurs that the work of the contract is sufficient and meaningful enough to support training in the additional classification.
2. A journeyman is available to instruct the trainee.
3. The contractor has developed a monthly time report detailing the training curriculum and has established the minimum and maximum training hours and proficiency standards that will be required.
4. A Wage Determination has been received for the pay rate of the proposed classification at journey level status, if applicable.

The ***Project Request for a new OJT Classification, Form 275-021-14*** is provided for the prime contractor's use in summarizing information required for approval of an additional classification. The completed form is forwarded to the DCCM for submission to the Equal Opportunity Office (EOO) for review and approval.

If use of the classification is approved for the project, then the prime contractor may submit the ***Proficiency Record of OJT Form 275-021-01*** and the ***Trainee Enrollment and Notice of Personnel Action Form 275-020-08***.

Additional classifications are approved on a contract specific basis. If the classification proves to be a meaningful addition in the development of the construction industry workforce, the classification may be added to the list of approved classifications.

### **5.1.5 Criteria for Contractor Fulfillment of Trainee Requirements**

The following criteria will be used in determining whether or not the Contractor has complied with the Training Special Provision as it relates to the number of trainees to be trained:

1. Credit will be allowed for each trainee that is both enrolled and satisfactorily completes training on a contract.
2. Credit will be allowed for each trainee that has been previously enrolled in FDOT's approved training program on another contract and continues training in the same classification for a significant period and completes his/her training after the transfer has been processed and approved.
3. Credit will be allowed for each trainee who, due to the amount of work available in his/her classification, is given the greatest practical amount of training on the contract regardless of whether or not the trainee completes training. The trainee must meet the requirements regarding the proficiency demonstration.
4. Credit will be allowed for any training position indicated in the approved OJT schedule, if the contractor can demonstrate that a good faith effort was made to provide training in that classification.

5. No credit will be allowed for a trainee whose employment with the contractor is involuntarily terminated, unless the contractor can clearly demonstrate good cause for this action.
6. Offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a substantial part of the overall training.

Credit for offsite training may only be given to the contractor where he or she does one or more of the following and the trainees are concurrently employed on a Federal-Aid Project: contributes to the cost of the training; provides the instruction to the trainee; and/or pays the trainee's wages during the offsite training period.

The prime contractor is responsible for satisfactorily fulfilling the number of trainees agreed upon for the contract. To ensure overall growth of the workforce versus continuous training of current employees, where feasible, 25% of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. A contractor will have fulfilled his responsibilities if he/she has provided acceptable training to the number of trainees specified.

#### **5.1.6 Training by Subcontractors**

In the event the prime contractor subcontracts a portion of the contract work, the contractor shall determine how many, if any, of the trainee requirements are to be fulfilled by the subcontractor. The prime contractor shall retain the primary responsibility for meeting the training requirements imposed by the training special provision.

The prime contractor can apply the requirements of the training special provisions to subcontracts but is responsible for ensuring the subcontractor is knowledgeable and abides by the requirements of the FDOT OJT program. Care should be taken to ensure that each enrolling subcontractor maintains a reasonable and effective ratio of trainees to journey level positions on the project and in the company's overall workforce.

#### **5.1.7 Trainee Wages**

An ***Additional Classification Request*** is to be submitted through the Classification Request Manager prior to the enrollment of a trainee for any classification to be trained that is not included on the wage decision/wage table of the project the trainee is assigned. This classification will be assigned to the person training the trainee (the journey level instructor), if applicable.

The contractor shall compensate the trainee at no less than the lowest existing laborer rate established in the contract at the onset of training. This compensation rate is to be increased to the journeyman's wage for that classification upon graduation from the training program if the trainee continues to work in the classification.

#### **5.1.8 Training Program Communication**

Prior to beginning training, the contractor shall furnish the trainee a copy of the monthly time report and the approved proficiencies for the training classification. The trainee should be advised they will receive a trainee identification card and a copy of their monthly time report reflecting hours to date. Graduation should be fully explained including required hours, the proficiency observation process, and the graduation certificate.

## **5.2 POST-RECONSTRUCTION TRAINING—TRAINEE EVALUATION MEETING**

### **5.2.1 Purpose**

A Post Preconstruction Trainee Training Evaluation Meeting (TEM) will be held prior to the start of construction for all contracts which meet the project criteria for OJT. The goal of the meeting is to develop the project specific OJT plan, to finalize the number of trainees that will be required on a contract, to identify training classifications to be used, to develop and approve Proficiency Statements for those classifications, and to develop and approve the initial OJT Schedule.

### **5.2.2 Meeting Timeframe, Announcement and Attendees**

The DCCM or designee schedules and conducts the TEM. The TEM occurs after the Preconstruction Conference and no more than thirty (30) days prior to the beginning of construction. A date may be set outside of this timeframe provided it is agreeable to all attendees.

The goal of the meeting is to develop the project specific OJT plan and be ready for implementation by the first day of construction. Required attendees include the prime contractor's Project Manager, FDOT's Project Administrator, and the RCS. Other interested persons such as the contractor's EEO Officer, Project Manager and/or staff of subcontractors who will enroll trainees may also attend.

Written notification of the meeting's date, time, location and required attendees will be issued to the prime by FDOT. The prime contractor will be informed to bring the following required documents and reports to the Meeting:

1. **Company Wide EEO Report Form 275-021-07** of prime contractor and each subcontractor who may enroll trainees. That report is to be based on the following date which is at least 30 days prior to the meeting date: March 20, June 20, September 20, or December 20.
2. Executed Bid Blank
3. Project Schedule
4. Schedule of Values
5. Project Wage Determination(s)
6. If the project includes design or other professional services, the following breakdown of contract data is also required:
  - Design and other professional services days and dollar amounts
  - Construction days and dollar amounts

- Total contract award
- Construction begin date and estimated completion date

In the event the project work schedule is not available on the date of the meeting, the initial OJT Schedule will be established for the number of trainees identified in Table 5.1.2 Estimate of Trainees Based on Contract Amount and may be revised thereafter.

### 5.2.3 Agenda for Training Evaluation Meeting

The minimum subjects included as agenda items for the TEM are shown in Table 5.2.3., Agenda for TEM, below.

**Table 5.2.3 Agenda for Training Evaluation Meeting**

EEO Contract Compliance Manual, Chapter 5 OJT Training
Number of trainees required, contract award amount, estimated contract amount, scope and schedule of work
Workforce diversity, under-utilization, minority and female availability
Training classifications; minimum length and type of training for each classification
Trainee enrollment criteria including options for contractors whose workforce has reasonable representation of employees by race and sex (particularly minorities, females, and the disadvantaged)
Trainee enrollments, transfers, terminations
Monthly Time Reports
Graduation requirements
The OJT Schedule and revision requirements
Proficiencies and proficiency observations
Voluntary OJT and the use of banking credits
Other: including off-site training and apprenticeship programs

### 5.2.4 Setting the Number of Required Trainees:

#### 1. Estimated Contract Amount Used to Set Maximum Trainee Requirements

A critical element in determining the number of trainees on a contract is the contract award amount as reported on the Contract's Bid Blank. The contract award amount is discussed at the TEM and any contract dollars which do not create training opportunities for craft and labor positions in the highway/bridge construction industry, are identified or estimated.

These monies may be deducted from the contract award amount as those monies are not associated with work traditional to highway and bridge construction and as such do not support OJT opportunities for the contract. A standard removal of typical non-trainable monies is factored into the ratio of trainees to estimated contract amounts.

This standard removal covers non-trainable monies for typical items in the contract award amount which are not performed by workers covered by the **Davis-Bacon Act**.

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The resulting dollar number is the Estimated Contract Amount shown in Table 5.1.2, "Maximum Number of Required Trainees Based on Estimated Contract Amount." If there are no such deductions, then the contract award amount is applied to Table 5.1.2. Examples of contract monies which do not support traditional highway and bridge construction OJT opportunities include: contingency money, partnering money, project design and engineering, buildings, bascule bridge machinery, off-duty law enforcement, survey services, advanced information technology, advanced telecommunications, and time bid dollars on A + B contracts.

## **2. Analyzing the Scope and Schedule of Work**

A second factor in setting the number of trainees required on the project is the scope and schedule of work to be performed.

Pertinent topics to be considered include: description of work to be performed, scope of work, length of operations, sequence and schedule of work, prime contractor and subcontractor work, etc.

The contractor's intent to pursue an early completion bonus(s) does not warrant a reduction in the required number of trainees.

## **3. Determining the Level at which Banking Begins**

The required number of trainees will be compared to the number stated in Table 5.1.2 for the Estimated Contract Amount. The estimated contract amount may be the contract award amount or an amount reduced for non-trainable items.

The estimated contract amount is used to determine the level at which graduates will be counted for banking. An OJT "Banking Certificate" will be issued to the prime for graduates exceeding the required number of trainees and may be redeemed to fulfill OJT requirements on other projects.

The following are examples for calculation of estimated contract amount, the agreed number of trainees and the level at which banking begins.

<b>EXAMPLE 1</b>		TABLE 5.1.2 Maximum Number of Required Trainees Based on Estimated Contract Amount	
		Estimated Contract Amount	Maximum Trainees Required
Contract Award Amount is reduced for non-trainable contract monies. Scope and schedule of work has no impact on trainees. Agreed Number of trainees is set based on at the Estimated Contract Amount.			
Contract Award Amount	\$6,700,000	Over \$6,000,000 to \$12,000,000	5
Less Non-trainable contract monies:			
Engineering Services	\$ 850,000		
Off Duty Officers	\$ 5,000		
Survey Services	\$ 30,000		
Subtotal: Non-trainable contract monies:	(\$ 885,000)		
Estimated Contract Amount	\$ 5,815,000	Over \$4,000,000 to \$ 6,000,000	3
Table 5.1.2 Maximum Number of Trainees	3		
Any Scope/Schedule of Work impact on Trainees?	no		
Agreed Number of Trainees this project	3		
Banking begins with graduate number	4		
<b>EXAMPLE 2:</b>		TABLE 5.1.2 Maximum Number of Required Trainees Based on Estimated Contract Amount	
		Estimated Contract Amount	Maximum Trainees Required
Contract Award Amount reduced for Non-trainable contract monies. Scope and Schedule of work impacts number of trainees. Agreed Number of trainees is less than Estimated Contract Amount.			
Contract Award Amount	\$6,700,000	Over \$6,000,000 to \$12,000,000	5
Less Non-trainable contract monies:			
Engineering Services	\$ 850,000		
Off Duty Officers	\$ 5,000		
Survey Services	\$ 30,000		
Subtotal: Non-trainable contract Monies:	(\$ 885,000)		
Estimated Contract Amount	\$ 5,815,000	Over \$4,000,000 to \$ 6,000,000	3
Table 5.1.2 Maximum Number of Trainees	3		
Any Scope/Schedule of Work Impact on Trainees?	Yes		
Agreed Number of Trainees this project	2	Over \$2,000,000 to \$4,000,000	2
Banking begins with graduate number	4		

### 5.2.5 Workforce Diversity

The workforce of each contractor enrolling trainees, as reported on a current **Company Wide EEO Report Form 275-021-07**, is reviewed at the TEM to determine the diversity of the workforce.

If an enrolling subcontractor is identified after the TEM, their most recent Company Wide EEO Report is submitted along with the first schedule submission listing their enrollment(s). The DCCM will review the workforce diversity and advise the prime of that subcontractor's trainee diversity enrollment requirements prior to approving enrollments in the classification listed on the approved OJT schedule.

When a contractor's workforce reflects a variety of races and females, then enrollment in the OJT training classifications should reflect that diversity.

### 5.2.6 Selecting the OJT Training Classification

Considerations in selecting training classifications for the project include:

- Sufficient availability of meaningful work in the classification

- Journey level instructor for the work
- Contractor need for workers with such skills
- Workforce development
- Advancement of affirmative action
- Reasonable ratio of journey-level workers to trainees for the work to be performed

The project's training classifications may be modified subsequent to the TEM with the prime's submission of a request explaining the purpose or reason for the change.

### **5.2.7 Training Evaluation Meeting Outcomes**

The following are the minimum outcomes of the TEM:

1. The DCCM will review the contractor's Company-wide EEO Report for reasonable representation of employees by race and sex particularly females and minorities in reported job categories and in typical classifications.
2. The required number of trainees and the level at which graduates will be counted for banking.
3. The initial (original) **OJT Schedule Form 275-020-96** will be developed and reviewed for concurrence/approval.
4. A **Proficiency Record for OJT Form 275-021-01**, Section 1 (Project Identification), Section 2 (Proficiency Standards) and Section 3 (Concurrence with Proficiency Standards) will be completed for each training classification included on the OJT Schedule. A minimum of three (3) proficiency standards are required.

In the event the OJT Schedule and some or all of the proficiency records are not finalized at the TEM, they shall be due ten (10) days following the meeting.

### **5.2.8 Meeting Minutes**

The DCCM ensures written minutes of the TEM are produced and issued to attendees as soon as practical. Corrections/changes may be requested within 14 days of issuance and the minutes are to be finalized 14 days thereafter. Minutes are to be retained as official project documents.

The minutes of the TEM will reflect the details considered in setting the number of trainees and the level at which graduates will be counted for banking.

## **5.3 OJT TRAINING SCHEDULE**

### **5.3.1 Purpose**

The **OJT Schedule Form 275-020-96** details the number of trainees to be trained in each training classification, the portion of the contract time during which training of each trainee is to take place, and the beginning and ending dates of training.

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### 5.3.2 OJT Schedule and Concurrence/Approval Process

The initial (or original) OJT Schedule is established at the TEM or within ten days thereafter. The contractor is responsible for completing the form using the project work schedule. When multiple pages of the OJT Schedule forms are submitted, signatures are only required on the last page of the schedule to ensure all data has been reviewed and approved as recorded on previous pages.

Care is to be taken to ensure that the schedule reflects the actual title for the Training Classification as shown in Table 5.1.3 and on each Monthly Time Report.

The Project Administrator reviews each schedule for approval considering the following minimum requirements:

1. The project work schedule indicates, for the designated training period, that there is sufficient work available to train in the classification.
2. The length of operations have been calculated so as to qualify the average trainee for journeyman status in the classification by at least the minimum hours prescribed on the Monthly Time Report of the classification.
3. The OJT Schedule allows sufficient time for trainee proficiency demonstration(s).

The DCCM reviews each schedule and issues an approval decision within ten days of receipt. Additional classifications may not be listed on a contract's OJT Schedule until such time the EOO issues approval. The approval of OJT Schedule includes the following minimum considerations:

1. Conformance with Training Special Provisions.
2. Incorporation of agreements reached at the TEM.
3. The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

### 5.3.3 Timeframe for Implementation of OJT Schedule

Approval of the OJT Schedule shall be obtained from FDOT prior to commencing work or prior to implementing Schedule revisions.

