Audit Compliance
Breakout Session #5

September 30, 2018
Cindy Clark – Moderator
Compliance Manager, Local Assistance Division
The Compliance Assessment Program
and Key Federal Requirements

Gilberto DeLeon, P.E.
Program Delivery Team Leader – FHWA Virginia Division
FHWA CAP Review Overview

• What is an FHWA CAP?
• Why do CAP?
• How do we conduct CAP in Virginia?
• What did we review in 2018?
What is CAP?

Project Stewardship and Oversight

Required Project Approval Actions

Projects of Division Interest

CAP
Why do CAP?

- Provide reasonable assurance on Federal-aid construction compliance
- Provide statistically valid results
- Inform FHWA risk assessment
How are reviews conducted?

- Multi-disciplinary teams
- Standardized review guidelines
What did we review in 2018?

- 60 State and Locally Administered Projects
- 10 Core Questions – Contract Admin, Finance
Review Results

• Good compliance overall

• We identified a process or control weakness

  ➢ Finance - Federal Share and funding codes
    ▪ 16 findings between the two questions

  ➢ Contract development – Davis Bacon wage rates
    ▪ 6 findings

  ➢ Contract Administration - Pay items, Buy America
    ▪ 28 findings between the two questions
How to ensure compliance with key Federal Requirements

• **Buy America** –
  Required on all Federal-Aid projects,
  All Steel and Iron must be manufactured in the United States

• **Form 1273 and Wage Rates** –
  Required on all Federal-aid projects, form must be physically incorporated into contract. Wage Rates must be included in contracts with a current published date

• **Pay Items** –
  Required on all Federal-aid projects,
  Adequate documentation must be provided to show work quantities were determined accurately.
How to ensure Buy America Compliance

• 23 CFR 635.410(b)(1) Contract Administration Question # 10
  – Based on a minimum review of one applicable pay item paid in one progress payment, did the State ensure that all steel or iron material manufacturing processes, including application of coatings, for that pay item occur in the United States as required under FHWA’s Buy America regulations?
How to ensure Buy America Compliance

- **Buy America Certification Example**
  - VDOT Buy America Special Provision
  - Where domestic material is supplied, prior to incorporation into the Work, the Contractor shall furnish to the Department a *certificate of compliance* that all steel and/or iron products supplied to the project satisfies the domestic requirements…This certification shall contain a *definitive statement* about the origin of all products covered under the provisions of Buy America as stated herein.
How to ensure Buy America Compliance

• Definitive Statement Sample:
  – I hereby certify that the material described herein has been manufactured in the United States in accordance with the required specifications and standards.
Good example

Mill report with Steel # and Definitive Statement

Rebar invoice
• Not so good example
  - Mill Test Report
Does Not Apply to…

- Manufactured products that are not steel or iron (total iron and steel content <90% by weight)
  - Definition: “A product that is fully assembled or all of its components are delivered ready to be assembled.”
- See Memo on Manufactured Products
  - [https://www.fhwa.dot.gov/construction/contracts/121221.cfm](https://www.fhwa.dot.gov/construction/contracts/121221.cfm)
- Miscellaneous steel or iron components, subcomponents, and hardware necessary to encase, assemble, and construct steel components
How to ensure Buy America Compliance

• Minimal Use allowed
  – Spec: 0.1% (award amount) or $2,500 (whichever is greater) As delivered to the project

• Temporary or Permanent Use
  – If temp use but left as a structural element, then it is considered as a permanent use

• Also Applies to Utilities and Railroads
  – If non-Federal-aid Utility Contract
How to ensure Pay Items Compliance

- 23 CFR 635.123

Question #9

- Based on a minimum review of one applicable contract pay item paid in one progress payment, did the State provide adequate assurance that completed work quantities were determined accurately in accordance with the State’s statewide uniform procedures?
How to ensure Pay Items Compliance

• Follow established procedures in the LPA manual, State processes or internal processes
• Daily work reports or inspection reports should describe pay items in detail
• Records should show independent inspection and measurements by the LPA
• If a consultant is performing inspection and keeping records for payment, the LPA needs to verify the accuracy of those records on a periodic basis
How to ensure Minimum Wage Rates Compliance

