TDOT
Department of Transportation

CIVIL RIGHTS OFFICE

TENNESSEE DEPARTMENT OF TRANSPORTATION

Affirmative Action
Small Business Development
Title VI

Assistance for Local Government entities in meeting their Civil Rights compliance requirements

Welcome!

The following power point presentation will assist Local Government entities in meeting their Civil Rights compliance requirements. However, it is not meant to provide an in-depth presentation of all the Civil Rights compliance requirements. Additionally, it is not inclusive of all requirements that may need to be met on projects per TDOT's Local Programs Guidelines. Further information can be accessed via internet at **www.tn.gov/tdot/section/civil-rights** **or** **www.tn.gov/tdot/article/tdot-local-programs-development-office**

Civil Rights Compliance

Title VI/Non-Discrimination

- Ensure non-discrimination on federally funded projects, activities and/or services;

External Equal Employment Opportunity

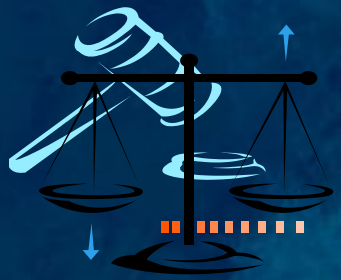
- Ensure non-discrimination in the contractor's recruiting, hiring, training and promotion practices; and

Disadvantaged Business Enterprise (DBE) Program

- Level the playing field for DBEs.

EXTERNAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

PRIMARY AUTHORITIES FOR EXTERNAL EQUAL EMPLOYMENT OPPORTUNITY



23 USC 140 – Federal-aid Highway Act of 1968.

23 CFR 230 - Subparts A, B, C and D.

23 CFR 635 - Subpart A.

FHWA 1273.

Executive Order 11246.

41 CFR 60.

23 USC 140 (FHWA – 1273)
Non-Discrimination Contract Provisions

1. EEO Policy Statement;
2. EEO Officer;
3. Dissemination of Policy;
4. Recruitment;
5. Personnel Actions;
6. Training and Promotion;
7. Unions;
8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment; and
9. Records and Reports.

Local Government Compliance Staff Responsibilities

- √ EEO training for EEO Officers, contractors, sub-contractors and consultants;
- √ One-on-One assistance;
- √ Attend Preconstruction Conferences;
- √ Conduct Contract Compliance Reviews (CCR);
- √ Make compliance determinations;
- √ Initiate Corrective Actions; and
- √ Notify TDOT Civil Rights Office of contractors not in compliance.

EEO Policy Statement

The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

CONTRACTOR'S EEO OFFICER RESPONSIBILITY

The contractor will designate an EEO Officer who will have the responsibility for administering and promoting an active EEO program.

The EEO Officer is tasked to:

- Implement the Contractor's EEO policy and procedures;
- Disseminate EEO policies and contractual responsibilities;
- Conduct periodic meetings with supervisors, personnel office staff and all employees to review and explain EEO policies;
- Provide EEO training to all new employees;
- Instruct all personnel engaged in direct recruitment of EEO requirements, obligations and goals; and
- Ensure required notices and posters are displayed.

Dissemination of Policy

All members of the contractor's staff who are authorized to hire, supervise, promote and discharge employees will:

- Know, fully adhere to, and implement the contractor's EEO Policy in all employment actions.
- Receive EEO training from EEO Officer within 30 days of reporting to duty.
- Attend EEO meetings prior to start of each project and once every six months.
- Receive instruction on locating/hiring minority applicants.
- Ensure posting of contractor's EEO Policy.
- Bring the contractor's EEO Policy to the attention of employees by means of meetings, employee handbooks , postings, etc.

RECRUITMENT "An Equal Opportunity Employer"

- Advertisements will be placed in publications having a large circulation among minority and female groups;
- Systematic and direct recruitment will be conducted through public and private employee referral sources likely to yield qualified minority and female applicants;
- Sources that will refer minority and female applicants directly to the contractor for employment consideration will be identified and referral procedures established;
- Present employees will be encouraged to refer minority and female applicants.

