



 **WASCITO**

CIVIL RIGHTS TRAINING SYMPOSIUM | AUSTIN 2019



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

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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
 - <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-program-best-practices>
- 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



PROMPT PAYMENT AND RETAINAGE COMPLAINTS

1. Sponsor and DBELO Information:

Sponsor/Owner Name	<input type="text"/>
Airport Name	<input type="text"/>
Airport ID Code (3 digit)	<input type="text"/>
DBELO Name	<input type="text"/>
DBELO Email Address	<input type="text"/>
DBELO Phone Number	<input type="text"/>

2. Date of Complaint

Date

MM/DD/YYYY	\
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3. How was this complaint submitted?

- Email
- Formal Letter
- Telephone
- Via weblink
- Other (please specify)

4. Complainant Information:

Complainant Name	<input type="text"/>
Company Name	<input type="text"/>
Certified DBE Firm (Yes/No)	<input type="text"/>
Address	<input type="text"/>
City/Town	<input type="text"/>
State/Province	<input type="text"/>
ZIP/Postal Code	<input type="text"/>
Email Address	<input type="text"/>
Phone Number	<input type="text"/>

5. FAA funded project information:

Project Name	<input type="text"/>
Project Number	<input type="text"/>
AIP Grant Number	<input type="text"/>

6. Description of complaint (include internal tracking #):

7. Resolution for Complaint:

8. Did all project contracts include the following provisions (check all that apply):

- A. Contract assurances as required by 49 CFR 26.13(b).
- B. 90-80 Partial Payment clause as required by AC150/5370-10G.
- C. Additional Prompt Payment language related to 49 CFR 26.29(a)-(c).
- D. Prompt Payment enforcement provision as required 49 CFR 26.29(d)-(e)
- If you checked D, please describe how contractual enforcement provisions are included, specify document name and section/clause.

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.

Done

Complaint Reporting

- Report complete details
- Reporting a complaint is an opportunity to review your own processes

Additional Resources

- Official USDOT DBE Program Q&A:
 - <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/official-questions-and-answers-qas-disadvantaged>
 - <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/prompt-payment-section-sample-template>
- 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
 - FHWA: <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>. - 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](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



The Who, What, When, Why & How of Prevailing Wage





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

**EMPLOYEE RIGHTS
UNDER THE DAVIS-BACON ACT**

**FOR LABORERS AND MECHANICS
EMPLOYED ON FEDERAL OR FEDERALLY
ASSISTED CONSTRUCTION PROJECTS**

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

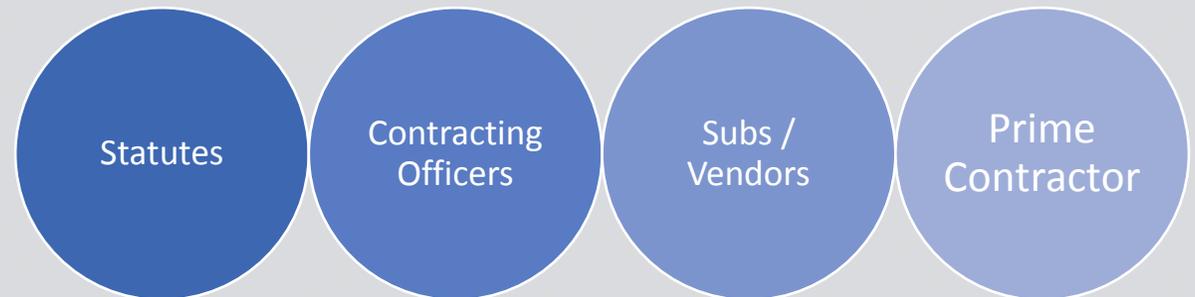
PROPER PAY If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

For additional information:

 **1-866-4-USWAGE** 
(1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division



Why do we Care about Compliance?

CFRs

FARs

DBA

DBRA

CWHSSA

Copeland
Act

Withholding
of funds

Union labor
disputes

Fines

Contract
termination

Debarment

- *"...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



Best Practices

Resources

- 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



What happens if I'm Non – Compliant?

- Suspension
- Forfeiture
- Penalties
- Criminal Prosecution
- Civil Prosecution

AND/OR...

DEBARMENT





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