• 23 CFR 635.117(f)

Question #7

- Does the executed contract include the appropriate minimum wage rates determined by the Secretary of Labor to be prevailing where the construction is located (State & County) for the date of bid opening?
How to ensure Minimum Wage Rates Compliance

Davis-Bacon Act

- Where are prevailing wages required?
- What records must be maintained to verify Davis-Bacon?
How to ensure FHWA form 1273 Compliance

• 23 CFR 633.102(b)
  The form 1273 is required in all Contracts and Sub-contracts
How to ensure
FHWA form 1273 Compliance

Applicable to all Federal-Aid Construction Contracts

- Nondiscrimination
- Non-segregated facilities
- Prevailing wage rates (Davis-Bacon)
- Contract work hours and Safety Standards Act provisions
- Subletting or assigning the contract
- Safety (accident prevention)
- False statements concerning highway projects
Safety: Accident Prevention Requirements

- Comply with all Federal, State, and local laws
- Provide safeguards, safety devices, and personal protective equipment (PPE)
- Prevent work in unsanitary, hazardous, or dangerous locations
- Accommodate USDOL inspections
Job Site Posters

Need to be:
– Current
– Accessible
– Legible
– Viewable
Posting Examples
• Great resource for quick guidance on requirements
  - [https://www.fhwa.dot.gov/federal-aidessentials/](https://www.fhwa.dot.gov/federal-aidessentials/)
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Field Operations Team Leader

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Richmond, VA 23219

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U.S. Department of Transportation
Federal Highway Administration
Virginia Division
LAP Compliance

Cynthia Clark
Compliance Manager
VDOT Central Office – Local Assistance Division
LAP COMPLIANCE

Localities must deliver their projects in compliance with state and federal laws and regulations, and in accordance with VDOT policies as outlined in the LAP Manual.

LAP COMPLIANCE

Background

In 2008, FHWA and VDOT’s Internal Audit conducted a Process Review of VDOT’s locally administered projects

- Results of the review identified federal-aid projects administered by local public agencies to be **HIGH RISK** and recommended/mandated that we develop a compliance program for locally administered projects.

- Local Assistance Division created the Compliance Assessment Program in 2009.
LAP COMPLIANCE

Purpose

The purpose of the program is **NOT** to evaluate every project and to point out where errors could have been made or were made, but to:

- identify areas that seem to have common issues and trends among locally administered projects,
- to maintain a continual process to improve locally administered project procedures for a more efficient program.
3 Levels of Assessments

**Functional Assessments**

- Division driven
- Review specific of elements within the functional area
- Coordinate and track reviews with LAD
3 Levels of Assessments

Project Specific Assessments

- LAD driven with assistance from Local Partnership Team
- Project specific high risk multi-function reviews
- Ensure localities are meeting the requirements & are in compliance with laws
Roles and Responsibilities

Who actually reviews the documentation?

LOCAL PARTNERSHIP TEAM

NO!

Cindy? She requests the documents.
Roles and Responsibilities

VDOT Central Office Policy Divisions

- Environmental
- Materials
- Civil Rights
- Procurement
- Right of Way
Project Specific Assessment

Procurement Office

Construction Office
3 Levels of Assessments

Program Wide Assessments

- LAD driven with FHWA engaged in review process
- Assess VDOT’s entire LAP program to ensure program requirements are being met
- Focus on trends/themes from annual reviews
Results of Assessments

Characterized into 2 categories

Good Practices
• Use of LAP Manual
• Work closely with VDOT Project Coordinator
• Keep the same project manager from PE – CN

Observations
• Buy America requirements
• Form 1273 not being in Sub-contracts
• Daily Diaries not containing the minimum information needed
  ➔ To be used as a basis for calculating payments for contracts,
  ➔ For the purpose of disputing resolutions or claims,
Results of Assessments

Suggestions and Recommendations

- Be mindful of all mandatory federal-aid provisions to be included in contracts
- Use of LAP Manual
- Checklists found in the manual

Conclusion

- Localities are acting in good faith
- Adhering to the guidance provided by VDOT Project Coordinators
- Using LAD resources
- Federal project level requirements are being met
Results of Assessments

New Guidance

Training

Outreach Programs
This is NOT an audit, but a review of the processes.

