

# Local Agency Program & Florida Highway Administration Certification & Recertification Computer Based Training

## Module 4 Part 1 – Federal Statutes and Regulations

This portion of the presentation covers specific statutes and regulations imposed by the federal government on federal-aid highway construction programs.

There are many code references throughout the presentation. Please have your pen and paper handy to write down the codes for future research. There is also a link for more information related to the content of this portion of the presentation. You may access the link by selecting the “links” button at the bottom of this page.

Let’s take a look at federal requirements as they relate to Contract Administration.

DOES ANYONE KNOW WHAT THE FHWA 1273 IS?

Form 1273 used to be referred to as the “pink sheets”. It applies to all Federal-aid projects, regardless of size, location, or funding type and is a “Convenient collection” of Federal Regulations.

For National Highway System or NHS projects, a State may not modify the 1273 although they may supplement it with State-specific requirements, provided the State requirements do not conflict with or modify the 1273.

For Non-NHS projects, the State may develop a modified boilerplate, but non-Title 23 requirements cannot be changed. FHWA Division Administrator must approve the modifications.

Major Parts of FHWA Form 1273 include:

- General
- Nondiscrimination
- Non - segregated Facilities
- Payment of Predetermined Minimum Wage (Davis-Bacon)
- Subletting or Assigning the Contract
- Safety: Accident Prevention (OSHA Requirements)
- False Statements Concerning Highway Projects

This section sets forth the general provisions in the 1273. It Applies to ALL work performed on the contract, including subcontracts. The Prime contractor is responsible for compliance by subcontractors.

Failure to comply with the requirements is a breach of contract and therefore may be grounds for contract termination or debarment depending on requirement breached.

The contractor shall not discriminate in hiring locally. Neither the State nor the local government may mandate a hiring preference. Convict labor cannot be used on a Federal aid contract.

Nondiscrimination applies to all federal-aid construction contracts and subcontracts of greater than \$10K.

The federal government recognizes seven forms of discrimination. They are: Race, Color, Religion, Gender, National Origin, Age, and Disability.

Equal Employment Opportunity or EEO extends to contractors the practices of: Recruitment, Hiring, Pay, Training, Promotion, and Retention. Like any other contract requirement, violations in these practices may result in holding payments or cancellation of contract.

The contractor is required to have an EEO policy that prohibits discrimination and provides for affirmative action in employment practices.

The contractor shall adopt the following statement as his operating policy:

*"It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age, or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."*

Affirmative action is defined as a good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur.

The contractor's EEO policy also pertains to his selection of subcontractors, including material suppliers and equipment leasing companies. Contractors are encouraged to use Disadvantaged Business Enterprises (DBEs) or other subcontractors that employ minorities and women. Furthermore, contractors are required to exercise their best efforts to ensure that subcontractors comply with the EEO requirements.

#### Review Question

A local agency is constructing a LAP project and wants to utilize state wage rates. As per federal requirements, the FHWA form 1273 is included in the contract package; however, the section referring to Davis-Bacon is crossed out. Does this mean that Davis-Bacon does not apply to this construction project?

The answer is NO.

# LINKS

LAP Website

<http://www.dot.state.fl.us/projectmanagementoffice/LAP/default.shtm>

Florida Statutes

<http://www.leg.state.fl.us/statutes/>

Wage Tables and related info

<http://www.dot.state.fl.us/construction/wage.htm>

Federal Statutes and Regulations

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2A02>

Environmental Process Acronyms

<http://www.fhwa.dot.gov/programadmin/contracts/coregloss.cfm>

FHWA 1273

<http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&rgn=div6&view=text&node=23:1.0.1.7.22.1&idno=23>

Civil Rights Act of 1964

[http://www.fhwa.dot.gov/environment/title\\_vi.htm](http://www.fhwa.dot.gov/environment/title_vi.htm)

Section II.1 EEO

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2A02>

Davis Bacon Act

<http://www.gpo.gov/davisbacon/>

Federal aid policy guide 6011.10 has additional information:

<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>

“Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation”

<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>