Personnel Actions

Wages, working conditions, and employment benefits shall be applied without regard to race, color, religion, sex, national origin, age or disability.

- Contractor will conduct periodic inspections to ensure compliance.
- Contractor will periodically evaluate wages.
- Contractor will review personnel actions.
- Contractor will promptly investigate all complaints of alleged discrimination.

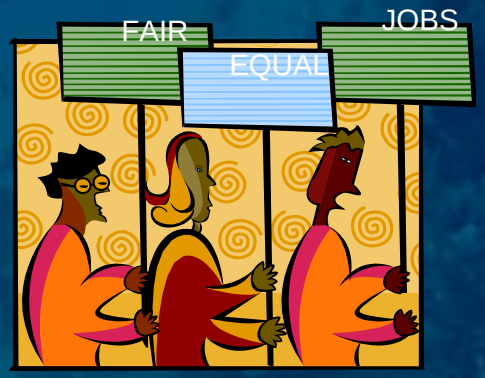
Training and Promotion

The contractor will assist in locating, hiring, and increasing the skills of minority and female employees and applicants.

- Use Apprenticeship and On-The-Job Training (OJT) Programs.
- Advise employees/applicants of program availability and entrance requirements.
- Periodically review training and promotional potential of minority and female employees.
- Encourage eligible minority and female employees to apply for training and promotional opportunity.

ON-THE-JOB (OJT) TRAINING PROGRAM

- Contractor's must have an OJT Program established in accordance with 23 CFR 230 Subpart A, Appendix A.7. a-d.



Unions

The contractor will use best efforts to obtain union cooperation to increase opportunities of minorities and females within the union.

- Establish joint training programs.
- Incorporate EEO clause into union agreements.
- Obtain union referral practices/policies.
- Where union is unable to provide a reasonable flow of minority and female applicants, take independent action to fill employment vacancies in accordance with EEO Policy.

Subcontractors and Suppliers

- The contractor shall not discriminate on the basis of race, color, religion, sex, national origin, age or disability in the selection of subcontractors, including procurement of materials and leases of equipment.
  - Subcontractors will be notified of their EEO obligations under the contract.
  - DBEs will have equal opportunity to compete.
  - Contractor will use best efforts to ensure subcontractor compliance with EEO obligations.

Records and Reports

The contractor shall keep records that document EEO compliance.

- Retained 3 years or until review/action is completed.
- Shall document:
  - Number of minority, non-minority, and females employed in each job classification.
  - Progress/efforts made with unions.
  - Progress/efforts made in locating, hiring, training, and upgrading minority/female employees.
  - The progress/efforts being made in securing the service of DBE subcontractors or subcontractors with minority and female representation.

Records and Reports

Contractors and/or Subcontractors will submit an annual report to the TDOT Local Program Office (LPO) by August 15th and a copy to the TDOT Civil Rights Office, Affirmative Action Program.

- Use Form FHWA-1391.
- Indicate the number of minority, female and non-minority employees currently engaged in each job classification required by contract work.

Non-segregated Facilities

By submission of the bid, the contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its work sites and does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

Local entities shall take the necessary administrative actions including the imposition of contract sanctions and appropriate legal proceedings under any applicable state and federal law to achieve EEO on Federal-aid projects.

Per Section 22(a) of the Federal-Aid Highway Act of 1968

Small Business Development Program

Statement of Commitment

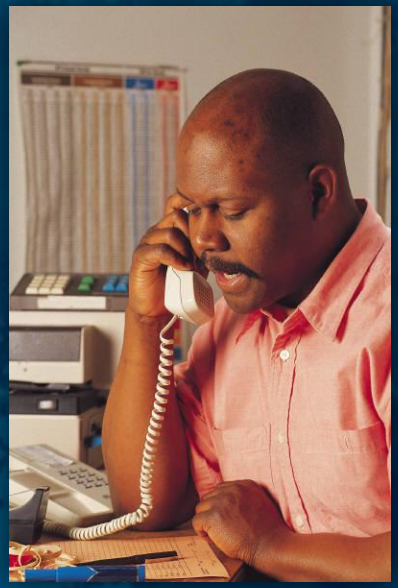
The DBE program is intended to remedy past and current discrimination against disadvantaged business enterprises, to ensure a "level playing field," on which DBEs can compete fairly for contracts.