• To see if the guidelines are being followed and to see if our guidance is correct or do we need to develop new guidance documentation.

• To provide specific training or offer certain outreach programs.
RIGHT OF WAY

Terry Cook
Right of Way Manager, Special Projects
Northeast Region
VDOT SPECIAL PROJECT COORDINATORS

Region and Coordinator

- Northeast (NOVA, Culpeper, Fredericksburg)
  Rick Rohm (540) 729-4047

- Southeast (Richmond & Hampton Roads)
  Al Cargill (757) 925-2606

- Western (Staunton, Lynchburg, Salem, Bristol)
  Ashby Jones (540) 332-8918
SPECIAL PROJECT COORDINATOR’S ROLE

- Ensure all Right of Way acquisition and Relocation is accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and amendments (Uniform Act), State Laws and the VDOT ROW Manual of Instructions (unless the locality has an approved manual of their own).

- Work with the Localities to resolve project complexity and unique issues.

- To be the resource and share our knowledge.

- The Locally Administered Projects (LAP) Manual Part 3 Standards and practices for LAP Chapter 16, Right of Way, Section 16.3 states:

  “Right of Way” includes all interests in the land, whether fee simple, permanent easement or temporary easement and refers to the real property rights which the LPAs must possess to construct transportation projects.
PARTNERSHIP

Coming together is a beginning
Keeping together is progress
Working together is success.
COMPLIANCE

- VDOT has been given the responsibility to provide the oversight to the Localities on projects that Federal aid is used on ANY phase.
- Quality control measures usually include compliance reviews and/or spot checks of the activities of the Localities that acquire ROW and any ROW consultants furnishing services to the local acquiring agency for a federally funded project.
- 23 CFR 710.201(g)
- LAP Manual: Chapter 16: 16.11
RIGHT OF WAY COMPLIANCE REVIEWS

- Detailed reviews focusing on the Federal/State Laws and regulations as they apply to the Uniform Act. These steps must be followed to assure all Right of Way has been acquired legally.

- A Compliance Review Worksheet is available in the appendix of Chapter 16 of the LAP Manual. You may also request a copy to be emailed to you from the Special Projects Coordinator.
SPOT CHECK REVIEWS

- Proactive measures intended to prevent Localities from engaging in improper practices with land acquisitions.
- Available to any locality but primarily are meant for Localities with little Right of Way expertise.
- These reviews are intended to be UPFRONT reviews of the appraisal types and the preparation of negotiation packages PRIOR to offers being made but can be done as the project is progressing through the right of way phase.
- Localities should make this request through the VDOT PM and the Right of Way Special Projects Coordinator.
RIGHT OF WAY COMPLIANCE REVIEWS

Selection Process For Compliance Reviews

- Relocations
- Amount of RW Estimate
- Project Complexity Level
- Locality’s Experience
(e) Recordkeeping:

(1) Acquisition records shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24.

(2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 funds or incorporated into a program or project that received Title 23 funding.
§24.9  Recordkeeping and reports.

(a) **Records.** The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. *These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.*

- *VDOT LAP Manual 16.4.1. …These records are to be retained for no less than three (3) years following FHWA and/or VDOT acceptance of the final voucher.*

- (b) **Confidentiality of records.** Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

- (c) **Reports.** The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal Agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding Agency shows good cause. The report shall be prepared and submitted using the format contained in appendix B of this part.
VDOT/LPA – RIGHT OF WAY COMPLIANCE REVIEW WORKSHEET