### 5.3.4 OJT Schedule Revisions

The contractor shall, as far as practical, comply with the time frames established in the approved OJT schedule. When this proves to be impractical, a revised schedule shall be submitted for approval to and approved by the DCCM.

A revised OJT Schedule is required when one or more of the following occur:

- When a start date on the approved schedule has been missed by 14 or more days.
- When a start date is changed to be ~~sevenfourteen (714)~~ or more days earlier than approved.

- When there is a change in previously approved classifications.
- When replacement trainees are added due to voluntary or involuntary termination.

Failure to submit a revised schedule as indicated above may result in the issuance of noncompliance communications.

## 5.4 TRAINEE PERSONNEL ACTIONS

### 5.4.1 Purpose

The FDOT OJT program requires timely communication and coordination between the contractor and FDOT. The ***Trainee Enrollment and Notice of Personnel Action Form 275-020-08*** is provided for the contractor to communicate all trainee personnel actions to FDOT, and then FDOT must ~~e~~ approve each action. These actions include:

- Enrollment
- ~~Transfer of Trainee~~
- ~~Termination of Trainee~~
- Request for Graduation
- Request for Banking
- ~~Transfer of Trainee~~
- ~~Termination of Trainee~~

The form is initiated by the contractor and sent to FDOT for approval of all actions associated with a trainee. This form is due to FDOT within seven (7) days of the effective date of each action recorded thereon. Submission time frames can be complied with via mailing or by email.

Personnel actions pertaining to each trainee participating in the OJT Program are initiated by the Prime Contractor processed by the RCS and forwarded to the DCCM for action and approval.

### 5.4.2 Trainee Enrollments

The contractor is responsible for identifying eligible employees to fill the positions on the approved Training Schedule and to ensure that sufficient time is allowed for the training and proficiency determination of each trainee. Section 2 (Enrollment and Trainee Identification) of the Trainee Enrollment and ***Notice of Personnel Action Form 275-020-08***, is completed by the contractor and submitted to the RCS ~~within seven fourteen (714)~~ days ~~of prior to~~ the requested Enrollment Date for the Trainee.

### 5.4.3 Enrollment Requirements

The primary objective of the OJT program is the training and upgrading of women and minorities, and economically disadvantaged persons (including groups which are typically underrepresented in the craft and semi-skilled laborer occupations) toward journey level status.

Contractors select employees for enrollment in the OJT program if they have not previously trained or worked in that training classification (See Section 5.4.6 for additional criteria). Contractors collect and submit background data to substantiate enrollment eligibility. FDOT issues qualifying enrollees an OJT Begin Date marking the start of training. Selected training classifications, and enrollment and completion dates are maintained on an OJT Schedule developed by the prime. The Department's Project Administrator must concur with the selection and scheduling of trainees.

#### **5.4.4 Trainee Affirmative Action Criteria**

OJT is an affirmative action program that contractors utilize to attain, enhance and maintain equal opportunity in their workforce. Table 5.1.3 identifies the primary OJT enrollment classifications. A contractor's workforce, as reflected on a recent Company Wide EEO Report, is analyzed at the TEM to determine if the major job categories reflect utilization of minorities and females.

The major job categories for analysis include equipment operators, mechanics, truck drivers, ironworkers, carpenters, cement masons, electricians, pipe fitters /plumbers, painters, and semi-skilled laborers.

The Company Wide EEO Report of the contractor who will provide the trainee is reviewed to determine if minority and female employment is reflective of the available workforce, in the Metropolitan Statistical Area (MSA) where the project is located. This may be the Company Wide EEO Report of the prime contractor or a subcontractor. Unskilled laborer employees should be given primary consideration for OJT enrollment in order to upgrade them into craft and semi-skilled laborer classifications.

When a contractor's workforce reflects utilization of minorities and females in a job category, then the enrollment in training classifications for that job category is open to all employees, including non-minorities who are economically disadvantaged.

#### **5.4.5 Trainee Economic Disadvantaged Criteria**

An enrollee is determined to have Economic Disadvantaged status if the individual is at or below poverty level as determined by the following:

1. Certification from the Florida State Employment Service and/or Workforce Investment Act of 1998;
2. Prior year unemployment verification using a W-2 or;
3. Other income tax data reflecting the person's economic status (or) a recipient's verification of AFDC (Aid for Families with Dependent Children) or verification of other public services that enhance family economics or;
4. Other bona fide verification of economically disadvantaged status.

#### **5.4.6 Trainee Work Experience & Training History**

In order to qualify for appointment to a specific training classification, the proposed trainee must meet the following criteria:

1. The candidate has not completed a training course leading to journey level status for the proposed training classification.
2. The candidate has not worked ~~in~~ at journey level status in the proposed classification.
3. The candidate does not have journey level experience in the proposed classification.
4. The candidate is not enrolled in another FDOT training classification.

To reflect prevailing practices of Florida's highway/bridge construction industry, trainees graduating to journey level status from one OJT classification may be considered for enrollment in subsequent FDOT training classifications that will promote the achievement of additional knowledge, skills, and abilities. This is not intended to promote the use of career trainees or to exclude the enrollment of others from the OJT program.

Where feasible, 25% of the trainees in each occupation shall be in their first year of employment. This supports the addition of new workers into the industry.

#### **5.4.7 Trainee Interviews**

The ***OJT Trainee Interview Form 275-021-02*** is used by RCSs or other project staff, to record information regarding an enrollee's previous work experience and training. Additionally, the proficiencies established for the trainee's proposed classification on the project are reviewed with the enrollee and utilized in determining existing abilities for the proposed classification.

Questions are also asked to determine if the trainee understands the OJT program. Answers indicating possible lack of understanding are communicated by the RCS to the contractor for follow up with the trainee. Lack of understanding regarding the OJT program does not affect enrollment eligibility.

The training and work experience information of the enrollee are referenced by the DCCM in determining enrollment approval. Additional interviews may be conducted during an enrollee's training period.

#### **5.4.8 Trainee Identification Card**

A **Trainee** Identification Card (ID Card) is prepared for each enrollee once the DCCM approves the enrollment in Section 3 of the ***Trainee Enrollment and Notice of Personnel Action, Form 275-020-08***. A photo may be added to the identification card.

The ID card is forwarded to the prime contractor for issuance to the trainee. The prime contractor is responsible for ~~insuring~~**ensuring** that the trainee carries the ID card at all times during training on the project. -Attachment 5.4.5.1 is an example of a trainee Identification card.

### Attachment 5.4.8.1 Example of a Trainee Identification Card

State of Florida Department of Transportation, District No # OJT Program Identification Card	
District Address xxxxxxxxxxxxxxxxxxxx Xxxxxx, Florida xxxxx	District Telephone xxx/xxx-xxxx
This is to certify that _____ <u>Trainee Name</u> _____ is enrolled as a _____ <u>Training Classification</u> _____ trainee beginning _____ <u>Date</u> _____ with _____ <u>Company Name</u> _____ on Financial Project No.: _____ <u>Financial Project No.</u> _____	
District Contract Compliance Manager's Signature	

#### ~~5.4.9 Trainee Graduation~~

~~Graduation from the FDOT OJT program requires attainment of a specified number of training hours on defined topics and the ability to successfully perform, for observation, all proficiencies defined for the training classification. Training hours are subject to verification by the RCS.~~

~~Once a successful proficiency observation has been obtained, the contractor may request graduation of the trainee. Section 4 (Graduation Request) of the **Trainee Enrollment and Notice of Personnel Action, Form 275-020-08** is completed by the contractor and submitted to the RCS who verifies graduation eligibility. The DCCM completes Section 5, (Graduation Approval) of the **Trainee Enrollment and Notice of Personnel Action Form 275-020-08** once the verification of training hours and proficiency has been completed.~~

~~A graduation certificate stating the trainee's full name, training classification and graduation date is issued to the contractor for presentation to the trainee.~~

#### ~~5.4.10.9 Trainee Transfers~~

~~To complete training, the transfer of trainees from project to project and from district to district is permitted. This includes transfers between multiple projects which could include non-FDOT government projects (City, County, etc.) provided there is the existence of an agreement to monitor the OJT Trainees in accordance with the OJT Program with the contractor, FDOT and other participating agencies. A trainee is only allowed to be enrolled on the original project. The transfer of trainees from project to project and from district to district is permitted. Reasons for transfers include but are not limited to the following:~~

- ~~• Completion of Training: Transfer from one project to another to meet training requirements.~~

- ~~• Trainee Relocation: The trainee relocates to an area where the contractor has an on-going project where the trainee can continue training.~~

~~Trainee Transfers will not be approved when a trainee completes the maximum training hours allowed for a classification and proficiency has not been demonstrated. When training is being accomplished on multiple projects, the proficiency demonstration may occur on any of the approved projects. However, training credit will only apply to the original contract that required training.~~

~~The Contractor shall submit to the District Contract Compliance Manager a copy of an **Training Enrollment and Notice of Personnel Action Form 275-020-08** no later than seven days after the effective date of the action when the following action occurs: a trainee is transferred on the project, transferred from the project to continue training on another contract, completes training, is upgraded to journeyman status or voluntary terminates or is involuntary terminated from the project. If transferring to a single project to complete training, the contractor shall submit to the District Contract Compliance Manager a copy of the Trainee Enrollment and Notice of Personnel Action Form 275-020-08 no later than fourteen (14) days after the transfer action.~~

~~If transferring to multiple projects, the contractor shall contact the District Contract Compliance Manager prior to movement to agree on an OJT schedule that monitors trainee progress.~~

~~Banking credits will not be awarded until the standard number of trainees specified in Table 5.1.2 have graduated from the original project.~~

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#### **5.4.11-10 Trainee Terminations**

A trainee's accumulation of OJT hours may stop due to absence, injury, illness, incarceration or termination. The voluntary or involuntary termination of a trainee at any time following enrollment and prior to the approval of their graduation is communicated to the Department by completing Section 10 (Notice of Termination prior to Graduation) of the **Trainee Enrollment and Notice of Personnel Action Form 275-020-08**.

Voluntary terminations occur when the trainee initiates the separation. Examples of voluntary terminations include resignation to accept work elsewhere, resignation due to denial of a request for reassignment, relocation/leaving the area, etc.

Involuntary terminations occur when the contractor initiates the separation. Examples of involuntary termination include termination for misconduct, absenteeism, failing to maintain employment status, layoffs, staff reductions, etc.

If the trainee returns to the project and the contractor wishes to resume their training in the same classification and on the **same** project the following criteria apply: FDOT verified OJT hours accumulated prior to the termination date may be credited provided the trainee

has trained no less than 50% of the minimum required OJT hours for the classification and less than 60 calendar days have passed since the termination date.

Trainees who terminate prior to graduation and are subsequently employed by another contractor will not be credited for any OJT hours accumulated with the previous contractor.

#### **5.4.911 Trainee Graduation**

Graduation from the FDOT OJT program requires attainment of a specified number of training hours on defined topics and the ability to successfully perform, for observation, all proficiencies defined for the training classification. Training hours are subject to verification by the RCS.

Once a successful proficiency observation has ~~been obtained~~ occurred and been recorded by FDOT's observer, the completed demonstration will be supplied to the RCS within seven (7) days. Within fourteen (14) days of a successful proficiency observation, the contractor may request RCS will verify graduation of the trainee eligibility and (if found favorable) will forward on to the DCCM. Section 4 (Graduation Request) of the *Trainee Enrollment and Notice of Personnel Action, Form 275-020-08* is submitted to the RCSDCCM, who verifies graduation eligibility. The DCCM completes Section 5, (Graduation Approval) of the *Trainee Enrollment and Notice of Personnel Action Form 275-020-08* once the verification of training hours and proficiency has been completed.

A graduation certificate stating the trainee's full name, training classification and graduation date is issued to the contractor for presentation to the trainee.

## **5.5 TRAINING PROFICIENCIES**

### **5.5.1 Purpose**

Once the minimum OJT hours are accumulated, the Contractor may verify and request a proficiency observation of the trainee. The trainee is eligible to exhibit for the project administrator, or their designee, and the prime contractor, or their designee, performance of the predefined proficiencies specific to the classification on which the trainee is enrolled. The RCS or other Department staff who have completed Department sponsored inspector training may serve as a designated observer for the Department.

Graduation from the FDOT OJT program requires accumulation of sufficient hours according to a pre-defined training curriculum and the successful exhibition by the trainee of predefined proficiencies specific to the classification and project on which the trainee is enrolled. Successful proficiency observations facilitate the attainment of meaningful skills essential to performance in the construction industry.

### **5.5.2 The Proficiency Statement**

A proficiency statement is specific to the job classification for which it is written.

Proficiency statements for a training classification may differ from one contractor to another in order to reflect the unique work responsibilities companies assign to their employees. ~~A contractor may desire to have proficiency statements for a classification be unique from one project to another in order to address project specifics.~~

A good proficiency statement is one which is clearly defined, unambiguous, observable (or measurable) and skill (not trait) based.

A proficiency statement must be understandable to the trainee, the contractor and the Department.

### **5.5.3 Training Proficiency Statement Development and Concurrence**

Proficiencies are developed for each training classification planned for use on a project. They are developed along with the initial OJT Schedule at the TEM. If agreed, proficiencies may be submitted up to ten (10) days following the TEM.

Prior to approving an OJT Schedule, the proficiency statements for each classification shown thereon are to be developed and concurred with. A minimum of three (3) proficiencies must be developed for a training classification; or a total of four (4) or five (5) may be developed.

Proficiency statements for a training classification on a project are recorded in Section 2 (Proficiency Standards) of the **Proficiency Record for OJT, Form 275-021-01**. The form is also used to request observation of a trainee's proficiency and to record the results of observations.

### **5.5.4 Proficiency Observation Eligibility, Request and Record**

Once a trainee has completed ~~at least the minimum number of~~ training hours for each subject listed on the Monthly Time Report for their training classification, the contractor may consider requesting a proficiency observation.

With a contractor's representative present, a trainee is required to demonstrate to a Department observer (e.g. Project Engineer or Inspector) the proficiencies agreed upon and documented on the **Proficiency Record for OJT Training, Form 275-021-01**. Up to four proficiency observations may be requested and the results recorded in Sections 5 and 6 (Proficiency Observation Request and Observation Results) **Proficiency Record for OJT Training, Form 275-021-01**.

The contractor initiates the observation of the trainee's proficiency by completing Section 5 (Proficiency Observation Request) of the **Proficiency Record for OJT Training, Form 275-021-01**. The RCS coordinates scheduling the observation which must be attended by both the contractor's project representative and a Department representative.

