

Network for Success

Local Programs Workshop



BREAKOUT SESSION – GROUP 3

Track B – Civil Rights

Thursday, September 26, 2013

10:30am – 12:00pm

Network for Success

Local Programs Workshop



Civil Rights Requirements

September 26, 2013

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Moderator: Russ Dudley

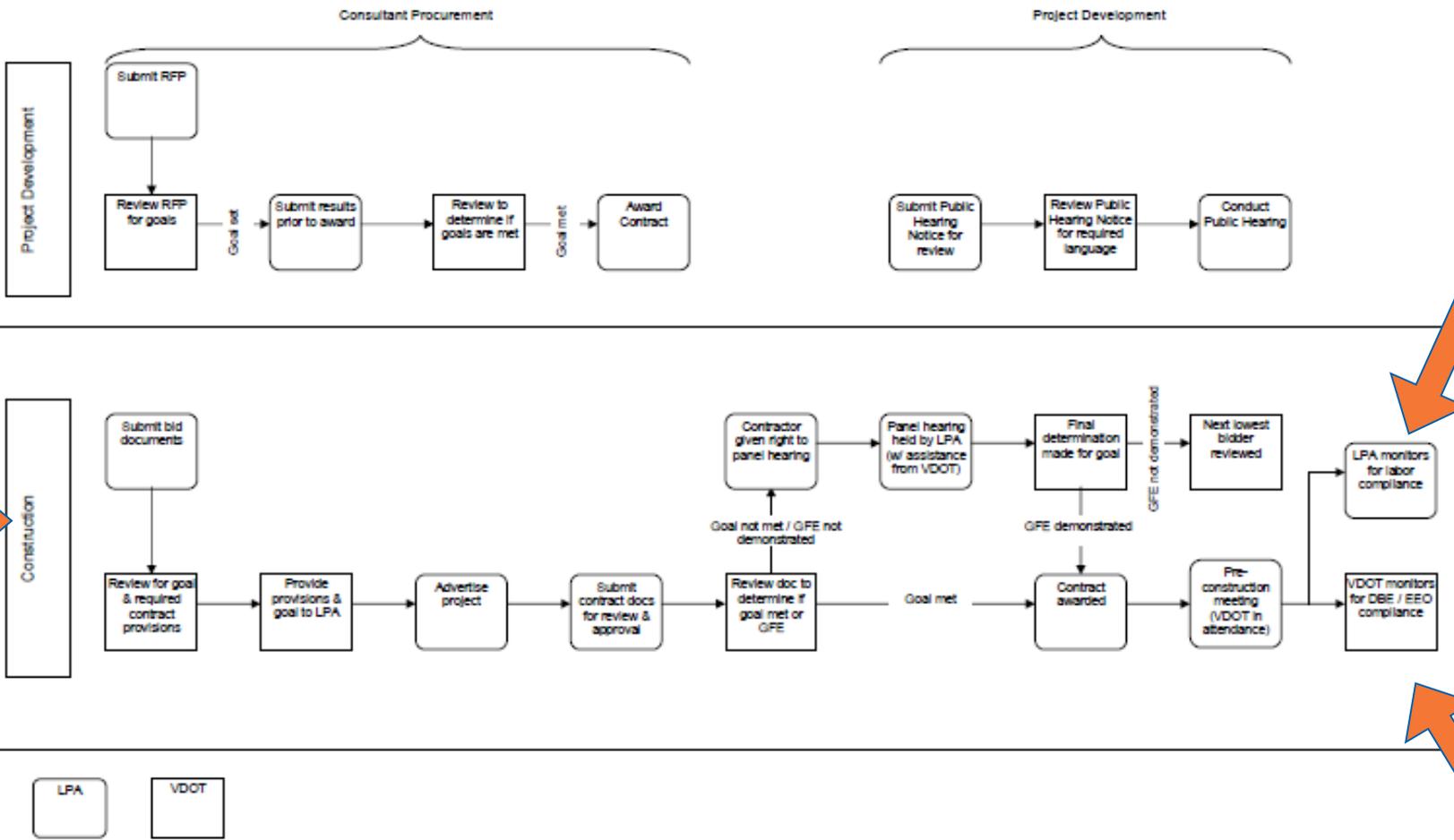
Assistance Division Administrator
Local Assistance Division
VDOT

Why is this Important?

