

PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE CHAPTER 6

CIVIL RIGHTS

Local Agencies administering Federal-Aid Highway 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 Highway projects and construction contracts. CDOT will monitor the Local Agency and its contractors for compliance as part of the normal project management reviews. More information pertaining to the Civil Rights Program can be found at the following link: [https:// www.codot.gov/business/civilrights/la-compliance/cr-requirements](https://www.codot.gov/business/civilrights/la-compliance/cr-requirements) .

Local Agencies administering federal funds from other Federal Agencies, such as the US Treasury, must adhere to the civil rights requirements of the specific agency. For example, Title VI plans, DBE requirements, OJT requirements, and inclusion of the FHWA Form 1273 in construction contracts are not required on projects with US Treasury funds. The US Treasury funds provided to Colorado from the American Rescue Plan Act/State and Local Fiscal Recovery Funds (ARPA/SLFRF) are referred to as Federal Recovery Funds in this *Desk Reference*. See the Multimodal Transportation & Mitigation Options Fund and Revitalizing Main Street Federal Recovery Fund Fact Sheets in Appendix G for further information specific to these programs and projects.

“Combo” Local Agency projects, consisting of more than one category of award funding, must comply with the most stringent requirements from each program and must apply to the entire project. An example is a project containing both Federal-aid Highway

Program funds (such as TAP, HSIP, CMAQ, etc.) and MMOF program Federal Recovery Funds.

This *Desk Reference* uses “CDOT Project Manager” to refer to the CDOT staff member responsible for providing assistance to the Local Agency. The CDOT Project Manager is also referred to as the CDOT Local Agency Coordinator.

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 Highway (FHWA) and FTA-funded projects. CDOT's Civil Rights and Business Resource Center (CRBRC) administers the program and its implementation. Regardless of funding source, the CRBRC requires every project to be evaluated by the Region Civil Rights Office to determine if the DBE program is applicable. If applicable, the Region Civil Rights Offices will set contract goals and conduct reviews during construction as needed to evaluate compliance. For FHWA-assisted projects where the Local Agency is receiving FHWA funds from CDOT, Local Agencies must adhere to the DBE oversight and administration requirements of CDOT's FHWA-approved DBE program. For FTA-assisted projects, DBE oversight and administration depends on how the local agency is receiving the FTA funding. If a local agency is receiving FTA funds directly from the FTA (instead of from CDOT), then the local agency will apply their own DBE program to the FTA-assisted project. If a local agency project is funded with FTA funds from CDOT, then CDOT's DBE program for FTA will apply.

The CDOT DBE Program does not apply to projects funded solely with US Treasury Federal Recovery Funds or non-federal (state) funds.

6.1 Set Disadvantaged Business Enterprise Goals for Consultant and Construction Contracts

All projects are required to be evaluated by CDOT for program applicability and potential DBE goals. CDOT may not concur with the award of a contract unless the consultant or contractor demonstrates (i) sufficient DBE commitments, or (ii) good faith efforts to meet the established DBE contract goal prior to award. At the earliest date possible, but not to exceed 90 days prior to advertisement, the CDOT Project Manager will contact the Region Civil Rights Office for both consultant Requests for Proposals (RFPs) and for construction projects, to be evaluated for potential DBE goals. In practice, the optimal timeframe to contact the Region Civil Rights Office is 15-30 days prior to advertisement. DBE contract goals will vary depending on the nature of the work, subcontracting opportunities, geographic location of the work, and the availability of DBE firms capable of performing such work. There are instances when the goal may be set at zero percent for the contract.

Set Consultant Goals

The Local Agency must submit a scope of work, services to be provided, funding source, and estimated cost of the total services to the CDOT Project Manager. This information is then forwarded to the Region Civil Rights Office who will determine if the DBE program is applicable. If the DBE program is applicable, the Region Civil Rights Office will establish the DBE Contract Goal. For projects requiring advertisement, where the DBE program is applicable, the RFP must contain a DBE goal in order to be advertised, even if the Region Civil Rights Office establishes a DBE goal of zero percent.

B2GNow, CDOT's system to track DBE participation and prompt payment requirements on Federal-aid Highway funded professional service contracts, is required on Local Agency projects advertised on or after July 1, 2022. In addition to the DBE Contract Goal, the Local Agency's RFP should include the applicable *CDOT Professional Services Local Agency Civil Rights and DBE Program Requirements*. The Local Agency must work with CDOT to ensure that the selected consultant either meets the DBE goal or makes good faith efforts to do so. An [Affidavit of Small Business Participation](#) form must be returned to the Local Agency with the Consultant's statement of interest proposal. This form is the Consultant's contractually binding guarantee to

meet the DBE Contract Goal or make good faith efforts to do so. Failure to submit the Affidavit will result in the proposer being deemed ineligible for award. The Local Agency will copy the Affidavit and RFP of the top preferred proposer to CDOT's Civil Rights and Business Resource Center (CRBRC) for approval of the Affidavit.