The established proficiencies are reviewed by the observers and compared to the trainee's actual performance during the observation. If three (3) proficiencies have been established, the trainee must successfully exhibit (perform) all three (3); if four (4) have been established then four (4) proficiencies must be successfully exhibited; if five (5) have been established, then five (5) must be successfully exhibited/performed. Graduation requires the successful performance of all proficiencies during one (1) proficiency observation.

When a trainee has accumulated at least the minimum training hours ~~for each training topic~~, up to two (2) proficiency observations may be scheduled.

Trainees, who fail to exhibit proficiency during the first two (2) observations, must accumulate the maximum training hours for their classification before additional observations may be requested. If the trainee is not successful during the first two (2) observations, then the contractor must wait until the trainee has accumulated at least the maximum training hours before requesting a third and then a fourth observation. The trainee may continue in the training program until project completion.

## 5.6 OJT TRAINING MONTHLY TIME REPORT

### 5.6.1 Purpose

Each training classification in the FDOT OJT program has a specific Monthly Time Report which is an FDOT Form ~~(see Table 5-1.3)~~ 275-030-30. The Monthly Time Report identifies the training curriculum for the classification and the recommended minimum and maximum hours for each ~~topic~~ proficiency category. Monthly Time Reports are located in the FDOT Forms-Procedural Document Library.

### 5.6.2 Responsibilities

The OJT Monthly Time Report Form is required for reporting all training hours accumulated on a project by an enrollee of the training program.

The contractor is responsible for maintaining records to document the actual hours each trainee is engaged in training.

The contractor completes the Monthly Time Report and submits it to the RCS. The Daily-Weekly Report, Form 275-021-12, which ~~is used~~ may be used by FDOT to track and monitor the trainee's progress may also be used by the contractor to assist in pinpointing how each hour of training is spent, such as five (5) hours "oriented in safety procedures."

Recommended hours in each proficiency category are provided, however the contractor may move hours as needed between categories depending on the training needs. The Minimum hours for the classification must be met in order to complete training.

The certified payroll record of the trainee and project records are referenced by the RCS in verifying monthly time report data.

### **5.6.3 Timeframe for Submitting the Monthly Time Report**

The contractor submits the Monthly Time Report to the RCS on or before the 10<sup>th</sup> of each month for training time accumulated the previous month. Submission time frames can be complied with via mailing or by email. A Monthly Time Report is required beginning with the first month in which the trainee is enrolled and time is accumulated, and continuing through the month in which the trainee graduates or terminates.

In the event a trainee accumulates zero training hours during a month, but remains a viable enrollee of the program, the contractor submits a Monthly Time Report reflecting accumulation of zero hours.

The RCS forwards Monthly Time Reports to the DCCM after verifying that all data is correct.

## **5.7 VOLUNTARY OJT AND BANKING**

### **5.7.1 Purpose**

FDOT provides contractors the opportunity to pursue OJT on projects not requiring trainees and on projects where trainee requirements have been fulfilled and the completion of excess trainees is desired. This is referred to as “Voluntary OJT for Banking.”

The graduation of trainees in such circumstances results in the earning of a “Banking Credit” and the issuance of a “Banking Certificate” which the contractor may apply to the fulfillment of trainee requirements on subsequent Federal-Aid projects.

Contractors pursuing Voluntary OJT shall comply with all training criteria set forth in the OJT Special Provision for Federal-Aid Projects.

### **5.7.2 Eligibility**

The Voluntary OJT Program may be initiated by a contractor awarded a state funded (non-Federal-Aid) project ~~having at least 275 contract days, an award amount of at least \$2,000,000 provided and~~ an RCS is available for OJT compliance monitoring. Contractors wishing to pursue Voluntary OJT on state funded contracts will contact the DCCM to initiate the scheduling of this meeting.

If a contractor declares the intent to earn banking credits on a Federal-Aid project requiring trainees, the actual award of a banking certificate will not occur until such time as the required number of trainees has graduated from the project.

Banking credits will not be awarded until the standard number of trainees specified in Table 5.1.2 have graduated from the project. Once the numbers of trainees indicated in the table have graduated, Voluntary OJT may be pursued (see 5.2.4 for guidance on the level at which banking begins).

All OJT program requirements outlined in the Standard Specifications and this CCM apply as well to Voluntary OJT. All program requirements must be satisfied prior to the issuance of Banking Certificate(s).

### **5.7.3 Weekly Record of Hours and Pay for Trainees on Non-Federally Assisted Projects**

Contractors who have trainees approved for OJT enrollment on non-federally assisted projects are required to submit a weekly record of hours and pay for each trainee. This data is due to the RCS seven (7) days after the trainees' regular pay day and continues until the trainee's graduation is approved.

Data to be shown on this weekly record of hours and pay includes: Name, four-digit identifier, race and sex, training classification, hours worked on the project each day which are being reported as training on a Monthly Time Report, rate of pay, gross wages and total wages.

Trainees on non-federal jobs are not subject to the **Davis-Bacon Act** so the certified payrolls are not required or available.

### **5.7.4 The Banking Certificate**

Contractors may pursue the enrollment and graduation of trainees in excess of the required number for a project. The prime contractor will be issued an OJT Banking Certificate for each graduate in excess of the number required in Table 5.1.2. Any of the classifications in Table 5.1.3 may be used to earn banking certificates. The project's OJT Schedule is to be maintained to reflect each excess trainee including their enrollment and completion dates.

A contractor requests the issuance of a banking certificate concurrent with their request for graduation of a trainee. The contractor completes Section 6 (Contractor's Request to Award Banking Certificate) of the **Trainee Enrollment and Notice of Personnel Action Form 275-020-08**, at the same time Section 4 (Graduation Request) is completed. This form is submitted to the RCS.

Banking certificates are retained by the contractor while the graduation certificate is presented to the trainee. A **Banking Certificate, Form 275-021-03** is issued to the prime contractor for each banking credit. Each banking certificate includes a unique five-digit serial number as follows:

D (number for district) plus XXX (three-digit sequence number)  
Example: D4053: Certificate issued by District 4, sequence number 053

Contractors hold the banking certificate(s) until such time as they are ready to apply the credit toward a Federal-Aid contract training requirement.

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### **5.7.5 Redemption of Banking Credits**

Banking certificates may be redeemed within ~~threefive~~ **(35)** years of issuance. The issuance and redemption of banking certificates are tracked by each District and the EEO.

Earned banking credits are redeemed by presenting the original banking certificate to the DCCM of the district where the project on which the credit is to be applied.

A contractor utilizing banking credit(s) to fulfill agreed upon trainee requirement(s), must present the original banking certificate for redemption. If the contractor has determined at the TEM that banked credits will be used to meet trainee requirements, then the certificate(s) is submitted with the initial training schedule. A prime contractor working as a subcontractor to another prime, may redeem their earned banking certificates for the prime.

If the contractor subsequently determines to use banked credit(s) to meet trainee requirements, then the certificate(s) are submitted with the revised training schedule.

The contractor records their intent to use Banking Credits in Box 11 of Section 1, on the ***OJT Training Schedule, Form 275-020-96***.

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## CHAPTER 6: WAGES AND PAYROLLS

### 6.1 GENERAL INFORMATION

#### 6.1.1 Purpose

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). This chapter offers guidance and information surrounding the requirements of payment of predetermined wages, record keeping and overtime requirements. Contracting agencies must monitor and keep records of payments to employees as required by law.

Additionally, this chapter provides a uniform process for reviewing and processing contractor payroll submittals, conducting labor interviews, issuing violations and adding wage classifications to the contract. As applicable, information concerning other labor laws and regulations is also provided.

#### 6.1.2 Scope

Contract wage requirements are included in every federally funded FDOT construction contract award of \$2,000 or more. These requirements apply to the prime and every level (tier) of subcontract, regardless of the amount of the subcontract.

The "government contract acts" (**Davis-Bacon Act, the Copeland Act and the Contract Work Hours and Safety Standards Act**) regulate: payment of wages, record keeping and reporting, and overtime pay respectively on these contracts. Compliance with these "government contract acts" is enforced on a day-to-day basis by the FDOT, as the contracting agency.

FDOT contracts which require compliance with the "government contract acts" include Special Provision Sub-article 7-1.1 which invokes the FHWA 1273, "Required Contract Provisions- Federal-Aid Construction Contracts." Also included in the Special Provisions of these Federal-Aid contracts is Sub-article 7-16, "Wage Rate for Federal-Aid Projects" which specifies the wage table(s) applicable to the specific contract. All FDOT contracts include Standard Specification 7-1, which requires adherence to all applicable laws; (federal, state and local).

Guidance for FDOT's in-house procedures for monitoring this area of compliance is contained in the latest version of the Construction Project Administration Manual (CPAM).

All FDOT projects are governed by the **Fair Labor Standards Act** (FLSA) which requires that a minimum wage, overtime pay, and child labor standards be met. FLSA is enforced directly by the USDOL.

### 6.1.3 State and Federal Minimum Wage

The State of Florida has a minimum wage law. This rate is reviewed annually for modification based upon inflation and cost of living. A new rate typically goes in effect on January 1<sup>st</sup> of each year.

State and Federal minimum Wages are summarized in Table 6.1.3.1

<b>Florida Minimum Wage</b>		<b>Federal Minimum Wage</b>	
<b>Effective Beginning:</b>	<b>Hourly Minimum</b>	<b>Effective Beginning</b>	<b>Hourly Minimum</b>
January 1, 2018-Present	\$8.25		
January 1, 2017	\$8.10		
January 1, 2015-2016	\$8.05		
January 1, 2014	\$7.93		
January 1, 2013	\$7.79		
January 1, 2012	\$7.67		
June 1, 2011	\$7.31		
January 1, 2010	\$7.25		
January 1, 2009	\$7.21	July 24, 2009	\$7.25
January 1, 2008	\$ 6.79	July 24, 2008	\$6.55
January 1, 2007	\$ 6.67	July 24, 2007	\$5.85

Florida's minimum wage law applies to workers on all FDOT construction projects, federal-funded, and state (Non-FAP) funded.

When the Florida minimum wage is higher than a required minimum rate on a Wage Determination, for a federally funded construction project, the Florida minimum wage must be paid. Compliance personnel, on FDOT federally funded construction projects, ~~will~~may issue a **Notification of Payroll Violation Form 700-010-59** for a code four violation (hourly rate paid is less than minimum authorized), in the event workers are paid less than Florida's minimum. If the violation is not resolved within 20 days of the Notification, a Performance Deficiency letter will be issued and the monthly estimate will

be withheld. The State Attorney General's office will be informed of the contractor's failure to correct the underpayment of Florida's minimum wage.

#### **6.1.4 Requirements**

The following elements comprise the contractor's responsibility involving wage compliance for Federal-Aid contracts:

**Wage Determinations** – The prime contractor, as outlined in Section 6.3 of this chapter "Requesting Additional Wage Classifications," must request approval of classifications and wage rates for classifications of work not covered by the applicable Wage Determination(s).

**Reporting and Recordkeeping** – Contractors must submit weekly-certified payrolls and statements of compliance as required. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for three years following the project's completion date, for all laborers and mechanics working at the site of the work.

**Overtime Payments** – All overtime hours (all those over 40 in a workweek) shall be paid at rates no less than 1.5 times the employee's basic rate of pay. Contractors are required to pay "laborers or mechanics" overtime for any hours over 40 in a workweek.

**Deductions** – Pursuant to the **Copeland Act**, any deduction from employee's pay must meet specified requirements and the contractor/subcontractor must request and receive USDOL approval for payroll deductions unless such deductions are specifically listed as not needing such approval (see Table 6.5.3.1 for listing). Deductions from employee pay must conform to the requirements of the **Copeland Act**, including documented approval where required.

**Local Agency Projects**—Federal-aid construction projects on roadways functionally classified as local roads or rural minor collectors could be exempt to the requirements of **Davis-Bacon**. This would depend on the funding. If you think that your project may be exempt, you should check with the State Wage Rate Coordinator or your District Contract Compliance Manager.

**Emergency Repair Work—Davis-Bacon** requirements do apply to emergency repair work that is performed by contractors or subcontractors using the Force account method. It does not apply to work that is performed by State or Local government forces because such agencies are not considered contractors.

## **6.2 WAGE DETERMINATIONS**

### **6.2.1 Purpose**

A "Wage Determination" (WD) is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour

Division of the U. S. Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential). The term Wage Determination includes not only the original decision but also any subsequent decisions modifying or superseding, correcting, or otherwise changing the rates and scope of the original decision.

There are two types of Wage Determinations issued: General Wage Determinations and Project Determinations. General Wage Determinations, also known as area determinations, are predetermined wages set by USDOL to be prevailing in a specific geographic area. General Wage Determinations contain no expiration date and are effective from their date of publication. Once assigned to a contract, this project determination or WD will not change for the life of the contract, unless major changes happen to the scope of the work. The other is Project Determinations which are issued at the request of a contracting agency and are applicable to the specific contract or project to which it was originally assigned. The project wage determination expires 180 calendar days from the date of issuance unless an extension of the expiration date is requested and approved by the Wage and Hour Division. If such a determination is not used in the period of its effectiveness, it is void.

One contract may include multiple Wage Decisions based on the type of construction, the location/county of the work, and certain critical contract dates. They may or may not contain fringe benefits in addition to the basic rates of pay for individual classifications.

The most current version of the wage table is locked in at a date ten (10) days prior to the letting. If a contract is not awarded within ninety (90) days after the bid letting (i.e., bid opening) then the most current modification of the Wage Determination will be applied to that contract, unless USDOL has granted the specific contract an extension to this 90 day rule. (See Table 6.2.3.1)

If an incorrect Wage Determination has been incorporated in a contract, the valid Wage Determination will be incorporated retroactive to the beginning of construction through supplemental agreement or other method as specified by FDOT or Local Agency.

## 6.2.2 Wage Determinations Based on Type of Construction

Wage Determinations will carry a title, which identifies the state, year and number of the WD. For example:

“General Wage Decision Number FL~~20210164020004~~”, FL – state, ~~022021~~ – year and ~~00040164~~ is the number signifying the area the table is effective and the type of construction that it covers. In this case ~~00040164~~ is ~~BuildingHighway~~ Construction for ~~DadeDuval~~ County.

There are four (4) major types of construction addressed on these WDs. They are:

**Highway** – this is used for most of FDOT’s projects. It includes the construction of roads, small bridges, bridges not over commercially navigable waterways, taxiways in airports,

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parking lots which are not incidental to building construction, and storm sewers/drainage work which are incidental to road construction.

**Heavy** – this category is one of a “catch all” nature. It includes those types, which are not covered by the other three categories. FDOT projects, which contain these, are mostly large marine bridges over commercially navigable waterways, dredging projects, jetties, pumping stations and sewage collection and disposal lines, sewer lines, and water mains. Other examples of this type of construction are dams, powerhouses, railroad construction, and tunnels.