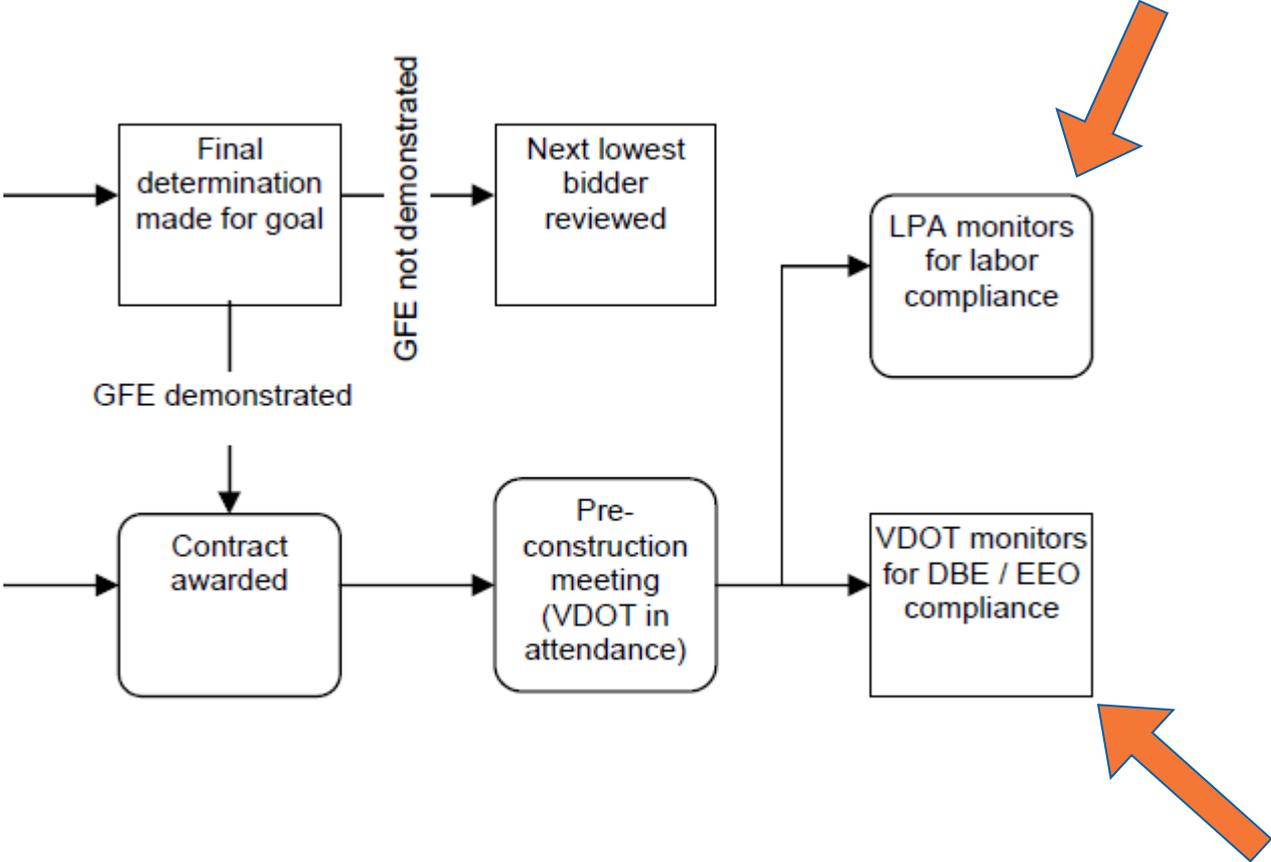
- Tend to focus on actual construction and design
- Civil Rights CN compliance is an integral part of any federal aid project
- One of the most often noted weaknesses during compliance reviews
- Neglect of CR can delay payment to localities and contractors and possibly delay project completion
- Right thing to Do