Set Construction Goals

At the earliest date possible, but not to exceed 90 days prior to advertising a project; the Local Agency must submit an engineer's construction estimate to the CDOT Project Manager and the anticipated date of advertisement. The estimate must show the item quantities and costs of the project. This information is forwarded to the Region Civil Rights Office along with the funding type, project duration and project description, and is used to determine DBE program applicability. If the DBE program is applicable, the Region Civil Rights Office will establish a DBE Contract Goal for construction.

The DBE Contract Goal is completed by the CDOT Region Civil Rights Manager based on the availability of subcontracting opportunities, the scope of the work, the geographic location of the work, and the availability of DBE firms capable of performing such work. The project bid documents must include information on the DBE contract goal (if applicable), even if the Region Civil Rights Office establishes a goal of zero percent.

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) Requirements* shall be included in the Plans, Specifications and Estimates. If the Contract Goal is greater than zero, all bidders should include in their bid package the [CDOT Form 1414](#) – Anticipated DBE Participation Plan. If the DBE goal for the project is zero, CDOT Form 1414 is not required to be completed by bidders, but it shall still be submitted documenting zero anticipated participation. Each bid will be reviewed to determine if the bid is responsive. Bids without completed CDOT Form 1414 at the time of bid submission are deemed unresponsive and therefore 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 federally funded 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.

Projects funded under the Federal-aid Highway Transportation Alternatives Program (TAP) or the Safe Routes to School (SRTS) program must comply with the requirements of the Davis-Bacon Act. For projects funded under other Federal-aid Highway programs, Davis-Bacon Act requirements may be excluded 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 based on roadway classification and funding program restrictions.
2. Force account work performed solely by Local Agency employees. See Section 5.12 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 ensure 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 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.

LCPtracker, CDOT's system to electronically monitor Davis-Bacon wages and on-the-job training program participation, is required on applicable Local Agency projects advertised on or after July 1, 2022.

Davis-Bacon Act requirements do not apply to Local Agency projects funded solely with non-federal (state) funds, solely with Federal Recovery Funds, or a combination of state and Federal Recovery Funds. However, if Federal Recovery Funds are combined with other federal funding, Davis-Bacon Act requirements may apply. Additionally, Federal Recovery Fund projects over \$10 million may have specific wage/labor standard reporting and documentation requirements. Confirm the applicability of Davis-Bacon Act requirements with the CDOT Project Manager prior to advertisement.

If there is a project where a wage decision is mistakenly included in the advertisement, the project would have to adhere to Davis-Bacon requirements.

6.3 Set On-the-Job Training Goals

All projects are required to be evaluated by CDOT for potential OJT goals. The goals are set based on criteria outlined in *Title 23 CFR 230, Appendix B to Subpart A* and CDOT's standard Special Provision, *On the Job Training*. These criteria include the dollar value and type of work on the contract. The Standard Special Provision, [On the Job Training](#), includes guidance information regarding goal setting for reference.

On all Federal-aid Highway funded contracts, a force account item must be added for the On-the-Job Training Program when the On-the-Job Training goal is greater than zero. 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.

The Local Agency must use CDOT's electronic tracking and submission system, LCPtracker, on contracts advertised on or after July 1, 2022. Contractors will be reimbursed at a rate of \$10.00 per hour per (approved) trainee for all OJT hours worked

in approved classifications up to the project goal. The Contractor will be reimbursed for no more than the amount outlined in the OJT Force Account budget.

Prior to July 1, 2022, if the Local Agency does not use LCPtracker, the Local Agency should use the Standard Special Provision, *On the Job Training – Local Agency projects Not Using LCP tracker for Reporting*. The Contractor will be reimbursed \$2.00 per hour worked for each apprentice or trainee working on a project and whose participation toward the OJT project goal has been approved. The Contractor will be reimbursed for no more than the amount outlined in the OJT Force Account budget.

On-the-Job Training program requirements do not apply to projects funded solely with non-federal (state) funds or Federal Recovery funds.