**Building** – covers most any building structure except those that are residential in nature that are 4 stories or less.

**Residential** – includes construction of all single family or apartment buildings designed which are not over four (4) stories high.

Note: that in the above definitions, the examples given for the types of construction are only some of the examples given by United States Department of Labor (USDOL). Sometimes when other types of construction are encountered, a decision is required by USDOL to determine the proper wage table(s) for the project.

Questions pertaining to the applicability of any Wage Determination should be directed to the District Contract Compliance Manager and the Prevailing Wage Rate Coordinator (PWRC). If necessary, the PWRC will contact USDOL for guidance. First decide on what type of table is required, then apply the rules of the table listed in 6.2.3.1.

### **6.2.3 U.S. Department of Labor Wage Determination**

Three of the most common rules experienced in determining which Wage Determinations and modifications apply to a specific contract are summarized in Table 6.2.3.1.

**Table 6.2.3.1 Common USDOL Rules Guiding Wage Determinations**

Referred To As:	Description
<b>Ten (10) Day Rule</b>	Guides the specific Publication Date & Modification Number for a contract's Wage Determination. The most current version (modification) of the wage table(s) (specified in the contract special provisions) is "locked in" at a date 10 day before the letting date. For example, if a wage table is modified by USDOL with a publication date that is 10 calendar days before the letting date for the project, then that is the correct version to use. If it is modified with publication date 9 calendar days or less, before the letting, then the previous version would be used.
<b>Ninety (90) Day Rule</b>	Guides the specific Publication Date & Modification Number for a contract's Wage Determination. If a contract is not awarded within 90 days after the bid letting (i.e., bid opening) then the most current modification of the Wage Determination will be applied to that contract, unless the USDOL has granted the specific contract an extension to this 90 day rule.
<b>20% and/or \$1Million</b>	Guides the incorporation of which Wage Determinations apply to a contract. Additional Wage Determinations delineating rates and fringes for specific types of construction (e.g. heavy, building, dredging, etc.) are required if the specialized costs comprise at least 20% of the total construction cost OR totals at least one million dollars. If such work is less than 20% of the total construction cost <u>and</u> will cost less than \$1 million dollars, they are considered incidental to the primary type of construction and a separate Wage Determination is not applicable. Examples: \$6 million roadway construction project includes the construction of a building at the side of the roadway "A" building construction is \$1 million. A Building Wage Determination is required because although building construction is 16.7% of the total, the cost is \$1 million. "B" building construction is \$750,000. A building Wage Determination is not required because the building construction is 12.5% and under \$1 million.

**6.2.4 Fringe Benefits Required in Wage Determination**

A WD may contain two (2) separate requirements for any individual classification: "Rate" and "Fringe." "Rate" refers to the minimum monetary wage and "Fringe" refers to minimum payments for a bona fide fringe benefit.

Contractors may fulfill the total wage requirement for a classification by paying cash and bona fide fringe benefits in a variety of combinations. Refer to Section 6.8 of this Chapter for information on Fringe Benefits.

**6.2.5 Posting Requirements**

The prime contractor on each federally funded project is required to ensure that the Job Site Bulletin Board(s) displays the following items:

(a) The correct Wage Determination(s) (WD). The WD posted on the bulletin board must be the same WD contained in the executed contract. WDs can be obtained from the FDOT Construction Office website or from the USDOL “Wage Determinations OnLine.gov” site.

(b) Classifications added by the request procedure. When additional classifications are approved by USDOL on a project, the approved classifications are to be listed on **Form 700-010-67 Additional Federal Wage Rate Decision Poster**, and then posted on the project bulletin board. The USDOL approval letter and the original request are not posted but should be retained in the contractors’ project files.

(c) The “Important Wage Rate Information” poster. This poster can be obtained from the FDOT Equal Opportunity Office website (see Section 1.4) or downloaded from the FDOT forms library.

## 6.3 REQUESTING ADDITIONAL WAGE CLASSIFICATIONS

### 6.3.1 Purpose

Requesting an additional wage classification is the process that allows a classification to be added to a Wage Determination/wage table (WD) on a project-by-project basis, when the wage table(s) assigned to the project does not include classifications needed to perform work on a project. USDOL **refers/replies** to this request **aswith** a “conformance.”

When a classification is approved, it is only valid for the particular project on which it was requested. Blanket coverage to other projects is not allowed by current regulations.

USDOL provides guidance on conformances in their U.S. Department of Labor Prevailing Wage Resource Book section on **Davis-Bacon Act (DBA) Conformances**.

### 6.3.2 Requirements and Process

It is the prime contractor’s responsibility to submit additional classification requests for their firm and for all subcontractors on the project. The Classification Request Manager (**WRDCRM**), is the system for managing additional classification request. This application allows classification request to be submitted through an Internet Subscriber Account by the contractor. FDOT personnel then process the request electronically and forward to the USDOL. The system creates the Additional Classification-Request Form and forwards the populated form to the Wage and Hour Division of USDOL.

To submit an additional classification request, the prime contractor should follow the directions in the Classification Request Manager User Guide found on the Construction Website. The **WRDCRM** system creates a documented record and allows for **rapidelectronic** response. The DCCM or their designee in each district will evaluate the request and the system will issue the contractor a copy of the decision whether it is

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rejected and returned for amendment by the contractor or validated and sent to the USDOL for conformance.

Upon receiving a response from the USDOL, the PWRC attaches the letter from the USDOL noting the action taken by the USDOL to the system that in turn sends the conformance to the contractor and the DCCM. The DCCM is responsible for forwarding a copy of this transmittal to the project's Resident Compliance Specialist.

The contractor is responsible for posting any added wage classifications and rates on the project bulletin board. The Additional Federal Wage Rate Decisions (Form No. 700-010-67) is provided to make posting this information on the project bulletin board easier.

The final approval letter issued by the USDOL for each classification is sent to the contractor and must be kept by the contractor in the project files for verification of the posted rates.

Additional classifications are not needed for apprentices enrolled in bona fide apprentice programs. An additional classification request is not needed for enrollees in the FDOT OJT program unless the training classification is not specified on the WD. In such cases, the journeyman rate is to be requested for the classification where OJT will occur. Apprentice or trainee rates will be specified in the apprentice or training program document approved by the Florida Department of Education.

### **6.3.3 Wage Payment while Awaiting Additional Classification Decision**

Contractors are to make every good faith effort to submit and obtain additional Wage Classification decisions prior to workers appearing on the project.

If an "Additional Wage Classification" has been requested, but a response has not been received, the contractor may include the additional classification on the certified payroll and pay at least the minimum amount indicated in their request document.

Once the wage decision has been received from the US Department of Labor, the contractor must retroactively make any pay adjustments required, if the rates approved are greater than the rates paid to employees, in that classification. In the event the response indicates that the work is included, in that of an existing classification, the contractor is to begin immediately using the indicated classification and must retroactively pay any difference in rate resulting from this decision.

The contractor will be given 20 days from the date of notification from FDOT to make retroactive pay adjustments, if needed. The 20 days also applies to submission of corrected payrolls and documents evidencing payment to the affected employees. If these adjustments are not made within this timeframe, payroll violations will be issued.

## 6.4 EMPLOYEE LABOR INTERVIEWS

### 6.4.1 Purpose

To fulfill the contracting agency's (FDOT) requirement to monitor payments made on Federal-Aid construction projects, the following procedures have been developed for interviewing employees for proper classification and wage payment purposes.

### 6.4.2 Overview

The **Employee Interview Report - Labor Compliance Form No. 700-010-63**, is provided to document interview results of a cross section of employees based on the dollar amount of the contract. For Consistency, Predictability and Repeatability (CPR) effects, we ask that all labor interviews be conducted using this compliance form. Interviews are conducted monthly on a random basis and interviews are sought on a wide range of laborers and mechanics for labor compliance criteria. "Laborers and Mechanics" are general terms used to mean all construction employees on a project, performing either labor or work termed a craft, as opposed to managerial or technical work. Note: For comparative purposes, other personnel, such as the foreperson, working on the project should be interviewed.

### 6.4.3 Monthly Interview Requirements

Representatives of FDOT and other agencies may interview employees to verify compliance with requirements. Contractors and subcontractors are required to ensure that employees are available for interviews on the project during work hours.

An Employee Interview Report – Labor form will be completed to document any labor interviews conducted by the Department or its representatives. Completed "Employee Interview Report – Labor" forms will be transmitted to the RCS within 5 business days of completion.

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The Resident Compliance Specialist ensures the required minimum number of Labor interviews are completed each month based on the contract dollar amount. The interviews will include a cross-section of active contractors and a diversity of workers. Table 6.4.3 summarizes the minimum number of monthly interviews based on the contract amount. However, additional interviews, above the minimum, may be conducted.

The Resident Compliance Specialist will utilize the ~~Data collected information obtained~~ in the interviews ~~are compared to certified payroll records and other compliance-related information~~ to evaluate ~~compliance~~ the following:-

- o Interview document is complete and accurate
- o Information matches wage rates on the certified payroll -
- o Compare the date of the interview against payroll to ensure interviewee is shown on the project for that date.

- Employee ID matches and listed on the payroll
- Ensure employee is paid overtime, receives hard hat and vest and has not received money or favors on the job
- Ensure the employee is aware of JSBB
- Deductions noted match deductions on payroll
- Review Fringe Data against payroll
- Work observed in field matches classification on payroll and is paid accordingly against WD
- Discrimination concerns

This review should be completed by the RCS within 10 business days of receipt of the completed Employee Interview Report-Labor and supporting documentation whichever is later.

-The Resident Compliance Specialist takes action to resolve discrepancies identified during the interviews. Follow-up interviews maybe required. Actions that may be taken include, but are not limited to: ~~issuance of payroll violations, notices of noncompliance, obtaining copies of payroll checks, copies of other related records, etc.~~ Follow-up interviews maybe required.

- issuance of payroll violations, notices of noncompliance, obtaining copies of payroll checks, copies of other related records, etc.
- Depending on the concern and clarification, a phone call may be performed to the contractor prior to issuing a payroll violation.
- Minimum amount of time from completion of the labor interview until communication with the Prime Contractor? 30 days
- Maximum amount of time from completion of the labor interview until communication with the Prime Contractor? 45 days (would allow for follow up with inspectors, communication with the Contractor, perform additional interview if needed to clarify information, follow up on any potential discrimination issues, etc.
- Some exceptions may occur when...
  - Documented findings on a CCCA, CCCR, or other audits reveal the need to issue a PRV
  - Discrimination investigation (Title VI)

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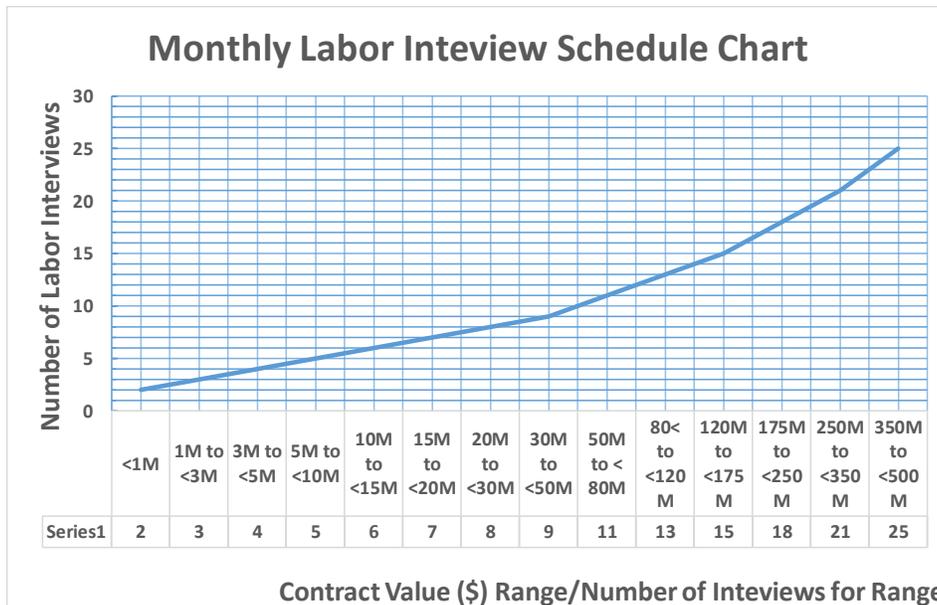
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**Table 6.4.3  
 Minimum Number of Monthly Employee Labor Interviews**

Original Contract Amount	Required Minimum Number of Interviews per Month
Under \$ 1,000,000	2
\$1,000,000 - \$3,000,000	3
Over \$3,000,000 - \$5,000,000	4
Over \$5,000,000 - \$10,000,000	5
Over \$10,000,000 - \$15,000,000	6
Over \$15,000,000 - \$20,000,000	7
Over \$20,000,000 - *	*

\*For original contract dollars greater than \$20 million, the minimum number of interviews will be determined on the vertical axis of the graph. The number of interviews of each range is depicted below the range. Any contracts over \$500 million, the Director of Construction will determine the number of interviews to be conducted.



## 6.5 PAYROLLS

### 6.5.1 Purpose

On all federally assisted construction projects over \$2000-00, the DBA requires submittal of weekly certified payrolls. The payrolls contain information about who worked OJT and ensures compliance with federal wage requirements. Certified payrolls are also necessary to meet the requirements of the **Copeland Act** that lays out regulations for a statement of compliance, signed by the contractor, certifying that the contractor has paid the required wages.

### 6.5.2 Payroll Reporting Requirements

Each contractor and subcontractor will furnish to the project's Resident Compliance Specialist a certified payroll for wages paid to each of their employees assigned to the project during the preceding weekly payroll period. The prime Contractor is responsible for the submission of certified payrolls by all subcontractors. The certified payroll includes the Statement of Compliance and the payroll record.

The submittal ~~will be digitally~~ can be signed **electronically or handwritten** and submitted, to the Resident Engineer (or their designee). Digital certificates used to sign payroll documents must be acquired ~~form~~ **from** one of the approved digital certificate authorities approved by the Department and be of a National Institute of Standards Technology (NIST) assurance level of three (3) or higher.

The payroll includes wages paid to "Laborers and Mechanics" (i.e., workers whose duties are manual or physical in nature including those who use tools or perform the work of a trade), apprentices, trainees, watchmen and guards. Wages paid to workers who perform no manual or physical work on the construction project and whose primary duties are administrative, executive or clerical, are not included on the certified payroll record. Excluded on project certified payroll records are employees such as architects, engineers, timekeepers, administrative staff, surveyors, quality assurance staff, and inspectors. However, any of the excluded employee classifications that perform primarily physical and/or manual duties, while employed by a contractor or subcontractor, in work performed immediately prior to or during actual construction, in direct support of construction crew(s) on the site of the work, will be considered a laborer or mechanic and will be covered by the **Davis-Bacon** requirements. This could include people that normally would be excluded such as surveyors, if they meet the requirements of the covered class.

