Contract Best Practices – Prompt Payment, Labor Compliance, and More

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Dolores Leyva
DBE/ACDBE Compliance Specialist | Southwest Region, FAA

Aliecia Taormina, CCEP, CCA
Director of Client Services | LCPtracker, Inc.
Why are we talking about Prompt Payment?

• Prompt Payment remains a compliance priority
• Prompt Payment complements the purpose and intent of the DBE program
• FAST Act re-emphasizes role of Prompt Payment in DBE program
• OIG Audit of FAA’s DBE Program-Year Two
• FAA Reauthorization Act of 2018 creates Prompt Payment complaint reporting requirements
• Prompt Payment affects all small businesses, including DBEs
Prompt Payment – DBE Program
Requirements

• Update DBE Program to reflect current rule and guidance
• Contract clause requiring primes to pay subcontractors no more than 30 days after receipt of payment
• Identify retainage option(s) from § 26.29(b) recipient selected
  – Decline to hold retainage from primes, prohibit primes from holding retainage from subs
  – Decline to hold retainage from primes, require primes to pay retainage to subs within 30 days if sub’s work is satisfactorily completed
  – Hold retainage from primes, provide for prompt and regular incremental acceptances of portions of prime contract, pay retainage to primes based thereon, and require primes to pay retainage to subs within 30 days if sub’s work is satisfactorily completed
Prompt Payment – DBE Program
Requirements

• Program and contract documents should state what constitutes satisfactory completion, defined in §26.29(c)

• Satisfactory completion of a subcontractor’s work should also be identically defined in the prime’s contract with the recipient

• FAA recipients must use the partial payment language from Section 90-06 of FAA Advisory Circular 150/5370-10G

• Identify dispute resolution mechanisms
Prompt Payment Template

• Available Online

• Contains examples of Monitoring, Dispute Resolution Mechanisms, Enforcement Measures, etc.
Complaint Reporting

• Section 157 of the 2018 FAA reauthorization (Public Law No. 115-254)

• Airport sponsors must track and report subcontractors’ allegations of non-compliance

• FAA is required to assess and improve airport sponsor compliance based on analysis of reports received

• Report complaints and related data directly to FAA at: https://www.surveymonkey.com/r/PromptPaymentComplaints

• Report questions are previewed in the following slides
1. Sponsor and DBELO Information:
   - Sponsor/Owener Name
   - Airport Name
   - Airport ID Code (3 digit)
   - DBELO Name
   - DBELO Email Address
   - DBELO Phone Number

2. Date of Complaint
   - Date: MM/DD/YYYY

3. How was this complaint submitted?
   - [ ] Email
   - [ ] Formal Letter
   - [ ] Telephone
   - [ ] Via web link
   - [ ] Other (please specify): 

(Submit details in the space provided)
### 4. Complainant Information:

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
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</thead>
<tbody>
<tr>
<td>Complainant Name</td>
<td></td>
</tr>
<tr>
<td>Company Name</td>
<td></td>
</tr>
<tr>
<td>Certified DBE Firm (Viable)</td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td></td>
</tr>
<tr>
<td>City/Town</td>
<td></td>
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<tr>
<td>State/Province</td>
<td></td>
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<tr>
<td>ZIP/Postal Code</td>
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<tr>
<td>Email Address</td>
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<tr>
<td>Phone Number</td>
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### 5. FAA funded project information:

<table>
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<tr>
<th>Field</th>
<th>Details</th>
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<tbody>
<tr>
<td>Project Name</td>
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<tr>
<td>Project Number</td>
<td></td>
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<tr>
<td>AF Grant Number</td>
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### 6. Description of complaint (Include internal tracking #):

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<th>Field</th>
<th>Details</th>
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### 7. Resolution for Complaint:

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<th>Details</th>
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### 8. Did all project contracts include the following provisions (check all that apply):

- [ ] A. Contract assurance as required by 49 CFR 26.132(a)
- [ ] B. 90-01 Partial Payment clause as required by ADB-83/97-100
- [ ] C. Additional Partial Payment language as required by 49 CFR 26.322(5)
- [ ] D. Prompt Payment enforcement provision as required 49 CFR 26.326(d)(e)

If you selected D, please describe how contractual enforcement provisions are included, specify document name and section/lines.
9. Does the Sponsor proactively monitor prompt payment of all subcontractors?
   - YES
   - NO
   - IF YES, please describe how.