6.4 Enforce Prompt Payment Requirements

Prompt payment is a requirement that all contractors with lower tier subcontractors or suppliers are contractually obligated to pay their subcontractors and suppliers promptly upon receiving payment either from the Local Agency, the prime contractor, or other subprime contractor. Prompt Payment applies to professional service and construction contracts with Federal-aid Highway program funds. Colorado also has a state law (*Colorado Revised Statutes 24-91-103*) that applies to public construction projects over \$150,000 (regardless of funding source) wherein the public entity is required to make payment at the end of each month. The prime contractor then has seven (7) days to report payment to the next tier. Similarly, those subcontractors must then pay lower tier contractors or suppliers within seven (7) days of receiving payment from the prime (or higher tier).

The Local Agency is responsible for ensuring that the prime contractor is compliant with prompt payment requirements.

6.5 Use of Electronic Tracking and Submission Systems

Civil Rights compliance software systems are being implemented in 2022 to support monitoring of compliance elements on Federal-aid Highway Local Agency projects, state-funded Local Agency construction projects, and on Federal Recovery Fund construction projects under the oversight of CDOT Region Staff. Locally administered

projects under the oversight of other CDOT divisions may implement these systems at a later date. Check with your CDOT Project Manager for further details.

6.5.1 LCPtracker

During construction of Federal-aid Highway funded projects, contractors and subcontractors are required to submit weekly certified payroll records for workers performing work that is physical and/or manual in nature (including those who use tools or who are performing the work of a trade). For contracts advertised on or after July 1, 2022, electronic submission of records is required in LCPtracker, CDOT's system for managing certified payrolls and on-the-job training hours. This system requires contractors to log in weekly to submit and confirm payrolls. The CDOT Project Manager will submit a [B2GNow Project Setup Information](#) form to the Local Agency which must be returned with the submittal of the Request for Concurrence to Award.

The use of LCPtracker replaces the hard copy [CDOT Form 118](#) – Contractor Wage Compliance Statement and assists with the tracking/submission of OJT hours. The initial [CDOT Form 1337](#) – Contractor Commitment to Meet OJT Requirements and [CDOT Form 838](#) – OJT Trainee/Apprentice Record must be submitted to the CDOT Project Manager for the apprentice wage rate and employee to be entered into the system. The [CDOT Form 832](#) – Trainee Status and Evaluation is required to be submitted monthly to provide additional information regarding status of the trainee that cannot be tracked within LCPtracker. This system also tracks and submits the Federal Form 1391 that is required to be completed for work taking place in July, pending that the payrolls are up-to-date and approved.

More information can be found at the following link: [Construction Compliance Overview](#) .

6.5.2 B2GNow

B2GNow is CDOT's system for managing prompt payment and DBE participation on construction projects and on professional services contracts. Electronic submission of documents and records on applicable Local Agency projects is encouraged and is required on contracts advertised on or after July 1, 2022. On Professional Service Contracts with Federal-aid Highway funding, the Local agency submits an [Affidavit of Small Business Participation](#) form with the Consultant's statement of interest proposal.

On construction projects, the CDOT Project Manager will provide a [B2GNow Project Setup Information](#) form to the Local Agency which must be returned with the submittal of the Request for Concurrence to Award.

The use of B2Gnow software replaces the use of hard copy [CDOT Form 205](#) – Sublet Permit Application, [CDOT Form 1418](#) – Monthly Payment Summary (prompt payment), [CDOT Form 1419](#) – DBE participation Report, and [CDOT Form 1425](#) – Supplier list. These are now performed within the system via reports and monthly audits. B2Gnow and LCPtracker work in conjunction with each other and the submission, and subsequent approval, of a subcontractor into the B2Gnow system enrolls them in the LCPtracker system.

Both of these compliance systems are outlined further in Chapter 10.

6.6 Prepare and Submit Title VI Plan and Incorporate Title VI Assurances

Local Agencies that receive Federal-aid Highway funding are required to adhere to Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes, including ensuring that no one is excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, national origin, sex, age, or disability in programs and activities.

Local Agencies that receive Federal-aid Highway funds through CDOT are required to establish a Title VI Program that is subject to review by CDOT pursuant to *Title 23 CFR 200.9(b)(7)*. As part of these requirements, Local Agencies must prepare and submit a Title VI Plan to CDOT's CRBRC. The Title VI Plan includes, but is not limited to, collecting and analyzing demographic data on programs and activities, creating a Language Assistance Plan, and routing any Title VI discrimination complaints to CDOT for FHWA processing. Title VI plans should be provided to CDOT after notification of funding award or before.

Additionally, on Federal-aid Highway funded projects, Local Agencies sign and IGA with CDOT that contains the US DOT Order 1050.2A (also referred to as Standard US DOT Title VI Assurances) as an exhibit. The Local Agency must comply with the US DOT

Order 1050.2A and insert the appropriate language and appendices into requests for proposals (RFPs) of work and contracts.