Payrolls are due every week in which any contract work is performed.

Upon request, contractors will provide the day of the week their employees are paid. The Resident Engineer (or designee) is to receive each certified payroll within seven (7) calendar days of the regular payment date of the payroll. The certified payroll may be submitted on the form prescribed, or on the company's regular payroll form if all required information is included.

Photocopies or “pdf” copies of the “Statement of Compliance”, faxed “Statements of Compliance”, or an electronically scanned “Statement of Compliance” e-mailed to an agency ~~do not~~ satisfy the requirement that each “Statement of Compliance” be: “signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract.”

However, WHD affirms that the use of electronic signatures is sufficient for compliance purposes, and encourages electronic submission of certified payrolls.

The payroll record of each employee is to include: full name, employee identification number ~~(applies to contracts let 2009 or later)~~ correct work classification(s), hourly rate(s) of wages paid including any fringe benefits, daily and weekly number of hours worked on the project, gross wages on the project and all other projects the employee may have worked on, the amount and purpose of each deduction(s) made, and actual net wages paid.

~~On contracts let on or after January 19, 2009, t~~he employee’s address should not be reported and a four (4) digit employee identifier will be recorded instead of the nine (9) digit social security number. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Department. It is not a contract violation for the prime contractor to require the subcontractor to provide addresses and social security numbers to the prime for their records. (See FHWA 1273 Section IV 3(b))

~~FDOT additionally would like to have the race and gender annotated on the payroll records. See Table 6.5.2 for race and gender abbreviations. However, if race and gender are not provided on the payroll, then the contractor shall maintain records that document the race and gender of every covered worker and shall provide them upon request to the Department.~~

Contractors may make corrections to their payroll records by striking-through and initialing each correction; white-out is not acceptable.

**Table 6.5.2  
 Race and Gender Abbreviations**

Gender & Race Categories	Accepted Abbreviations for FDOT Reporting Purposes
Male	Male M
Female	Female F Fem
White ( Not of Hispanic Origin)	White W Wh C Ca
Black ( Not of Hispanic Origin)	Black B Bl
Hispanic	Hispanic H Hisp
American Indian or Alaskan Native	American Indian or Alaskan Native, AI-AN Amer Ind -Ala Nat
Asian	Asian As
Native Hawaiian or Other Pacific Islander	Native Hawaiian or Other Pacific Islander Nat Hi/PI HI/PI HI-PI
Two or More Races( not of Hispanic origin)	Two or More Races Two/More 2+

**6.5.3 Deductions**

The primary purpose of FDOT’s review of payroll deductions, for employees on federal construction projects, is to ensure that there is no violation of the **Copeland “Anti-Kickback” Act**. The **Copeland “Anti-Kickback” Act** prohibits federal contractors or subcontractors engaged in construction from influencing an employee to give up any part of the compensation (“kickbacks” of wages and back wages) to which he or she is entitled. It requires contractors and subcontractors to submit weekly, a statement of compliance certifying the contractor has paid the required wages. It regulates payroll deductions from wages and requires contractors to specify method of payment. Contractors are to maintain records documenting deductions and the employee’s consent or acknowledgment of deductions. Payrolls are required to show deductions in sufficient detail that allows compliance personnel to evaluate whether the deduction is subject to USDOL approval.

Per 29 CFR §3, Some employee deductions are permissible without application to USDOL, some deductions may require USDOL Approval, and lastly, some deductions

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are prohibited. Deductions must satisfy all items 1 – 4 of §3.5 or all items a – d of §3.6. Any employee deduction(s) not meeting the respective criterion is prohibited/unauthorized per §3.9.

**§3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.**

(1) The deduction is not otherwise prohibited by law:

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

**§3.6 Payroll deductions permissible with the approval of the Secretary of Labor.**

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under §3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

**§3.9 Prohibited payroll deductions.**

Deductions not elsewhere provided for by this part and which are not found to be permissible under §3.6 are prohibited.

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Table 6.5.3.1 summarizes, from the **Copeland Act**, deductions which are generally allowed without application to, or permission from, the U.S Department of Labor. Contractors are required to request U.S. Department of Labor permission before taking any deduction which does not fall within these parameters or which may questionably fall within these parameters. Deduction request letters can be submitted electronically. Simply scan a copy of the signed request and email your request to [dbadeductions@dol.gov](mailto:dbadeductions@dol.gov). The email address may also be used to request the status of current deduction requests, as well as ask technical assistance questions, regarding **Copeland Act** deductions.

Table 6.5.3.2 summarizes, from the **Copeland Act**, the four criteria that the USDOL considers in granting contractor permission for other deductions. All four criteria must be satisfied for the granting of permission.

Generally, administration fees, interest, or any profit taken on deductions is not allowed by the employer. Employee loans through a bona fide third party (such as a credit union, profit sharing trust fund, etc.) may include interest and fees charged by that third party. In short, the employer may not benefit financially from the loan of money to an employee nor may they impose an administrative fee. Court ordered garnishments including a minimal processing fee payable by the employee and/or employer are allowed.

Deductions for personal use of cell phones and use of company vehicles require the permission of USDOL and must meet the criteria stated in Table 6.5.3.2. Contractors requesting USDOL permission, for such deductions, should provide additional information to address compliance.

Collective bargaining agreements, which include deductions for dues do not require USDOL approval, but requires the prior approval for the deduction from the employee. If the deduction in the collective bargaining agreement is not identified or the deduction is identified on the payroll as a "union working assessment" then USDOL approval is required.

Child support or other court-mandated deductions may allow the contractor to deduct an administrative fee.<sup>57</sup> In accordance with Florida Law, a deduction of \$5.00 for the first deduction and \$2.00 for each deduction after that is allowed for administrative fees. This deduction is to help with the cost that the employer has, for setting up the deduction in their system and to aid in expenses for mailing etc. See Section 61.1301, F.S.

The following is general guidance on some common deductions:

**Uniform Rental Deductions:** If the deduction takes an employee below the required base rate of pay then the deduction must be approved by the USDOL. A copy of the deduction approval letter shall be sent to the DCCM and the Prevailing Wage Rate Coordinator for input into the tracking system.

**Garnishment:** A court ordered garnishment order shall be in the contractor's payroll files and will be made available to the FDOT upon request. Note: This does not mean that it should be attached to each payroll.

**Loans/Pay Advances:** Any loan or pay advance to employees by the contractor/subcontractor requires a signed authorization by the employee for the deductions. A new deduction requires a separate authorization. USDOL approval is not required.

<b>Table 6.5.3.1 Deductions Generally Allowed without Contractor Application to or Permission from the U.S. Department of Labor</b>	
A	Federal, State income withholding tax; social security taxes
B	Amounts required by court order, such as child support payments
C	Repayment, without discount or interest, of employee advances or loans
D	Contributions to funds for medical or life insurance, retirement funds or pensions
E	Purchase of US savings bonds
F	Deductions for charitable organizations such as Red Cross, United Way
G	Automatic payroll deposits to a Credit Union
H	Union initiation fees and membership dues
I	Purchase of safety equipment of nominal value when such equipment is not required by law to be furnished by the employer
J	Reasonable cost of board, lodging or other facilities, when such meets the specific requirements of the Fair Labor Standards Act, Part 531 and special records are kept;
K	Transportation to and from the place of employment
L	Bona-fide Fringe Benefits that are approved in writing by the employee.

<b>Table 6.5.3.2 Four Criteria Required by USDOL in Granting Permission for Other Deductions (Satisfaction of all 4 Criteria is Required)</b>					
1	The contractor, subcontractor or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend or otherwise, and;				
2	The deduction is not otherwise prohibited by law, and;				
3	The deduction is either: <table border="0" style="width: 100%;"> <tr> <td style="width: 20px;">A</td> <td>Voluntarily consented to by the employee and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining employment or its continuance –or-</td> </tr> <tr> <td>B</td> <td>Provided for in a bona fide collective bargaining agreement between the contractor and the representatives of its employees, and;</td> </tr> </table>	A	Voluntarily consented to by the employee and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining employment or its continuance –or-	B	Provided for in a bona fide collective bargaining agreement between the contractor and the representatives of its employees, and;
A	Voluntarily consented to by the employee and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining employment or its continuance –or-				
B	Provided for in a bona fide collective bargaining agreement between the contractor and the representatives of its employees, and;				
4	The deduction serves the convenience and interest of the employee				

#### 6.5.4 Requesting USDOL Permission for Deductions

Contractors are responsible for requesting U.S. Department of Labor permission for deductions that do not fall within the parameters of those deductions generally allowed without USDOL permission (see Table 6.5.3.1.) This permission is to be obtained before taking the deduction.

Permission is generally granted for a period of one (1) year. Retroactive permission is occasionally granted and it is documented accordingly in the USDOL approval.

Submit electronic deduction request letters to [dbadeductions@dol.gov](mailto:dbadeductions@dol.gov) or send signed deduction permission requests on company letterhead and include a copy of any previous approval granted for this deduction. Address the request to:

<p style="text-align: center;">U.S. Dept. of Labor, Wage &amp; Hour Division Division of Enforcement Policies &amp; Procedures - Rm. # S3006 200 Constitution Avenue, N.W. Washington D.C. 20210</p>
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The contractor's proposed deductions should comply with all of the criteria stated in Table 6.5.3.2 and the letter should specifically state:

- 1.) This request complies with the provisions as set forth in the Department of Labor Regulations 29 C.F.R. Part 3.6-Payroll deductions permissible with the approval of the Secretary of Labor.
- 2.) The contractor or any affiliated person does not make a profit or benefit directly or indirectly from the deduction.
- 3.) The deduction is not otherwise prohibited by law.
- 4.) The deduction is either (1) voluntarily consented to by the employee in writing and such consent is not a condition of employment, or (2) the deduction is provided for in a bona fide collective bargaining agreement, and
- 5.) The deduction serves the convenience and interest of the employee."

USDOL tries to respond to these requests within 30 days.

### 6.5.5 Overtime

Overtime (OT) is the payment of 1.5 times the basic rate of pay for any hours worked in a workweek over 40. The basic rate of pay is the straight time hourly rate-generally listed in the "RATE" column, apart from the fringe benefit amount (if any) listed for a classification in the Wage Determination. ~~See the requirements set out in 29 CFR part 3.5 and 3.6 and part 5.32.~~ Fringe benefits must be provided for overtime hours. But fringes are calculated on an hourly basis. If an employee works five (5) overtime hours then they must be paid 5 hours of fringe benefits. Fringe benefits are never calculated at time and one-half. The basic hourly rate (BHR) is always controlled by the employee, so any deductions to the BHR should have the employee's consent. When overtime hours are involved then special consent must be granted by the employee to deduct any portion of the overtime pay. Pursuant to FLSA in 531.37 deductions may be made during an

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overtime workweek as in non-overtime workweeks providing the amount deducted does not exceed the amount that could be deducted if the employee had only worked the maximum number of straight time hours during the workweek.

This does not mean that the employers cost for fringe benefits will not be considered "compensation" in the context of an overtime payment. If fringes are used to meet the basic hourly rate, then that cost is considered compensation towards the total cost owed to the employee for overtime weeks as in a non-overtime week. Employer funded fringe benefits creditable towards fulfilling a contractor's obligation to meet the **Davis-Bacon** prevailing wage requirement are separate and distinct from payroll deductions addressed in 29 CFR 3.5 & 3.6.

In addition to OT requirements for employees that fall under the provisions of the DBA, there is also a requirement for OT pay for night watchmen and guards. The Contract Work Hours and Safety Standards Act on federally funded projects over \$100,000.00 requires overtime pay for laborers and mechanics, including guards and watchmen, for at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. Federally funded projects under \$100,000.00, as well as state funded projects, also have overtime requirements for covered employees under the Fair Labor Standards Act.

Overtime payments are based on time actually worked (including break periods but not lunch) and cannot include holiday, vacation or other time, for which an employee is paid, but not worked.

### **6.5.6 Classifications**

The payroll record is to reflect the employee's classification of work as listed on the General Wage Determination (WD) or on the additional Wage Determination.

The payroll record should state the employee's classification title as listed on the wage decision. If classifications are abbreviated on the payroll, and the relationship to the titles on the wage decision is ambiguous, the contractor may be required to submit a letter stating to which classification on the wage decision the abbreviation is referring, or a legend can be provided.

Semi-skilled is an EEO Category which includes several individual classifications; it is not a job classification. Refer to Chapter 3, Table 3.4.5 for specific semi-skilled job classifications that must be shown on the payroll, if applicable.

A person working as a welder should be classified in the classification for which welding is incidental (example: Welder-Reinforcing Iron Worker) on the payroll record.

Enrollees in the FDOT OJT Training program (See Chapter 5) may be paid at the common general laborer rate, stated in the Wage Determination, for training hours, if the trainee is not paid at least the minimum of the classification in which he is training.

~~Also, "Trainee" must be added to the classification title on the payroll. (Note: This may only be done when the individual is properly enrolled in the OJT program.)~~  
~~Also, 'trainee' must be annotated/included with the classification on the certified payroll to identify applicable training hours. Enrollees cannot be classified as 'trainee' when performing work not associated with the OJT Program. Enrollees must be identified in the appropriate Davis Bacon Act (DBA) classification when performing work which does not pertain to OJT program/training hours.~~

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### 6.5.7 Work in More than One Classification

When an employee's work on a project includes activities performed in more than one classification during a payroll period, the contractor has two alternatives for wage and payroll compliance:

Note: In the following examples, only applicable portions of the payroll record are shown; the examples are not complete payroll records.

#### 1.) Hourly rate varies and classification of work varies.

Pay the employee varying amounts based on the work performed, provided that the hours worked, in each classification are documented and the hourly rate paid, is at least the minimum rate for each classification.

The Certified payroll reflects each work classification, hours worked in each, and rate paid for each.

Example:

General Decision Number FL 2003xxxxx												
		CLASSIFICATION		RATE		FRINGE						
		Truck Driver Multi-Rear Axle		\$8.88								
		Unskilled Laborer		\$7.77								
NAME	WORK CLASSIFICATION	HOURS WORED EACH DAY ON THIS PROJECT								TOTAL HOURS	RATE OF PAY	GROSS
		S 4/4	M 4/5	T 4/6	W 4/7	Th 4/8	F 4/9	Sa 4/10				
DLEX, JOE	Unskilled Laborer		8	8		2	8			26	\$ 7.77	\$202.02
	Truck Driver Multi-rear axle				8	6				14	\$ 8.88	\$124.32

If an employee's work during one pay period is covered by more than one Wage Decision ( e.g. Highway- County X and Highway- County Y or, Highway and/or Heavy) and the contactor wishes to vary the rate of pay based on the classification of work, then the payroll record must additionally include a notation as to which WD applies to which classification, days and hours of work.