LAP Manual – Chapter 17

Civil Rights



LAP Manual – Chapter 17



Civil Rights Requirements

- **DBE Compliance Monitoring during Construction Phase**
- **Labor Compliance Monitoring during Construction Phase**
- **Best Practices / Lessons Learned**

Civil Rights Requirements

DBE Compliance Monitoring during Construction Phase

DBE Program Requirements:

- **Locality Responsibility:**
 - Forward all documentation relating to DBE Program requirements to the District CR Office (DCRO)
 - All **subcontracts** between Prime and DBE subcontractors (within fourteen (14) business days of main contract execution)
 - Any documents submitted by Prime related to DBE firm's work
 - Report any '**red flags**' of concern at project site to DCRO
- **VDOT Responsibility:**
 - Monitor DBE Compliance – DCRO will perform a Compliance Review on each DBE firm listed on C-111 for which the prime has committed to use toward meeting the goal on the project

Civil Rights Requirements

DBE Compliance Monitoring during Construction Phase

“A DBE performs a CUF (Commercially Useful Function) when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work.”

Areas to review for CUF:

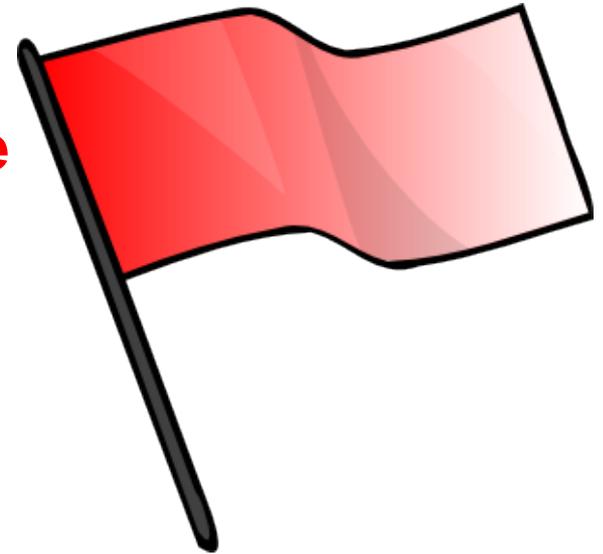
- **Performance**
- **Management**
- **Equipment**
- **Materials**
- **Supervision / Workforce**

Civil Rights Requirements

DBE Compliance Monitoring during Construction Phase

RED FLAG DISCLAIMER!

****Red Flag Issues do not indicate Fraud but must be monitored and reviewed when they occur****



Civil Rights Requirements

DBE Compliance Monitoring during Construction Phase

Areas to review for CUF:

- Performance
 - Does the DBE have a subcontract with the prime contractor?
 - Has the DBE performed 30% of the overall contract?
 - Is a portion of the DBE's work performed by the prime contractor or any other contractor?



If it is unclear that the DBE is performing the work specified in its agreement with the prime contractor – contact the local District Civil Rights office

Civil Rights Requirements

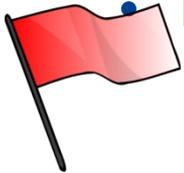
DBE Compliance Monitoring during Construction Phase

Areas to review for CUF:

- Management

- Is the DBE scheduling work operations?
- Is the DBE ordering equipment and supplies?

- Is the DBE preparing and submitting certified payrolls?



A “no” response requires further inquiry to assess if a DBE is separate and independent from the prime – notify your local District Civil Rights Office.

Civil Rights Requirements

DBE Compliance Monitoring during Construction Phase

Areas to review for CUF:

- Equipment
 - Who is the owner of the equipment? Who is operating the equipment? Is the operator an employee of the DBE?
 - Is there a sign over an original sign?
 - Does the inspector identify the equipment used by the DBE?