Negotiations Report
- Right of Way Manual – Chapter 5, Section 8

Parcel Records
- FHWA Project Development Guide 3.7.3

LAP Manual
- Right Chapter 16.6.2

<table>
<thead>
<tr>
<th>PROJECT INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Locality:</td>
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<tr>
<td>Project:</td>
</tr>
<tr>
<td>Reviewer:</td>
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<table>
<thead>
<tr>
<th>PARCEL INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parcel:</td>
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<tr>
<td>Landowner:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TITLE REPORT</th>
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</thead>
<tbody>
<tr>
<td>Date:</td>
</tr>
<tr>
<td>Furnished landowner: [COV §33.2-1001(D)]</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>APPRAISAL</th>
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<tbody>
<tr>
<td>The Code of Virginia requires that the landowner be provided a notice prior to the Virginia Department of Transportation (VDOT) entering their property. [COV §33.2-1011]</td>
</tr>
<tr>
<td>Appraisal/BAR Date – Est. of just compensation prior to offer [49 CFR §24.102(e)(6)(vii)]</td>
</tr>
<tr>
<td>Any such appraisal used by the Commissioner of Highways as the basis for an offer shall be prepared by a real estate appraiser licensed in accordance with [COV §33.2-1001(1)]</td>
</tr>
<tr>
<td>Appraisal Amount:</td>
</tr>
<tr>
<td>Date of Inspection:</td>
</tr>
<tr>
<td>Appraisal Approved for Negotiations by a responsible official of the acquiring agency [49 CFR §24.102(d)]</td>
</tr>
<tr>
<td>Uneconomic Remnants Identified and offered made to purchase same [49 CFR §24.102(b)]</td>
</tr>
<tr>
<td>Owner given opportunity to accompany appraiser - [49 CFR §24.102(c)]</td>
</tr>
<tr>
<td>The appraisal was reviewed by a qualified review appraiser [49 CFR §24.104]</td>
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<tr>
<th>APPRAISAL COMMENTS</th>
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16.6.1 Fair Market Value: The first step is to provide the owner or owner’s representative a certified letter of intent to enter upon the property for the purpose of inspection and allow them the opportunity to accompany the appraiser on the inspection.
TYPES OF VALUATIONS

- $10,000 or less: you may do a Basic Administrative Report (BAR)
- $10,000-$25,000: may do a BAR, however at the time of the offer, must inform the property owner the option of having the locality appraise the property.
- Over $25,000: Full appraisal
### Power to Acquire Lands
**COV§33.2-1001(F)**

### Payment of certificates of deposit; notice to owner
**COV§33.2-1020(C)**

### Administrative Settlement
**49 CFR§24.102(i)**

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#### NEGOTIATION

A diary of right of way activities must be provided for each acquisition file. See VDOT Right of Manual Chapter 5.8.1 and FHWA Project Development Guide 3.7.1 & 3.7.3 for how parcel records should be kept.

#### Offer Date:

<table>
<thead>
<tr>
<th>Month, Day, and Year of the contact</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the individual who made contact</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Written offer made ^49 CFR824.102[c]</td>
<td>IN PERSON</td>
<td>BY MAIL</td>
</tr>
<tr>
<td>Name(s) of the individual(s) contacted</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Landowner’s questions documented and responses captured</td>
<td>YES</td>
<td>NO</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact entry – initiated by Agent</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowner provided with a title, appraisal, option/agreement, plans, profiles &amp; x-sections</td>
<td></td>
<td></td>
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</tbody>
</table>

- [COVA 25.1-117(D)]
- [COV§33.2-1001(D), (F), (F)]
- [COV 25.1-294(D)]

- Landowner was made aware of their rights to Appraisal for valuations over $10K. ^49 CFR824.102[2](C)

- Option or deed executed by the property owner contains a statement that the plans as they affect his property have been fully explained. ^[COV §33.2-1001(F)]

<table>
<thead>
<tr>
<th>Landowner was given reasonable amount of time (30 days) minimum to make a decision ^49 CFR824.102(G) [See appendix A, §24.102(G)]</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>If no agreement was reached, a letter of Intent to File Certificate was sent between 30 and 45 days before the certificate was filed and a copy of the COT sent to the landowner less than 4 days after filing ^[COV §33.2-1020(C)]</td>
<td>YES</td>
<td>NO</td>
</tr>
</tbody>
</table>