#### 2.) Hourly rate and reported classification is unchanged although work varies.

All hours worked by the employee are paid at one rate that is equal to or greater than the minimum rate, of the “highest classification” the employee worked. The “highest classification,” is the classification which the employee worked, that has the highest minimum wage, on the Wage Decision.

The actual rate paid is equal to or higher than the minimum for each classification worked.

The Certified payroll reflects the highest classification of work, hours worked each day, and the one rate applied to all work.

General Decision Number FL 2003xxxxx										
CLASSIFICATION		RATE		FRINGE						
Truck Driver Multi-Rear Axle		\$8.88		-						
Laborer		\$7.77		-						

NAME	WORK CLASSIFICATION	HOURS WORED EACH DAY ON THIS PROJECT								TOTAL HOURS	RATE OF PAY	GROSS
		S	M	T	W	Th	F	Sa	4/10			
DLEX, JOE	Truck Driver Multi-rear axle	4/4	4/5	4/6	4/7	4/8	4/9	4/10		40	\$ 8.88	\$355.20

### 6.5.8 Working Foremen/~~W~~women

Working foremen/women, referred to as “forepersons”, are those employees who, while having some supervisory duties, also engage in “hands-on” construction craft and laborer work.

The time that a working foreperson spends in the construction craft or laborer work is subject to the **Davis-Bacon Act** provisions provided:

(1) The employee does not qualify as an exempt executive (as defined in Part 541 of 29 C.F.R.);

~~And~~ (2) 20% or more, of the pay period, the employee is involved with duties in a construction craft, or is working in a labor classification.

The payroll record of a working foreperson includes the designation of foreperson, plus the craft or laborer classification worked in (i.e. “Foreperson-Carpenter”). The Working foreperson is to be paid at least the minimum rate listed in the Wage Determination for the hours spent working in the specific classification.

If a working foreperson works overtime hours in a craft or laborer classification, the wage paid for those overtime hours must be at least equal to time and a half (1.5) of the “Rate” specified for that classification on the project’s Wage Determination. If it is less, additional pay is due for each of the overtime hours.

A working foreperson’s hourly rate for a craft or laborer classification is calculated as follows:

Weekly Pay rate divided by 40 hours=equivalent hourly rate EXAMPLE:

A Working Foreperson/Carpenter's weekly pay is \$600.00 per week; the hourly rate is \$15.00 (\$600.00/40 hours). The wage decision for Carpenter is:

General Decision Number FL xxxxx		
CLASSIFICATION	RATE	FRINGE
Carpenter	\$10.00	-

If overtime hours are incurred while working as a carpenter, this Working Foreperson must earn at least \$15.00 per hour (1.5 times the carpenter's "rate" of \$10.00). This employee's hourly rate equals the time and a half rate of the carpenter classification, so no additional pay is required. If the employee's hourly rate was less than \$15.00, then additional pay would be required for each overtime hour to equal the time and a half rate of the carpenter.

### 6.5.9 Independent Contractors & Working Owners

Occasionally, a contractor will have a person perform work on a project and that contractor will report that the person is an independent contractor and not an employee. Generally, a person cannot become an independent contractor just because he or she wants to be or because an employer prefers them to be. It is not enough that the employee and the employer agree.

Independent contractors are a legitimate resource in highway and bridge construction projects. The Department's ~~concern~~ position is to ensure that such is not being falsely claimed ~~in order~~ to circumvent taxation, workers compensation and or prevailing wage requirements. ~~To do business with the State of Florida, a contractor must be registered with the Department of State (DOS), and should supply the prime with an FEID number.~~

The USDOL and the U.S. Supreme Court have indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee. ~~But the~~ FDOT requires all independent contractors to ~~be registered with the DOS and~~ have a sublet or rental agreement on file.

FDOT may advise the contractor of apparent violations, and will rely on the determination of investigators from ~~the~~ IRS, the USDOL, etc., for ~~a determination as to~~ determining the validity of the reported status.

The USDOL Fact Sheet #13, (Employment Relations under the **Fair Labor Standards Act**) offers additional insight as well as various IRS documents. The fact sheet is available at the USDOL website. (See Chapter 1, Section 1.4 for a Directory of Compliance Websites)

The work of independent contractors is to be authorized for the project through a Sublet or Rental Agreement. All subcontractor compliance reporting requirements apply to independent contractors, (See Chapter 1, Section 1.7 Compliance Requirement Summary), including submission of certified payrolls reflecting hours worked on the project and classification of work.

Owners of independent contracting businesses who themselves perform the work of a laborer or mechanic on DBA-covered jobs may be exempt from the prevailing wage requirements. To qualify as an exempt owner, a 20% bona fide equity interest must be held and the individual must participate in management of the business. To establish eligibility for this treatment, the owner must file a statement with the FDOT attesting to their ownership interest and management activities within their organization. This must be filed with a signature on each job where the business owner performs manual or physical work at the job site. Additional documentation may be requested for verification and verification may be done by the USDOL. After this statement is filed, for each week where the business owner works at the job site, the certified payroll should show their name and a four (4) digit identifier, but the remaining information need not be shown, just a notation, "Owner-541 Excluded." This treatment will be ~~accorded~~applied only to bona fide business owners.

#### **6.5.10 Truck Owner-Operators**

An independent owner-operator of a truck is one who owns and drives their own truck. Truck owner-operators are not routinely subject to EEO Reporting however, they are subject to complying with FDOT's non-discrimination requirements and an 'abbreviated certified payroll' is required.

The abbreviated certified payroll of a truck owner operator includes their full name and the notation "owner-operator." None of the other data items (hours, rate, deductions, etc.) required on a certified payroll is needed.

Contractors are responsible for ~~insuring~~ensuring accurate reporting of all such operators on Federal-Aid or federally assisted projects. It is acceptable for the prime or subcontractor who engages the owner-operator to list the truck owner-operator on their certified payroll provided they have (1) acquired and retained documentation attesting to the operator's ownership of the truck and (2) have a valid basis for assuring that only the owner is operating the truck on the specific project.

This valid basis may be established contractually (subcontract specifies that only the owner may drive the truck on the specific project), or with an affirmation statement signed by the owner of the truck. Documentation of this valid basis is subject to verification and should be retained by the contractor for a minimum of three years following FDOT final payment on the project.

Owners of trucks that have incorporated and own at least 20% of the business and are not hiring drivers outside of the corporate owners can be listed on the Prime or

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Subcontractors payroll. Once they hire outside of the corporate owners then they must submit Certified Payroll for their employees.

A payroll violation is issued when it is determined that a driver does not actually own the truck, they are operating on-site and they have previously been reported as a truck owner-operator. This determination could have been by someone filling out the Trucker Observation and Validation form, or some other type of routine inspection (See Chapter 2.7.7.1). Correction requires submission of a certified payroll for the driver, reflecting all required data elements, and an hourly rate at least equal to that specified on the project wage table, for the type of truck operated.

#### **6.5.11 Certified Payroll for Warranty Work**

Some construction contracts include provisions for warranty work following the final pay-off of a project. A certified payroll is required for construction craft and laborer workers, performing warranty work on FDOT federally funded contracts, if the employee(s) spend more than 20% of their workweek on the site of the original work. All certified payroll requirements associated with work during construction apply to the warranty work. The notification, sent to the contractor regarding the necessary warranty work, will reference the requirement, and state instructions on where to submit, the certified payrolls.

#### **6.5.12 Time Frame for Submittal of Payrolls**

Each week, in which any contract work is performed; the prime contractor will submit, to the FDOT Compliance staff, the payrolls and signed Statements of Compliance, within seven (7) calendar days, after the regular payment day, of the payroll period. The prime contractor is responsible, to assure that all required payrolls are submitted, for all subcontractors, rental companies (for agreements with operators), and temporary employment agencies performing work during the subject week.

#### **6.5.13 Contractor's Retention of Payroll Records**

Both FDOT and the contractor have retention responsibilities for payroll records.

Payrolls and basic records, relating to payrolls shall be maintained by the prime contractor, during the course of the work, and preserved for a period of three (3) years, from the date of completion of the project. These records are required to be available for inspection, copying or transcription by FDOT, FHWA, USDOL or authorized representatives. These provisions are governed under 29 C.F.R. Part 5.5 and FHWA 1273, section IV.

#### **6.5.14 Department's Storage and Retention of Payroll Records**

Payrolls submitted by the contractor to the Department and associated payroll records shall be maintained by the Department's representative during the duration of the contract. After final payment to the contractor is made, the payroll records will be submitted to FDOT. All payrolls will be moved to the payroll folder in the

Compliance Module of EDMS. Records will be retained along with any other sensitive documents such as Employee Interviews. When submitting these documents into EDMS, check the “sensitive” checkbox so that only administrative personnel given access to the Construction folder will be able to view the information.

FDOT’s individual schedule A-312(1) Contractor’s Payroll – Federal Projects, retention of three (3) fiscal years after final payment; is superseded by General Records Schedule GS1-SL for State and Local Government GS1-SL Project Files: Federal Item #137 retention is five (5) fiscal years after completion of project. FDOT A-312(1) is no longer used. See LAP Manual for Local Agency requirements.

### 6.5.15 The Wage and Hour Record

The **Wage and Hour Record Form 700-010-69** has two required parts:

- 1.) The Wage and Hour Record or payroll record and
- 2.) A Statement of Compliance that must include the signature of the contractor (or his/her agent) who pays or supervises the payment of the people employed under the contract.

Optional additional pages are provided for more space in detailing employee deductions (“Deduction Report”) and employee fringe benefits (“Fringe Report”).

The Statement of Compliance may be retyped for the convenience of the contractor, but it must contain the exact words and sections of the original form. The Statement is certifying the payroll, for the pay period, contains the information required and the information is correct and complete. That laborer(s) or mechanic(s) (including apprentices and trainees) employed on the contract, during the payroll period, have been paid the full wages earned and no deductions, directly or indirectly have been made other than those permissible. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage rate determination incorporated into the contract. And the Contractor or subcontractor shall make the required records available for inspection, copying or transcription by authorized representatives of FDOT, the FHWA, and the US Department of Labor.

~~Notifications of noncompliance (Payroll Violations)~~ are may be issued for payrolls that have errors, are not consistent with interview reports, or show inadequate payment of employees.

#### Directions for Completing Wage and Hour Record Form

This **Form 700-010-69** includes four pages: Statement of Compliance, Wage and Hour Record, Deduction Record, and Fringe Benefit Record.

**Note:** Computer generated payrolls should follow these same guidelines.

**Directions for completing The Statement of Compliance**

Date Record the date this record is being submitted  
Name: Name and title of person signing the Certification  
Contractor; Name of the company for which the employees work  
Building or Work Identification of the project (the FDOT contract #)  
Payroll Period Day and month /year pay period begins  
Day and month/year pay period ends  
Contractor Name of the company for which the employees work

Description of Deductions:

Each deduction listed on the payroll ~~should~~**must** be listed in this area (the four blank lines); however, attaching an additional page listing the deductions and placing a phrase such as **“see attached for deductions”** in this area is recommended in lieu of listing each one separately. If all deductions made are adequately described in the “Deductions” column on the payroll, state “See Deductions column in this payroll.”

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Box 4a, b, c On the statement of compliance (form 700-010-69) either box 4(a) or 4(b) will be checked and any exceptions to the box that is checked will be listed in box 4(c). The contractor will never check both boxes. Complete these boxes only if your payroll includes a classification that on the Wage Determination (WD) for the project, indicates a Fringe payment amount. If there were not classifications used on the project that required fringe benefits per the wage determination, the boxes should be left blank.

Contractors who satisfy the Fringe benefit requirements of a Wage Determination by making payments to an approved plan, fund or program should report that by checking box 4(a) on the Statement of Compliance. This signifies that the contractor is making payments for fringe benefits to appropriate programs for the benefit of the employees. The section for box 4(a) reads “where fringe benefits are paid to approved plans, funds or programs”. Any exceptions shall be noted in section 4(c)

If the contractor is satisfying fringe benefit requirements by paying employees in cash, then box 4(b) on the Statement of Compliance is checked. The section for box 4(b) reads “Where Fringe benefits are paid in cash.” Any exceptions shall be noted in section 4(c)

Remarks            Include any data deemed appropriate  
Name & Title        Name and title of person signing the Certification  
Signature            The person's signature

**Directions for completing Wage and Hour Record**

Column 1. All payroll records submitted shall contain the employee's first and last names. On contracts let on or after January 19, 2009, the employee's address is not reported and a four (4) digit employee identifier should be recorded instead of the nine (9) digit social security number. However, the social security number and address of each affected employee should be kept by the prime contractor in his employment records for this project and for the subcontractors' employees that are employed on the site of work.

Column 2. This column is optional for withholding exemptions, race, and gender. While ~~we no longer not~~ required that race and gender be put on the payroll, ~~we encourage it.~~ Not annotating the payrolls will add an additional requirement for the contractor and subcontractors to keep separate records with this information and these records are to be provided to the Department upon request.

Column 3. Classification: Record the classification as it appears on the Wage Determination (WD) or on the additional wage rate request for the specific project. Semi-skilled laborer, helper, or operator (without designation of which type) cannot be used. If the classification listed on the payroll is not exactly as it appears on the WD, the contractor may submit a signed letter to clarify and to correlate the payroll classification to the WD.

Column 4. Hours worked by day of week. Overtime hours are to be listed on the upper row, straight-time hours are to be listed on the lower row.

Column 5. Total hours worked on FDOT project (shown separately for overtime and straight time).

Column 6. Rate Paid – Indicate the hourly pay rate for overtime on upper row and straight-time on lower row. Check the rate paid for the work classification against the Wage Determinations (WD) for the specific contract. The hourly rate for Fringes paid in cash may be shown in the straight time space as follows:

<u>Minimum Wage Determination</u>	
<u>Basic hourly rate</u>	<u>\$17.00</u>
<u>Fringe benefits</u>	<u>\$4.00</u>
<u>Total minimum wage/fringe benefit obligation</u>	<u>\$21.00</u>

(1) \$21.00 in cash wages:

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(2) \$17.00 plus \$4.00 in pension contributions or other bona fide fringe benefits;  
(3) \$15.00 plus \$6.00 in pension contributions or any combination of bona fide fringe benefits.  
\*Note: overtime must be paid at time and one-half the basic hourly rate of \$17.00. See 29 CFR 5.32.