If it is unclear that the DBE has control over equipment, further inquiry and follow-up is required – notify your local District Civil Rights Office.

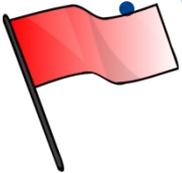
Civil Rights Requirements

DBE Compliance Monitoring during Construction Phase

Areas to review for CUF:

- Materials

- Did the DBE order its own materials?
- Are invoices for materials and supplies addressed to the DBE?
- Who paid for the materials? Is payment by a joint check?



If it is unclear that the DBE is responsible for ordering materials and supplies, further follow-up is required – notify your local District Civil Rights Office.

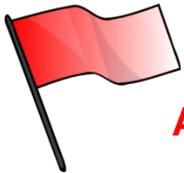
Civil Rights Requirements

DBE Compliance Monitoring during Construction Phase

Areas to review for CUF:

- Supervision / Workforce

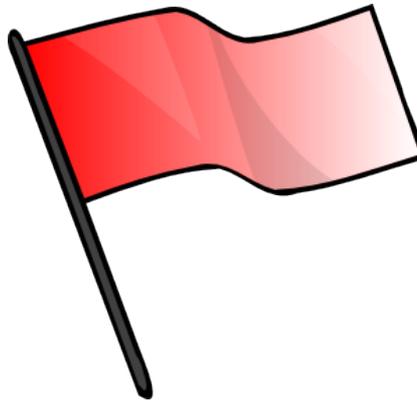
- Are employees on the DBE and prime contractor certified payroll?
- Does the DBE share office space with the prime contractor?
- Does the Prime contractor's superintendent direct the DBE firm's crews?



A “yes” response requires further inquiry and follow-up is required – notify your local District Civil Rights Office.

Civil Rights Requirements

Red Flag DBE Compliance Case Study #1



Civil Rights Requirements

Questions



Civil Rights Requirements

Labor Compliance Monitoring During Construction Phase

Labor Compliance Requirements:

- **Locality Responsibility:**
 - Track and monitor compliance on all certified payrolls for the project
 - Prime contractor is responsible for securing and reviewing all subcontractor certified payroll
 - Perform Davis Bacon Interviews – must be performed within 30 days of project start and every quarter thereafter until project completion
- **VDOT Responsibility:**
 - Audit locality's tracking of certified payroll and Davis Bacon Interviews
 - Provide training to locality

Civil Rights Requirements

Labor Compliance Monitoring During Construction Phase

Labor Compliance

- ✓ Track & Monitor
- ✓ Interview
- ✓ Review

Civil Rights Requirements

Labor Compliance Monitoring During Construction Phase

Labor Compliance

- **Track & Monitor**
 - ✓ **Locality must have tracking mechanism to ensure when certified payrolls are needed;**
 - ✓ **Certified payroll must be submitted weekly, within 2 weeks of payroll ending date;**
 - ✓ **Prime contractor is responsible for ensuring subcontractor payrolls are accurate before submitting to locality;**
 - ✓ **Locality must ensure all **necessary** payrolls are received and accurate before approving payment to the contractor;**

Civil Rights Requirements

Labor Compliance Monitoring During Construction Phase

Labor Compliance

- **Interview**
 - ✓ **Locality must perform Davis Bacon interviews of Prime contractor and subcontractors' employees;**
 - ✓ **Interview a random sampling (different classifications, different demographics) – no set amount;**
 - ✓ **Bring a current payroll to field when conducting interviews;**
 - ✓ **Compare information from Davis Bacon interview with certified payroll for the week of the interviews, when it is received;**

