

## **PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE CHAPTER 6**

### **EQUAL EMPLOYMENT OPPORTUNITY**

Local Agencies administering Federal-Aid projects are required to adhere to and monitor contractor compliance with federal civil rights programs including Title VI, Equal Employment Opportunity (EEO), On-the-Job Training (OJT), and Disadvantaged Business Enterprise (DBE). Federal policy requires that all Federal-Aid construction contracts include specific requirements to implement the Title VI program, related civil rights laws, and regulations. These requirements are included in the FHWA Form 1273 – Required Contract Provisions Federal-Aid Construction Contract Provisions and apply to contractors, subcontractors and suppliers. CDOT is responsible for oversight of the EEO program for Federal-Aid projects and construction contracts. CDOT will monitor the Local Agency and its contractors for compliance as part of the normal project management reviews.

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

The Disadvantaged Business Enterprise (DBE) program seeks to create a level playing field on which DBEs can compete fairly for Department of Transportation (DOT) - assisted contracts, help remove barriers to the participation of DBEs in DOT-assisted contracts, promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients, and assist the development of firms that can compete successfully in the marketplace outside the DBE program.

The CDOT DBE Program applies to all Federal-Aid projects. CDOT's Civil Rights and Business Resource Center (CRBRC) administers the program and its implementation. Regional civil rights offices conduct reviews during construction to determine compliance.

Local Agencies that have their own DOT-approved DBE programs should contact the CDOT CRBRC in order to enter into a Memorandum of Agreement with CDOT pertaining to DBE oversight and administration.

## **6.1 Set Disadvantaged Business Enterprise Goals for Consultant and Construction Contracts**

For any project containing federal funds, or for any project that will seek reimbursement with federal funds, a goal for Disadvantaged Business Enterprise (DBE) participation must be established and the contractor must make good faith efforts to meet such goal. The CDOT Project Manager will contact the Region Civil Rights Office at least two weeks before the scheduled advertisement date, for both consultant and construction contracts, to have the project evaluated for potential DBE participation and a DBE goal set for the project. Project goals vary depending on the nature of the work and the availability of DBE firms capable of performing such work. There are instances when the goal may be zero percent.

### **Set Consultant Goals**

The Local Agency must submit a scope of work, services to be provided, and estimated cost of the total services to the CDOT Project Manager. For projects requiring advertisement, the Request for Proposal (RFP) must contain a goal in order to be advertised, even if the Region Civil Rights Office establishes a goal of zero percent. The Local Agency must ensure that the selected consultant either meets the DBE goal or makes good faith efforts to do so.

### **Set Construction Goals**

The Local Agency must submit an engineer's construction estimate to the CDOT Project Manager. The estimate must show the item quantities and costs of the project. The project must contain a goal in order to be advertised, even if the Region Civil Rights Manager establishes a goal of zero percent.

The DBE Contract Goal Recommendation is completed by the CDOT Region Civil Rights Manager based on the following criteria:

1. The dollar amount of the contract to ensure that it is large enough to permit efficient subcontracting.
2. The work content of the project that can be subcontracted.

3. The availability of DBE firms in the project area having the potential to do the required work.

After the goal has been determined, a CDOT Project Special Provision, *Disadvantaged Business Enterprise (DBE) Contract Goal* and the CDOT Standard Special Provision, *Disadvantaged Business Enterprise (DBE) Definitions and Requirements* shall be included in the Plans, Specifications and Estimates. All bidders should include CDOT Forms 1413 - Bidders List, and if the Contract Goal is greater than zero, Form 1414 - Anticipated DBE Participation Plan in the bid package. Each bid will be reviewed to determine if the bid is responsive. Failure to complete the CDOT Forms 1413 and 1414 (if applicable) is considered as evidence that the proposal is unresponsive and therefore is not eligible for award.

## **LABOR COMPLIANCE**

### **6.2 Determine Applicability of Davis-Bacon Act**

The Davis-Bacon Act applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. The Davis-Bacon Act dictates that mechanics and laborers working on the site of Federal-Aid construction projects must be paid according to the wage decision that is part of the *Standard Special Provisions* for the project. The U.S. Department of Labor defines mechanics and laborers as those employees who perform manual labor on the site of work.

With the exception of those projects funded under the Transportation Alternatives Program, the Davis-Bacon Act requirements may be excluded from Federal-Aid, Local Agency matched transportation projects only if they meet one of the following project categories:

1. Any projects fully located on or within the existing right-of-way of a roadway that is functionally classified as a local road or rural minor collector, or that is not within the right-of-way of any roadway whatsoever. This determination will be made by CDOT.

2. Force account work performed solely by Local Agency employees. See Section 5.11 for more information on force account work performed by the Local Agency.

For projects requiring Davis-Bacon wages, as soon as the Local Agency establishes the project bid opening date and is ready to advertise the project for bidding, the Local Agency's Project Manager must check with the CDOT Project Manager or Region Civil Rights Manager to assure that the latest modification of the wage decision is in the *Standard Special Provisions*.

The U.S. Department of Labor requires that a current wage decision be included in Federal-Aid construction contracts, if appropriate. Wage decisions may be modified frequently; wage decisions published in the Federal Register ten or more days prior to the bid opening must be incorporated into the contract by addendum to the advertisement with notification to all plan holders.

### **6.3 Set On-the-Job Training Goals**

Training goals are established by CDOT on selected Federal-Aid construction contracts. The goals are set based on the dollar amount and scope of work of the project as well as some additional factors described in the OJT Standard Special Provisions that are considered when setting the OJT goal. The Project Special Provisions include the minimum total training hours to be provided on the project.

On all federally funded projects, a force account item must be added for the On-the-Job Training Colorado Program, even if the On-the-Job Training goal is zero. This force account is necessary in the event the contractor on the project participates in the Colorado Program. The dollar amount required for this force account is listed in the CDOT Project Special Provision, *Force Account Items*. Contact the CDOT Project Manager for further information.

#### **6.4 Title VI Assurances**

The applicable appendix of the current Title VI assurance issued by USDOT and signed by CDOT must be included in the contract with the selected consultant or contractor.

The current Title VI assurance can be found at the following link:

<https://www.codot.gov/business/civilrights/accessibility/titlevi/title-vi-subrecipients> .

Contact CDOT's Civil Rights and Business Resource Center for further information.

The Local Agency must also have a Title VI assurance with CDOT.

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