	<b>\$12.00</b>	HOURLY RATE PAID
STRAIGHT TIME HOURLY RATE	<b>\$1.27</b>	FOR FRINGES

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Column 7. Gross Amount Earned. On the top section, record the employee's gross earnings on this project. On the bottom section, record the employee's total gross earnings this pay period (includes this project, other FDOT projects and any other)

<b>GROSS THIS PROJECT</b>	<b>\$21.00</b>
<b>TOTAL WEEKLY GROSS</b>	<b>\$400.00</b>

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GROSS THIS PROJECT		TOTAL GROSS
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Column 8. Deductions: All deductions *must be* identified. The amount of each and every deduction shall be listed along with its description, including those not requiring USDOL authorization. (See Deductions this Chapter, Section 6.5.4).

~~Column 9 — Not wages paid for week.~~

**Directions for completing the Deductions Record**

Record the contractor's name, address, payroll number, pay period ending date, contract number, financial project number and project description/county.

Employee Name (last, first): Record the employee's name as it appears on the "Wage and Hour Record."

Type a "deduction description" in each box and then record the amount of that deduction for each employee or leave blank. Do not mix deductions and benefits on the same form. Example

Employee's Name	Loan	Uniforms	Medical-individual	Total Deductions Amount
Adams, Juan		\$8.00		\$8.00
Beser, Louis	\$25.00	\$8.00	\$34.00	\$67.00

Column 9. Net wages paid for week.

Column 10. Fringe Benefits

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### **Directions for completing the Fringe Benefits Record**

Record the contractor's name, address, payroll number, pay period ending date, contract number, financial project number, and project description/county.

Employee Name (last, first): Record the employee's name as it appears on the "Wage and Hour Record." Type a "fringe benefit description" in each box and then record the amount of that Fringe Benefit for each employee or leave blank. Do not mix deductions and benefits on the same form.

## **6.6 NOTIFICATION OF PAYROLL VIOLATION**

### **6.6.1 Purpose**

Payrolls are to be promptly reviewed by the Resident Compliance Specialist and the contractor is to be advised of all instances of omissions, tardiness and violations.

### **6.6.2 Violation Types**

The RCS issues a "Payroll Violation" letter (See Chapter 1, Section 1.6) in the event:

- A. The contractor or subcontractor was active on a project and failed to submit a certified payroll for that week. A copy of the Daily Work Report may be attached as reference.
- B. The certified payroll record is not received within seven (7) days of that company's regular payment day of the payroll period.
- C. The Statement of Compliance is incorrect or incomplete.

A **Payroll Violation Form 700-010-59** is issued by the RCS when it is determined, the certified payroll does not comply with the minimum wage requirements, or the submitted wage/payroll information is incomplete or erroneous, or unauthorized deductions were made. FDOT Staff may refer to the Construction Project Administration Manual (CPAM) Section 5.4.7 "Notification of Payroll Violation."

~~Phone calls shall not be placed in lieu of issuance of this form; however, p~~Phone calls may be used to determine the nature or character of an apparent violation to better assure that a correct action or response is taken.

Payroll Violations are identified by a code number. The payroll record of any one employee may reflect more than one violation. The following Table 6.6.2 summarizes the Violation Codes.

Table 6.6.2  
Payroll Violation Codes

Code	Description
1	Time and one-half rates were not paid for work performed in excess of 40 hours per week
3	Improper Classification: Employees observed assigned to work involving "higher" classifications than those shown on payroll listing.
4	Hourly rate paid is less than minimum authorized wage rate for classification of work shown and included in the construction contract
5	Certified payroll contains mathematical errors that indicate payment made to the employee(s) violated Federal-Aid labor provisions or the contract
6	Unauthorized payroll deductions
7	Other violation not listed above

### 6.6.3 Correction Requirements

The prime Contractor is responsible for obtaining and forwarding to the Resident Compliance Specialist all documentation and records required to satisfactorily resolve all notices of noncompliance and payroll violations issued for their own workforce, their subcontractors, temporary employment agencies, and rental agreements with operators.

FDOT staff may refer to the Construction Project Administration Manual (CPAM) Chapter 5.4.78 for the Notification of Noncompliance process.

Code 1 payroll violations require that an assessed violation penalty of \$10.00 per day, plus additional gross wages due be withheld, and formal notification be sent to Federal Highway Administration. Monies withheld for wage differences shall be released to the contractor upon receipt of a supplemental certified payroll and proof that the employee was reimbursed for the amount in question. Satisfactory proof of reimbursement could include a copy of the electronic deposit into the employee's bank account, canceled check or pay stub or an affidavit stating payment by the contractor with the affected employee's signature. The Division Administrator of the FHWA or his designee will make the decision regarding the release of penalty monies withheld.

Code 3, 4, 5, or 6 payroll violations require contractors to furnish to the Resident Compliance Specialist, within 20 calendar days, a certified supplemental payroll showing the payment restitution, when applicable, along with proof of payment made and received by the employee. The date upon which the Payroll Violation is received by the prime contractor is counted as day one (1) of the twenty (20) calendar day resolution period.

The payroll record reflecting correction of a violation, and its accompanying Statement of Compliance, is referred to as a "Supplemental Payroll." The Supplemental Payroll is to be reviewed by the Resident Compliance Specialist. If it substantiates correction of the cited violation, the Contractor will be considered to be in compliance and no further noncompliance action is taken.

If the corrective action does not satisfy the violation cited or if a certified supplemental payroll is required and is not received within the (20) twenty days allotted, and/or is received and does not satisfy the infraction, then the Resident Compliance Specialist coordinates the Performance Deficiency Letter which withholds the Monthly Progress Estimate in its entirety and affects the final grade of the prime Contractor's Past Performance Rating.

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#### **6.6.4 Processing Supplemental Payments when the Employee cannot be located**

In the event the contractor cannot contact the affected employee, (e.g. the employee has moved and no forwarding address) the contractor is not relieved of the responsibility for payment. In these cases, payment in the amount owed the employee must be sent to the USDOL Wage and Hour Division. The District Contract Compliance Manager (DCCM) coordinates collection of the payment and the required supporting documentation, and makes the submission to USDOL.

The contractor will provide a payment document that has a minimum expiration period of 180 days, and make the check or money order payable to:

USDOL Wage and Hour Division

The check should note the name of the contractor and the contract number for which the work was performed. The contractor will also provide the employee's social security number and last known address to the DCCM.

Documentation to accompany the check or money order should include a cover letter from the DCCM, on FDOT letterhead, that will include contract information, contractor information, subcontractor information if applicable, and name, amount owed, social security number and last known address of the employee(s) to which payment is owed. A completed Standard Form 1446, a copy of the Contractor Noncompliance Notification and a copy of the Certified Payroll record(s) is to accompany the check or money order.

Mail the check to:

Ms. Beverly Kitchen  
U.S. Department of Labor  
Wage and Hour Division  
61 Forsyth Street, S.W., Room 7M40  
Atlanta, GA 30303

The USDOL should be able to readily identify and make appropriate disbursements to the affected employees.

Attachment 6.6.4.1  
Standard Form 1446

<b>LABOR STANDARDS INVESTIGATION SUMMARY SHEET</b>		OMB No.: <b>9000-0089</b> Expires: 03/31/93 CONTRACT NUMBER
<small>Public reporting burden for this collection of information is estimated to average 15 mins, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.</small>		
REPORTING OFFICE	CONTRACT AMOUNT	DATE OF CONTRACT
TYPE OF CONTRACT <input type="checkbox"/> FIXED PRICE <input type="checkbox"/> CPFF <input type="checkbox"/> OTHER (Specify)		
CONTRACTOR'S NAME AND ADDRESS (Include ZIP Code)		EMPLOYER'S NAME AND ADDRESS (Include ZIP Code) (If other than prime contractor)
PROJECT AND LOCATION		
DESCRIPTION OF WORK		
BASIS FOR INVESTIGATION		
WAGE DETERMINATION NUMBER	WAGE DETERMINATION DATE	
<b>NATURE AND EXTENT OF VIOLATION</b>		
NO. EMPLOYEES INVOLVED	ARE VIOLATIONS CONSIDERED WILLFUL? <input type="checkbox"/> YES <input type="checkbox"/> NO	COPELAND ACT VIOLATIONS <input type="checkbox"/> YES <input type="checkbox"/> NO
DAVIS-BACON ACT UNDERPAYMENTS \$	CWHSSA* UNDERPAYMENTS \$	CWHSSA* LAW VIOLATIONS \$
<b>CORRECTIVE ACTIONS TAKEN</b>		
RESTITUTION MADE <input type="checkbox"/> YES <input type="checkbox"/> NO	AMOUNT OF RESTITUTION \$	CONTRACTORS PAYMENT WITHHELD <input type="checkbox"/> YES <input type="checkbox"/> NO
WITHHELD FOR DAVIS-BACON VIOLATIONS \$	WITHHELD FOR CWHSSA* UNDERPAYMENTS \$	WITHHELD FOR CWHSSA* VIOLATIONS \$
REMARKS		
<b>PREPARED BY</b>		
DATE	TITLE	SIGNATURE

\*Contract Work Hours and Safety Standards Act

AUTHORIZED FOR LOCAL REPRODUCTION  
 Previous edition is usable

**STANDARD FORM 1446** (REV. 12-90)  
 Prescribed by GSA-FAR (48 CFR) 53.222(f)

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## 6.7 WAGE SURVEYS

### 6.7.1 Purpose

Wage surveys are the means by which the USDOL gathers information to update the WD's prevailing wage rates. New wage decisions were posted for every county in Florida in September 2013.

### 6.7.2 Requirements

Wage surveys will be conducted when the USDOL initiates them and commits to publishing new wage tables from the surveys. USDOL will outline the time period for which survey data will be collected, which is usually for a year's time period. The Prevailing Wage Rate Coordinator, along with the District Contract Compliance personnel, will encourage contractor participation by means of announcements and workshops in the districts and communication through the contractor's associations. The points will be stressed that (1) the results of the survey's accuracy are determined by the amount of participation (poor participation creates erratic rates in the wage tables); (2) once the survey is done, rates will be in effect for at least the next three years, and (3) if voluntary participation is not successful, FDOT will have no choice but to return to a contract requirement method of collecting data.

### 6.7.3 Data Collection

USDOL will provide the forms and assemble the data when collected. Instruction will be given by USDOL and/or FDOT to help guide contractors through the survey process.

## 6.8 FRINGE BENEFITS

### 6.8.1 General Information

A Wage Determination (WD) may contain two separate requirements for any individual classification: "Hourly Rate" and "Fringe Benefit," the sum of which is the "prevailing wage" for the classification. "Rate" refers to a monetary wage and "Fringe" refers to payments for a bona fide fringe benefit.

Contractors may meet the prevailing wage requirement for a classification by paying combinations of cash and bona fide fringe benefits:

- Paying the sum in cash
- Paying cash and making or incurring cost for "bona fide" fringe benefits
- Any combination of the above

Under the **Davis-Bacon Act**, monetary wages paid in excess of the specified "Rate" may be used as an offset or credit to satisfy fringe benefit obligations. Likewise, excess Fringe benefits may be used to satisfy the specified Rate provided the governmental minimum wage (Florida Minimum Wage) is honored in cash. Fringe benefits that exceed the fringe benefit limit on the Wage Decision and require part of the minimum base rate listed on

the Wage Decision to be used, are considered to be part of the employee's minimum base rate in meeting the prevailing wage. Bona fide fringe benefits do not require the approval of USDOL. If they exceed the limit of fringe benefits on the Wage Decision and require cutting into the minimum base rate on the Wage Decision, the employee's approval is not required, but the plan must be communicated to the employee in writing. The employee should be allowed to opt out of any fringe in which they would be termed ineligible or that is a deduction to the Base Rate on the Wage Decision. See 29 CFR part 3.5.

Where excess fringe benefits are used to offset the Rate, an employee's overtime pay of time-and-a half must be based on at least the "Rate" specified in the General Wage Decision.

### 6.8.2 Fringe Statements on Wage Determinations

The WD may state the Fringe for a specific classification in a variety of ways:

General Decision Number FL xxx xxx			
Fringe stated as:	CLASSIFICATION	HOURLY RATE	FRINGE RATE
Dollar amount per hour	Loader	\$12.00	\$2.00
Percent	Driver	\$12.00	3%
Specific benefit described in a footnote of the WD	Painter	\$12.00	(a)
Percent plus Dollar amount per hour plus	Carpenter	\$12.00	3%+ \$2.00
Percent, Dollar amount per hour plus footnote	Loader	\$12.00	3% , \$2.00, (a)
<b>Sample WD Footnote:</b>			
(a) Four (4) Paid Holidays per year			

The value of fringe stated as a percent is calculated by multiplying the percent times the WD Rate. The value of a fringe described in a footnote is calculated using the WD rate unless otherwise specified.

**Attachment 6.8.2.1 Fringe Calculation Examples**

**Example 1**

CLASSIFICATION	WD RATE	WD FRINGE	
Loader	\$12.00	\$2.00	
<p><b>The employee must be paid a minimum of the combined "WD Rate" plus "WD Fringe" for the first 40 hours each week. Many combinations are allowable:</b></p>			
Alternative	Cash Paid	WD Fringe Value	Total Paid per Hour
A	\$12.00	\$2.00	\$14.00
B	\$14.00	0	\$14.00
C	\$10.00	\$4.00	\$14.00
D	\$12.26	\$1.74	\$14.00
<p><b>Hours over 40 per week must be calculated at a minimum of the "WD Rate" times the one-and-a-half (1.5) "overtime premium." Fringe for overtime is paid at the straight time rate.</b></p>			
\$12.00	X 1.5=	\$18.00 +\$2.00 = \$20.00/hr Overtime Rate	

**Example 2**

CLASSIFICATION	WD RATE	WD FRINGE	
Loader	\$12.00	\$2.00	
<p><b>If the employee receives bona fide fringe benefits or the employer contributes to funded benefit plans, those benefits may be used to satisfy the combined "WD Rate" and "WD Fringe" amount. Pay for the first 40 hours each week may be:</b></p>			
Example	Cash Paid	WD Fringe Value	Total Paid per Hour
E	\$11.50	\$2.50	\$14.00
<p><b>If the employee works more than 40 hours per week and the amount for the bona fide fringe benefit or the funded benefit plan is fulfilled by the 40 hours of straight time, then the "WD Fringe" for overtime hours is paid in cash.</b></p>			
<p><b>Hours over 40 per week must be paid a minimum of the "WD Rate" times the one-and-a-half (1.5) "overtime premium" and the fringe for overtime is paid in cash since the benefits were fully funded from the first 40 hours.</b></p>			
\$12.00	X 1.5=	\$18.00 +\$2.00 = \$20.00/hr Overtime Rate	

**Example 3**

CLASSIFICATION	WD RATE	WD FRINGE	
Carpenter	\$12.00	3% + \$2.00	
<p><b>Fringe stated as a percent is calculated by multiplying the percent times the "WD Rate."</b></p>			
<p><b>Calculating the Value of for Fringe for Example 3:</b></p>			
\$12.00 x .03=		\$0.75	
Plus WD Fringe \$		\$2.00	
WD Fringe Value		\$2.75	
<p><b>The employee must be paid a minimum of the combined "WD Rate" plus "WD Fringe" for the first 40 hours each week</b></p>			
Example	WD Rate	WD Fringe Value	Total Paid per Hour
F	\$12.00	\$2.75	\$14.75

**Example 4**

CLASSIFICATION	WD RATE	WD FRINGE	
Carpenter	\$12.00	3%+\$2.00+(a)	
<p>(a) Four (4) Paid Holidays per year</p>			
<p><b>Fringe described in a footnote is calculated using the "WD Rate" unless otherwise specified</b></p>			
<p><b>Calculating the Value of Fringe for Example 3:</b></p>			
\$12.00 x .03=		\$0.75	
Plus WD Fringe \$2.00		\$2.00	
Plus (a)			
4 Holidays X 8 Hr per day X \$12=\$384.00			
Hourly value of (a): \$384.00/ (53 wks x 40hrs=		\$0.18	
WD Fringe Value		\$2.93	
<p><b>The employee must be paid a minimum of the combined "WD Rate" plus "WD Fringe" for the first 40 hours each week</b></p>			
Example	WD Rate	WD Fringe Value	Total Paid per Hour
G	\$12.00	\$2.93	\$14.93

### 6.8.3 Fringe Benefits: Work Hour and Overtime Requirements

Where a WD specifies “Rate” and “Fringe,” fringe benefits must be paid for all hours worked, including overtime. Overtime wages, including overtime fringe benefit payments are governed by Contract Work Hours and Safety Standards Act (CWHSSA).