Civil Rights Requirements

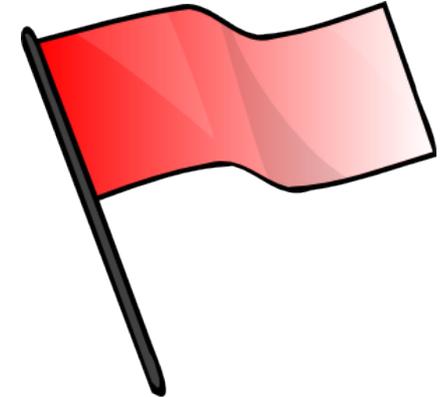
Labor Compliance Monitoring During Construction Phase

Labor Compliance

- Review
 - ✓ Payroll – FHWA 1273 indicates the following information must appear on the payroll:
 - ✓ Name
 - ✓ Last 4 digits of SSN
 - ✓ **CORRECT** classification
 - ✓ Hourly rates of wages paid
 - ✓ Daily AND weekly number of hours work
 - ✓ Deductions made
 - ✓ Actual wages paid
 - ✓ Interview information and payroll submitted

Civil Rights Requirements

Labor Compliance Monitoring during Construction Phase

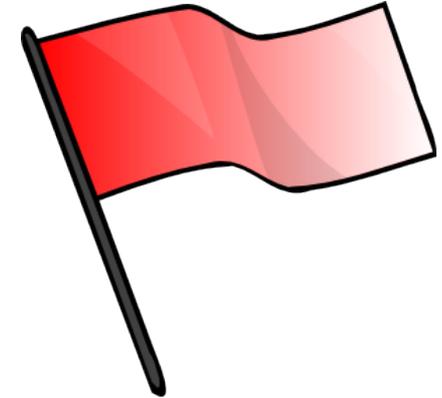


Red Flag Issues for Labor Compliance:

- ❏ One of the deductions is for “other”
- ❏ Employee is paid less than the predetermined minimum wage rate for their classification
- ❏ Same employee appears on prime and subcontractor’s payroll
- ❏ Payroll includes two weeks of work instead of one
- ❏ Gross pay does not equal straight time and/or overtime
- ❏ Deductions from gross pay does not equal net pay

Civil Rights Requirements

Labor Compliance Monitoring during Construction Phase



Red Flag Issues for Labor Compliance:

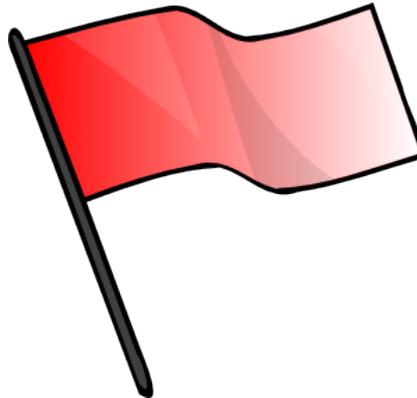
Davis Bacon Interviews:

- 🚩 Employee indicates they are paid in cash
- 🚩 Employee gives different job classification than listed on payroll
- 🚩 Employee is not performing job classification listed on payroll
- 🚩 Employee indicates they think they are being discriminated against

Civil Rights Requirements

Labor Compliance Monitoring during Construction Phase

Red Flag Labor Compliance Case Studies



Civil Rights Requirements

Questions



Civil Rights Requirements

Best Practices / Lessons Learned

- ✓ **Tracking Checklists**
- ✓ **Issues Experienced
(DBE Compliance and Labor Compliance)**
- ✓ **Relationship Building**

Civil Rights Requirements

Questions



Civil Rights Requirements

Resources:

Department of Labor
www.dol.gov

Davis Bacon Field Handbook
http://www.dol.gov/whd/FOH/FOH_Ch15.pdf

FHWA Civil Rights Resource Center
<http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/publications.cfm>

Local Assistance Manual – Chapter 17 – Civil Rights
http://www.virginiadot.org/business/resources/local_assistance/LAD_LAP_manual_final/CH17_Civil_Rights.pdf

- **Table 17B – EEO Bulletin Board Poster Requirements**
- **Table 17C – Civil Rights Requirements During Construction**