Who can qualify as a DBE?

- Owners must possess the expertise to control the daily operations and management of the firm.
- Owners must be able to show ownership of at least 51% of the firm through real and substantial investments of capital.
- Owners' net worth must not exceed $1.32 Million (excluding personal residence and stock/ownership in the potential DBE firm).

For further information or check the Civil Rights Office web-site www.tn.gov/tdot/section/civil-rights

DBE Ethnicity By Protected Classes



Legend

MBE	Minority Male Business Enterprise
MFBE	Minority Female Business Enterprise
AIA	Asian Indian American
APA	Asian Pacific American
BA	Black American
HA	Hispanic American
NA	Native American
FBE	Female Business Enterprise

Disadvantaged Business Enterprise (DBE) Goal Setting Guidelines For Contractors and Consultants on Locally Let Federal Aid Contracts

Which firms are Certified DBE firms?

The TDOT Directory of Certified Disadvantaged Business Enterprises is the official register of eligible DBE firms. This directory is available from the SBDP and on-line at www.tn.gov/tdot/topic/small-business Amendments to update this directory are published to coincide with regular TDOT contract lettings, and are available from the SBDP office.

Determining when a DBE project goal should be set

The federal regulations require TDOT to set an annual DBE goal. Historically, TDOT has set project DBE goals on highway construction contracts to achieve the annual DBE goal. The intent is to provide subcontract opportunities to minorities and females on all types of federal aid contracts. Therefore, DBE goals on locally let contracts should attempt to augment meeting the overall percentage of DBE participation. The goal attainment at the end of the FY should be based on all federal dollars available for award to DBEs which includes all work let and assigned to consultants.

Criteria to consider when determining potential for a DBE goal include:

The availability of ready, willing and able firms, as identified in the directory, should be a factor in establishing the goal. Consulting firms may also be required to be on the Department's list of pre-qualified consultants in order to bid a contract or subcontract.

Advertising opportunities for work on federal aid contracts

Opportunities to include DBE or minority and women owned firms in the contract should be made even if no project DBE goal is set. This can be done by notifying available DBE firms of the upcoming contract and by encouraging the prime contractor to seek out DBE firms for subcontracting work.

Advertising opportunities for work on federal aid contracts (Cont'd)

For consultant contracts, it is suggested the following phrase be included in the Request for Proposals (RFP) when no DBE project goal is set:

Advertising opportunities for work on federal aid contracts (Cont'd)

"No Disadvantaged Business Enterprise (DBE) goal has been set on this contract. However, the use of DBE or minority and women owned firms is encouraged."

Documentation submitted by bidders (or consultants) to demonstrate their good faith efforts to use DBE firms

All firms submitting a bid/proposal for contracts with a DBE goal should provide with their bid/proposal sufficient documentation of their good faith efforts (GFE) to achieve the goal. This information should include DBE firms contacted, a list of those DBE firms who submitted a quote to perform work on the contract, and an explanation of the reasons why each DBE who submitted a quote was not used. The documentation with the bid (or proposal) should be sufficient for the Contracting Authority to determine the reasonableness of the GFE.

Good faith efforts if a DBE is unable to perform the work that was committed to that DBE firm

If a DBE is unable to perform the work which they committed to perform, the prime contractor/consultant should notify the contract administrator. Adequate effort should be made to replace the dollar amount of the lost DBE commitment. No monetary sanction will be imposed if the DBE firm is unable to perform for reasons beyond the prime contractors/consultant's control, and the prime contractor/consultant did adequate good faith effort to replace the lost DBE commitment.

What to report and when to submit the information

DBE contract data must be submitted to the FHWA twice a year. The two reporting periods are October 1 through March 31 and April 1 through September 30.