The fringe amount may be excluded from the time and a half premium for overtime; fringe may be paid at the straight rate (versus the time-and-a-half rate) for overtime hours. Cash payments made to meet a required Wage Determination fringe benefit amount are excluded from the time and a half (1.5) premium for overtime; cash payment of fringe benefit requirements are paid at the rate of 1.0 for each overtime hour.

Following are three alternatives for the proper payment of fringe for overtime hours. Example: Cement Mason on a contract that utilizes the below general decision

General Decision Number FL xxx xxxxx		
CLASSIFICATION	RATE	FRINGE
Cement Mason/Concrete finisher	\$12.00	\$2.50

The Cement Mason works 44 hours during one pay period. The employee’s total compensation will be \$662.00. However, gross wages on the paycheck may be less due to satisfying all, some or more of the fringe requirements in benefits.

ALTERNATIVE 1: Contractor pays rate and fringe in cash only; no bona fide fringe benefits are involved. Overtime must be paid at one and a half times the sum of the cash paid rate and 1 times the fringe for every hour of work over 40 hours:

<b>Cash Wage</b>	<b>\$14.50</b>	<b>(=\$12+2.50; no bona fide fringes)</b>
Straight time	\$580.00	(=40 hrs x \$14.50)
overtime	\$72.00	(=4 hrs x (\$12.00 x 1.5) (1.5 premium on wages only)
	\$10.00	(=4 hrs x (\$2.50x 1.0) ( no 1.5 premium on fringe benefits)
Gross Wages	\$662.00	

ALTERNATIVE 2: Contractor pays rate in cash and fringe in bona fide benefits. Only the rate is subject to one and a half premium and the fringe is paid at straight rate for overtime:

<b>Cash Wage</b>	<b>\$12.00</b>	<b>(and bona fide fringes equivalent to \$2.50)</b>
Straight time	\$480.00	(=40 hrs x \$12.00)
Overtime	\$72.00	(=4 hrs x (\$12.00 x 1.5) (1.5 premium on wages only)
Gross Wages	\$552.00	

For fringe benefits, a total of \$2.50 must be paid into a plan, fund or program on every hour worked, including overtime.\*

**ALTERNATIVE 3:** Contractor pays cash at lower than the specified rate and pays fringes greater than specified. The one and a half overtime premium is paid 1½ the specified rate.

<b>Cash Wage</b>	<b>\$10.00</b>	<b>( and bona fide fringes equivalent to \$4.50 )</b>
Straight time	\$400.00	(=40 hrs x \$10.00)
overtime	\$72.00	(=4 hrs x (\$12.00 x 1.5))
Gross Wages	\$472.00	Plus bona fide fringe benefits

For fringe benefits, any hours over 40, \$2.50 must be paid into a plan, fund or program to meet requirements.\*

\*If a contractor is unable to pay fringe benefits into a plan, fund or program for overtime hours he will pay the overtime fringe benefit requirement to the employee in cash.

#### **6.8.4 Bona Fide Fringe Benefits**

Bona fide fringe benefits allowed by law include;

- Funded benefit plans:
  - Insurance: Life, health, dental,
  - Pension and 401K
- Unfunded benefit plans:
  - Vacation, holidays and sick leave

Deductions required by law such as taxes, social security, worker's compensation or unemployment compensation cannot be counted as a fringe benefit. Examples of items not considered bona fide fringe benefits include, but are not limited to the following:

- Personal use of a company vehicle
- Holiday cash bonus or food item
- Suggestion awards
- Recruitment bonuses
- Tools and other materials or services incidental to the employee's performance of the contract
- Cost of furnishing, laundering and maintaining uniforms or equipment where the contractor requires the employee to wear those items
- Cost of social functions, association dues, paid coffee breaks

##### **6.8.4.1 Funded Benefit plans**

Funded Benefit Plans involve contractor payments to a fund, plan or program where such payments are made irrevocably to a trustee or a third party. Insurance premiums paid irrevocably to a third party (e.g. insurance carrier) and employer 401K contributions and pension fund payments to a third party are examples of funded benefit plans. These may be credited toward the prevailing wage requirements if all requirements are met including the following;

- Such payments must be made regularly and at least quarterly. Profit sharing plans are bona fide fringe benefits provided the contractor escrows money at least quarterly on the basis of what the profit is expected to be.
- Fringe benefit contributions may not be claimed for employees who are not eligible for the benefit. (e.g. excluded because of part time status)
- Contributions to pension plans which meet **ERISA (Employment Retirement Income Security Act)** requirements are considered bona fide.
- Contributions to pension plans which contain “vesting requirements” (e.g. the employee is required to complete a certain length of employment) are bona fide provided the contractor’s contributions for the employees who do not meet the requirement are not reverted, credited and/or returned to the employer but instead are distributed to the remaining pension participants.

Contributions made to funded fringe benefit plans are allowed based on the effective annual rate of contributions for all hours worked during the year by an employee, regardless of whether or not the hours were worked on a **Davis-Bacon project**. This is referred to as “annualization” Example

General Decision Number FL xxx xxxxx		
CLASSIFICATION	RATE	FRINGE
Cement Mason/Concrete finisher	\$12.00	\$2.50

The contractor provides the Mason a medical insurance premium contribution of \$200 per month, which is \$2400 per year (\$200 x 12 months). The employee’s annual hours are 2080 (52 weeks x 40 hours per week) so the hourly insurance premium contribution is \$1.15 (\$2400 annual premium divided by 2080 hours worked per year).

If the employee receives only medical insurance as a fringe benefit then for each hour worked on projects covered by the Wage Determination, the employee’s pay is:

\$12.00 hourly rate  
 1.15 hourly fringe benefit for insurance premium  
 1.35 additional cash due for fringe  
 \_\_\_\_\_ (= \$2.50 total fringe - \$1.15 Insurance premium)  
 \$14.50 (\$12.00 Rate + \$2.50 fringe)

The certified payroll would report an hourly pay rate of \$13.35 (\$12.00+\$1.35) and the medical insurance would be identified as a fringe benefit.

### 6.8.4 2 Unfunded Benefit Plans

Unfunded or self-funded plan fringe benefits, monies are not paid by the contractor to a third party for future payments; rather the benefit is paid by the contractor as the benefit

is earned. Such plans must be submitted to the USDOL, National Office, to determine whether the benefits and the plan are “bono fide”. Common unfunded benefits include paid holidays, vacation or sick time. The USDOL requires contractors to set aside, in an account, sufficient assets to meet the future obligation of unfunded plans and to ensure that such plans are not used to avoid compliance.

Plans should be submitted to:

Branch Chief  
Branch of Government Contracts Enforcement  
Wage and Hour Division, Room S-3006  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Unfunded benefits must also meet the following **Davis-Bacon** requirements in order to qualify as bona fide benefits:

- It is reasonably anticipated that the benefit will be provided to the employee
- The benefit is a commitment that can be legally enforced
- The benefit has a financially responsible plan or program
- The benefit has been communicated in writing to the employees

The fringe contribution of most unfunded benefit plans varies based on the employee’s actual hourly rate of pay. The following is an example of how 40 hours paid vacation would be calculated as a fringe benefit for two different employees who work 2080 hours per year (52 weeks x 40 hours per week):

	Actual Rate of Pay (excluding fringe)	40 hours vacation pay	Per hour fringe contribution for 40 hours paid vacation
Employee A	\$10.00	\$400.00	\$0.19 (\$400 divided by 2080 hrs)
Employee B	\$15.00	\$600.00	\$0.29 (\$600 divided by 2080 hrs)

**Note:** The total hours an employee works in the year whether on projects covered or not covered by **Davis-Bacon** are included for calculating the hourly contribution rate.

If unused paid time off is forfeited upon termination, then the per hour cost must be computed on the basis of the time off paid to the employee unless the employee is paid in full for time off upon termination.

Paid holiday hours may be counted as a bona fide benefit provided the employee who works any part of the week in which the holiday occurs will be paid the entire holiday pay.

Contractors who require employees to work the day before and/or the day after the holiday in order to earn holiday pay, may be subject to verifications to prove the absence of arbitrary layoffs, and/ or other impermissible acts taken to avoid payment.

### **6.8.5 Administrative Expenses**

The administrative expenses incurred by a contractor in connection with the administration of a bona fide fringe benefit plan are creditable towards satisfying the prevailing wage requirement. If an administrative fee is charged to the employee it must be a valid expense and the employer must be able to show proof of the expense. Administrative fees for the deduction of child support payments are set by the Florida Statutes (see **Section 61.301, Florida Statutes**).

### **6.8.6. Reporting Payment of Fringe Benefits on the Statement of Compliance**

If fringes apply to the classifications utilized on your certified payroll then on the **Statement of Compliance Form 700-010-69** either box 4(a) or 4(b) will be checked and any exceptions to the box that is checked will be listed in box 4(c). The contractor will never check both boxes.

Contractors who satisfy the Fringe benefit requirements of a Wage Determination by making payments to an approved plan, fund or program, report such by checking box 4(a) on the Statement of Compliance. This signifies that the contractor is making payments for fringe benefits to appropriate programs for the benefit of the employee(s). The section for box 4(a) reads "where fringe benefits are paid to approved plans, funds or programs." Any exceptions shall be noted in section 4(c).

If the contractor is satisfying fringe benefit requirements by paying employees in cash, then box 4(b) on the Statement of Compliance is checked. The section for box 4(b) reads "Where Fringe benefits are paid in cash." Any exceptions shall be noted in section 4(c).

Enter in the Exception column of box 4(c) the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes, or the explanation of why this employee is different.

### **6.8.7 Fringe Benefit Record Keeping Requirement**

Fringe benefit contributions may not be averaged; credit may only be taken based on individual employee calculations. If fringe benefits are claimed toward the wage requirement, employer records must demonstrate that for each reported employee, payments were made or costs incurred for eligible fringe benefits. This includes a detailed accounting of all deductions made and the identification of funds. The contractor may be required to submit such calculations in support of their compliance with payroll requirements. An example of calculation records for two employees is shown below:

EMPLOYEE RATE & FRINGE CALCULATIONS					EMPLOYEE FRINGE BENEFIT CALCULATIONS						ADDITIONAL CASH PAYMENT FOR FRINGE
CLASSIF.	EMPL.	EMP'S HOURLY PAY RATE	WAGE TABLE		MEDICAL See #1	LIFE INSUR See #2	DENTAL INSUR See #3	PAID VAC-ATION See #4	PAID HOLIDAYS See #5	TOTAL PAID FRINGE	
			RATE	FRINGE							
CARP-ENTER	SMIT, J	\$8.00	\$8.00	\$0.76	\$1.73	\$0.46	\$0.26	\$0.15	\$0.18	\$2.78	\$0.00
CARP-ENTER	FUE,H	\$8.00	\$8.00	\$0.76	DECLINE D	\$0.06	DECLINE D	\$0.15	\$0.18	\$0.39	\$0.37
LOADER OPERATOR	GIR, M	\$11.00	\$9.50	\$1.50	NOT ELIGIBLE UNTIL 6 MOS SENIORITY					\$0.00	The \$1.50 paid excess of base Rate is considered as Fringe (\$11-9.50=\$1.50)

FUNDED FRINGE BENEFIT CALCULATIONS	(A) Total Monthly Premium	(B) Monthly portion of premium paid by company	(C) Annual Standard Hours (40 hrs per week X 52 wks)	(D) Monthly Standard Hours (Annual Standard Hrs divided by 12 mo) (= C / 12)	(E) Hourly Fringe Benefit Amount (Monthly Portion of premium paid by company divided by Monthly Standard Hours) (= B / D)
MEDICAL- EMPLOYEE ONLY COVERAGE	\$600.00	\$300.00	2,080	173.33	\$1.73 (#1)
LIFE INSURANCE (\$10,000 DEATH BENEFIT)	\$80.00	\$80.00	2,080	173.33	\$0.46 (#2)
DENTAL INSUR-EMPLOYEE ONLY COVERAGE	\$45.00	\$45.00	2,080	173.33	\$0.26 (#3)

UNFUNDED FRINGE BENEFIT CALCULATIONS FOR \$8.00 HOURLY PAY RATE	(W) Paid Hours	(X) Employee Hourly Rate	(Y) Paid Hours times Hourly Rate (= W x X)	(Z) Annual Value (Annual Value / Annual Standard Hours) (= Y / (40 Hr. per week x 52 Weeks))
PAID VACATION	5 days/yr @ 8hrs= 40 hrs	\$8.00	\$320.00	\$0.15 (#4)
PAID HOLIDAYS	6 days/yr @ 8hrs= 48 hrs	\$8.00	\$384.00	\$0.18 (#5)

### 6.8.8 Additional information on Davis-Bacon Fringe Benefits

Contractors are encouraged to research the details of **Davis-Bacon** Fringe benefit requirements and consult with District Contract Compliance Managers and the Prevailing Wage Rate Coordinator for additional information and assistance.