For more information, including a template of US DOT Order 1050.2A, please contact the CRBRC or visit <https://www.codot.gov/business/civilrights/titlevi/fhwa-subrecipients>.

Similar Assurances of Compliance with Civil Rights requirements are required by other Federal Awarding Agencies, like the US Treasury. The IGA will specify the required Assurance language and the requirement to insert the Assurance into RFPs and contracts.

6.7 Roles and Responsibilities

• Local Agency

- For Consultant DBE Goals, furnish the scope of work, services to be provided, funding source, and estimated cost of the total services to the CDOT Project Manager. Once a DBE goal is assigned, ensure that the RFP documents include the goal and program requirements, and the selected consultant either meets the DBE goal or makes good faith efforts to do so.
- On Federal-aid Highway projects, at the completion of the work, expenditure of funds and/or expiration of the Contract, whichever comes first, forward the [Professional Services Closeout Report](#) with the final invoice to the CDOT Project Manager and the Region Civil Rights Office.
- For DBE/OJT Goals for a construction project, within 90 days prior to advertisement, submit an engineer's construction estimate and the anticipated date of advertisement to the CDOT Project Manager. Ensure the DBE/OJT goals and appropriate forms are included in the bid documents prior to advertisement.
- For construction projects requiring Davis-Bacon wages, verify that the latest modification of the wage decision is in the Standard Special Provisions prior to advertisement.
- Monitor compliance of Davis-Bacon and Related Acts through use of the LCPtracker system, as applicable. This includes reviewing submitted payrolls on a weekly basis to determine if payrolls will be accepted or

rejected. See Chapter 10 of this *Desk Reference* for additional information.

- On Federal-aid Highway funded projects, include a force account item in the bid documents for the On-the-Job Training Program, even if the On-the-Job Training goal is zero.
- Submit the [B2GNow Project Setup Information](#) form
- Confirm that the appropriate federal Title VI assurances are included in the contract with the selected consultant or contractor. Confirm that a Title VI Plan is on file with CDOT CRBRC, if the project is Federal-aid Highway or FTA-funded.
- Complete the Civil Rights Certification letter and submit it to the CDOT Project Manager. See Chapter 10 of this *Desk Reference* for additional information.

- **CDOT**

- **Project Manager/Local Agency Coordinator**
 1. For Consultant DBE Goals, submit a copy of the RFP and the design workhour estimate to the Region Civil Rights Office and request evaluation for a DBE goal. Verify that the RFP contains the name and location of the project, the scope, the duration or completion date, the type of funds, and the anticipated advertisement date.
 2. Notify the Local Agency of the Consultant DBE Goal set by the Region Civil Rights Office.
 3. For Construction DBE/OJT goals, submit the final engineer's estimate, title sheet or project description, duration of project, anticipated date of advertisement and project funding sources to the Region Civil Rights Office within 90 days of advertisement.
 4. Notify the Local Agency of the Construction DBE/OJT Goals and check to verify the bid documents contain the goal, all associated forms, and applicable specifications. This includes, but is not limited to, the Local Agency Prompt Payment Section 109 revision, CDOT's DBE Standard Special/Project Special Provisions and the appropriate CDOT OJT Standard Special/Project Special Provisions.
 5. Verify the Form FHWA 1273- Required Contract Provisions,

- Federal-aid Construction Contracts, is included in the bidding and advertisement package on projects with Federal-aid highway funds.
 - 6. Provide [B2GNow Project Setup Information](#) form to the Local Agency after bid opening.
 - **Region Civil Rights Office**
 - 1. Set Consultant DBE goals, Construction DBE goals, and OJT Goals and notify the CDOT Project Manager.
 - 2. Oversee compliance with the electronic systems.
 - 3. Approve/Reject subletting requests.
 - 4. Approve/Reject On-The-Job Training Form 838.
 - 5. Review and determine approval of DBE commitment modification requests.
 - 6. Complete Certification of Compliance form prior to project closeout.
 - **Civil Rights and Business Resource Center**
 - 1. Review the B2GNow Affidavit of [Small Business Participation](#) form and provide approval to the Local Agency.
 - 2. Review supporting documentation on Professional Services Good Faith Efforts Reports if required.
 - 3. Approve Consultant Contract Utilization Plans in B2Gnow as required.
 - 4. Set up contracts in B2GNow and LCPtracker systems, as required
 - 5. Review Title VI Plans.
- **FHWA** – Overall responsibility for the Federal-aid Highway Program including those project actions which cannot be assumed by the CDOT or the Local Agency.