10. Did the Sponsor implement enforcement actions with this complaint to prevent prompt payment complaints from recurring?
    - YES
    - NO
    - IF YES, please describe how.

11. Has the Sponsor's DBE Program been updated to address USDOT prompt payment guidance released in 2016 and 2018?
    - YES
    - NO
    - IF YES, has a copy of it been uploaded to FAA Civil Rights Connect?

12. Was FAA involved in the resolution of the complaint?
    - YES
    - NO
    - IF YES, please provide staff name.
Complaint Reporting

• Report complete details
• Reporting a complaint is an opportunity to review your own processes
Additional Resources

• Official USDOT DBE Program Q&A:

• Your Operating Administration’s Civil Rights Contact
  – FAA: [https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/faa_dbe_staff.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/faa_dbe_staff.pdf)
  – FHWA: [https://www.fhwa.dot.gov/civilrights/overview/crpersons.cfm](https://www.fhwa.dot.gov/civilrights/overview/crpersons.cfm)
  – FTA: Your Regional Civil Rights Officer (RCRO) or Contact at [https://ftawebprod.fta.dot.gov/ContactUsTool/Public/NewRequest.aspx](https://ftawebprod.fta.dot.gov/ContactUsTool/Public/NewRequest.aspx). - select “Civil Rights & Accessibility” as the dropdown category
Federal Aviation Administration
Office of Civil Rights

http://www.faa.gov/about/office_org/headquarters_offices/acr
Why should we discuss Labor Compliance?

- Federal and Federally-assisted contract require it
- If your contract requires DBE, it probably requires labor compliance
- It can be expensive to not do
- People should be paid properly
Who has to Comply with Prevailing Wage?

- Agencies who receive funds that make prevailing wage laws applicable
- Contractors who build projects for those Agencies
- Subcontractors who work for those Contractors
What does Compliance Mean?
When do I have to comply with Prevailing Wage?

- Davis-Bacon: Federal or federally-assisted projects over $2000 (DBA or DBRA)
- State/City/County mandated prevailing wage program
- Contract required
Why do we Care about Compliance?

- “…Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.” (52.222-8 – Payrolls and Basic Records)
- “…Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor…” (52.222-11 – Subcontracts – Labor Standards)
How Do I Achieve Compliance?
Compliance Risks
Labor Compliance Risks

- Inadequate Information & Incomplete CPRs
- Classification & Wage Issues
- Apprentices & Trainees
- Overtime / Double-time Requirements
- Fringe Benefit Requirements
- Deductions
- Wage Determination Utilization
- Workforce Makeup
Red Flags
Red Flags

• No deductions / 1099er’s
• Crew make-up
• Time tracking not consistent with industry standards
• Business Owners
• Only working 40 hours
• Wage determination type doesn’t match work being performed
• Apprentice ratios
• Other deductions that aren’t permissible
• No signed authorization for other deductions
• Truck Brokers turning in CPRs with Owner-Operators
Resources

- [www.dol.gov](http://www.dol.gov)
- Field Operations Handbook Chapter 15
- Prevailing Wage Resource Book
- USDOL Prevailing Wage Seminars
- Conferences like this
- Contacts in the industry
Training

- Don’t assign this topic to the intern
- Train your staff members
- Attend industry conferences
- Ask questions of your Client
Clients Compliance Programs

• Learn their program
• States, Counties & Cities can all be different than the Federal
  – Understand their specific prevailing wage rates
• Ask questions
• Look for guides or manuals
Electronic Labor Compliance Program

USE ONE
What happens if I’m Non – Compliant?

• Suspension
• Forfeiture
• Penalties
• Criminal Prosecution
• Civil Prosecution

AND/OR...

DEBARMENT