**Administrative Settlement:**
An authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for, or participate in, acquisition costs, a written justification shall be prepared stating what available information, including trial risks, supports such a settlement. ^49 CFR§24.102(G)

**Donations:**
An owner whose real property is being acquired may opt to donate, but only after being fully informed by the Agency of their right to receive just compensation for such property. ^49 CFR§24.102(G)

**Billboards:**
Adjustment or relocation of certain billboard signs
The notice of removal shall be provided at least 45 days prior to the required removal date, which shall be the earlier of the certification date for a highway project advertisement or the date that utility relocations are scheduled to commence. ^[COV §33.2-1130].
RIGHT OF WAY AND UTILITIES MANAGEMENT SYSTEM

RUMS:
This record management system is available to the localities

BENEFIT:
- One system to track and maintain records on each parcel
- Provides a template for all forms and letters needed to be generated for every type of acquisition
Appendix A, §24.102(f) Basic negotiation procedures:

- An offer should be adequately presented to an owner, and the owner should be properly informed.
- This includes: Explaining in lay terms including all proposed changes in alignment, profiles, and grade changes.
DONATIONS

Donations – Alternate Means of Property Acquisition

VDOT Right of Way Manual of Instructions – 5.5.2 Steps in the Donation Process
VDOT Locally Administered Projects (LAP) Manual – 16.6.4 Donations

1) The negotiator explains the project or acquisition to the owner
2) The negotiator advises the landowner of their right to just compensation for their property
3) The negotiator asks for a donation
4) If the owner agrees to donate, the negotiator explains that the Locality will determine the value of the donation and provide it to the landowner in writing
5) Once the explanations are made, the owner is asked to execute an option and a Donation Acknowledgement Form
Relocations
**TOP** priority for Right of Way Compliance Reviews

### VDOT/LPA – RIGHT OF WAY COMPLIANCE REVIEW WORKSHEET

**NEGOTIATION COMMENTS**

### RELOCATION

**PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS** [See also VDOT Right of Way Manual Chapter 6 Relocation for more information]

<table>
<thead>
<tr>
<th>Relocation Assistance Required: Informs the displaced person that he or she will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available; [49 CFR 24.203 (a)(3); 49 CFR 24.203 (c)(3)]</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>General requirements—claims for relocation payments; [49 CFR 24.247]</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Each person seeking payment or advisory services shall certify that they are citizen or national of the United States, or an alien who is lawfully present in the United States; [49 CFR 24.208]</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Relocation assistance advisory services: Section 24.203(c)(2)(D) emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas; [49 CFR 24.208]</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Relocation planning advisory services, and coordination. [Stage 1 report prepared] [49 CFR 24.205]</td>
<td>YES</td>
<td>NO</td>
</tr>
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### RELOCATION COMMENTS

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USEFUL LINKS

FHWA Project Development Guide – Contains practical advice and suggestions on all phases of Right of Way acquisitions and relocation.

VDOT Local Assistance Projects (LAP) Manual – Contains VDOT policy and procedures regarding locally administered projects.

Right of Way Manual of Instructions – Contains general VDOT policy and procedures when for acquiring Right of Way.

Uniform Act – Contains overall guideline pertaining to federally funded real property acquisition and relocation of persons impacted by real property acquisition.
TOOL BOX RESOURCES

- VDOT – RIGHT OF WAY MANUAL OF INSTRUCTIONS
- LOCALLY ADMINISTERED PROJECTS (LAP) MANUAL
TOOL BOX RESOURCES

Federal-aid Essentials / ROW

50 Ways To Lose Your Money
The term “right of way” includes all interests in the land, whether fee simple, permanent easement or temporary easement.

Projects anticipated to receive donations of Right of Way should include a Right of Way phase.

VDOT recommends localities hire qualified Right of Way professionals for the acquisition of right of way.

It is better to ask for guidance than to ask for forgiveness!