

PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE CHAPTER 6

EQUAL EMPLOYMENT OPPORTUNITY

Local Agencies administering Federal-Aid projects are required to adhere to Equal Employment Opportunity (EEO) and Disadvantaged Business Enterprise (DBE) statutes and regulations.

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 administering 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. Guidelines are included in the *CDOT Construction Manual*.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises, as defined in *Title 49 CFR Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs Part 26*, have the maximum opportunity to participate in the performance of federally financed contracts or subcontracts. To accomplish this goal, all agencies involved in the development of Federal-Aid projects must take appropriate measures to ensure that DBEs are encouraged to compete for construction contracts, procurement contracts, grants, services, financial aid, or other benefits, and that DBEs have full access to these opportunities.

Actions to ensure compliance with this policy must be approved by the FHWA and cannot be delegated to the State or the Local Agency.

The CDOT DBE Program, approved by the FHWA, establishes procedures for complying with both State and Federal policies, and applies to all Federal-Aid projects. CDOT's Business Programs Office administers the program and its implementation, and conducts reviews during construction to determine compliance.

Businesses determined eligible as DBEs under the Colorado Unified Certification Program must be certified by the Office of Certification in the Department of Regulatory Agencies or the Mayor's Office of Contract Compliance for the City of Denver. These firms must be owned and controlled by socially and economically disadvantaged individuals as defined by *Title 49 CFR Part 26*.

6-1 Set Underutilized Disadvantaged Business Enterprise Goals for Consultant and Construction Contracts

To obtain Federal funds, goals for Underutilized Disadvantaged Business Enterprise (UDBE) participation must be established for all consultant and construction contracts. A UDBE is a DBE that belongs to a group that has been determined by the Commission to be underutilized. The CDOT Project Manager will contact the Region EEO/Civil Rights Specialist 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 UDBE goal set for the project. Project goals vary depending on the nature of the work and the availability of UDBE 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. The Request for Proposal (RFP) must contain a goal in order to be advertised, even if the EEO/Civil Rights Specialist establishes a goal of zero percent.

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 EEO/Civil Rights Specialist establishes a goal of zero percent.

In the establishment of a goal, the CDOT Form 863 - DBE Contract Goal Recommendation is completed by the CDOT EEO/Civil Rights Specialist 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 UDBE firms in the project area having the potential to do the required work.

After the goal has been determined, a CDOT *Project Special Provision*, "Contract Goal (Combined)" shall be included in the Plans, Specifications and Estimates. The CDOT Form 714 - Underutilized DBE Bid Conditions Assurance shall be included in the bid package and must be completed by each bidder. Each bid will be reviewed to determine if the bid is responsive. Failure to complete the Form 714 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 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 Department of Labor defines mechanics and laborers as those employees who perform manual labor on the site of work.

The Davis-Bacon Act requirements can 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. 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 EEO/Civil Rights Specialist 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 decision may be modified frequently; wage decision 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 of the project. The *Project Special Provisions* include the goals. The goal is zero if total construction is less than \$1 million; please refer to the *Project Special Provisions* for appropriate goal if construction exceeds \$1 million.

On all 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 Standard Special Provisions* index worksheet. Contact the CDOT Project Manager for further information.