What to report and when to submit the information (Cont'd)

Three basic types of information are reported to FHWA:

1. Contract Awards/Commitments
2. Ethnicity and Gender breakdown of DBE used on the projects
3. Actual payment data on completed contracts

What to report and when to submit the information (Cont'd)

The three forms needed to report this data may be obtained electronically at the CRO SBDP website.

Title VI of the Civil Rights Act of 1964

Purpose

The purpose of the Title VI Program is to plan, implement and provide guidance to prevent discrimination in federal aid programs and activities.

Federal Law

Title VI is codified at 42 U.S.C. § 2000d, *et seq*..

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

You must take proactive steps to assure that this type of discrimination does not occur.

Federal Requirements

23 CFR 200 (FHWA)

- Title VI Program & Related Statutes
- No discrimination based on Sex
- (Federal Highway Act of 1973)
- Trained personnel in compliance investigations
- Title VI reviews of consultants & contractors
- Develop Title VI information for the general public and in languages other than English
- Establish procedures to identify & eliminate discrimination

Federal Requirements continued:

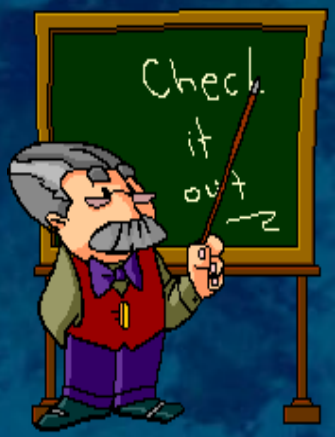
49 CFR 21 (USDOT) - Nondiscrimination in Federally Assisted Programs

- **Federal-aid contractors may not discriminate in selection & retention of first-tier subcontractors**
- **First-tier subcontractors may not discriminate in the selection & retention of second-tier subcontractors who participate in Federal-Aid Highway construction**
- **Contractors and subcontractors cannot discriminate in their employment practices in connection with highway construction projects or projects assisted by Federal Highway Administration**

Responsibilities of the Locally Managed Program Administrator

Appoint a Title VI Coordinator

- Have access to top level official
- Organizational Chart
- Attend Training



Monitor and Document DBE Participation

DBE Participation:

Provide the opportunity for Disadvantaged Business Enterprises (DBEs) participation on federally funded contracts by means of:

- **Outreach to DBEs on both goal and non-goal projects**
- **Solicit through all reasonable and available means (e.g. pre-bid meetings, advertisement, TDOT DBE list)**
- **Arrange times for presentation of bids, quantities, specifications and delivery schedules in ways that facilitate DBE participation**
- **Ensure that bid notices and requests for proposals are available to (DBEs) in a timely manner**
- **Advertise with local media resources and minority newspapers**

Ensure Environmental Justice

- Environmental Justice:
- The pursuit of equal justice and equal protection under the law for all environmental statues and regulation without discrimination based on race and ethnicity and/or socioeconomic status by:
  - Avoid or minimize disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority and low-income populations
  - Ensure full and fair participation by all potentially affected communities in the decision making process
  - Prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations

Ensure and Document Public Participation

Public Participation:

Engage the Public with the opportunity to provide input in the project study process through:

- **Hold Public Meetings/Hearings in centralized locations**
- **Outreach to Community Based Organizations**
- **Advertise with Local Media Resources and Minority Newspapers**
- **Do Direct Mailings**

Records to Keep/Monitor

Develop and maintain a record keeping system for:

- Number of contracts awarded to DBEs
- Description of general categories of contracts awarded to DBES
- Dollar value of contracts awarded to DBEs
- Percentage of dollar value of all contracts awarded to DBEs
- Whether the goal was met on goal projects

Monitor Ethnicity and Gender of Contractors AND Sub-Contractors

TDOT requires that sub-recipients maintain records of those ethnic and gender groups who are awarded bids on projects.

For Title VI compliance, we ask for voluntary disclosure of the following information:

Gender: Male ____
Female ____

Race: Caucasian ____
African American ____
Hispanic ____
Asian ____
American Indian & Native Alaskan ____
Other _____

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