

**PART 3**

Standards and  
practices for LAP

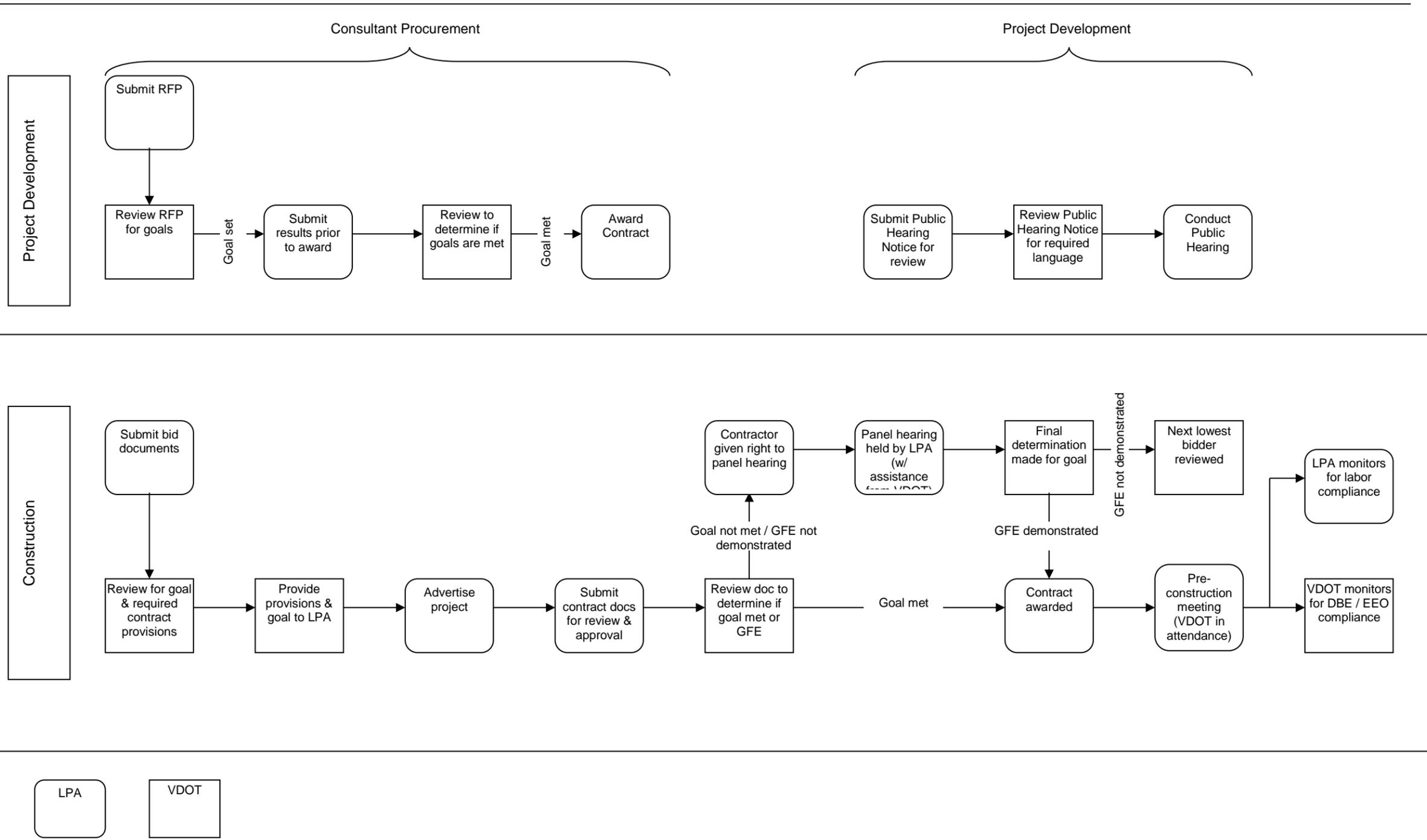
**Chapter 17**

Civil Rights and DBE

Locally Administered  
Projects (LAP) Manual

# CHAPTER 17 - CIVIL RIGHTS PROGRAM REQUIREMENTS

## Civil Rights



## Chapter 17 Civil Rights Requirements

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## 17.1 GENERAL CIVIL RIGHTS REQUIREMENTS

### 17.1.1 Introduction

This chapter outlines the processes and responsibilities associated with Civil Rights compliance for federal-aid projects. These procedures support LPA compliance with Title VI of the Civil Rights Act of 1964, as amended and all other presidential executive orders, rules and regulations governing nondiscrimination, equal employment opportunity, the Disadvantaged Business Enterprise (DBE) and On the Job Training (OJT) Programs. This chapter contains checklists of civil rights requirements for contract provisions and civil rights goals and requirements to be monitored prior to and after award of a contract.

Civil Rights responsibilities exist throughout the life of the project. The following Civil Rights guidelines are intended to provide an easy reference to federal-aid and state construction program regulations, policies, and guidance. As a recipient of federal funds, LPA's are responsible for ensuring nondiscrimination in the administration of projects and must adhere to all Civil Rights requirements. VDOT's Civil Rights Office ensures that the Virginia Department of Transportation's (VDOT) policies related to Equal Employment Opportunity (EEO), Nondiscrimination, Training, and Disadvantaged Business Enterprises (DBE) and Small, Women, and Minority-owned (SWaM) businesses are carried out. VDOT's Civil Rights Office monitors compliance with contractual affirmative action requirements both prior to and after award of a contract.

### 17.1.2 Applicability

<i>Federal-aid</i>	<i>State-aid/VDOT</i>	<i>State-aid/LPA</i>
	<i>Maintained</i>	<i>Maintained</i>
X	*	*

\* State aid projects shall include the requirements outlined in the Virginia Public Procurement Act, other applicable laws, and provisions outlined in Chapter 5.2.

### 17.1.3 Tasks/Submittals Table

<b>Task/Submittal/File Documentation</b>	<b>Locality Responsibility</b>	<b>VDOT CR Responsibility</b>	<b>Submittal Timing/Recordkeeping Requirements</b>
Project Scope and applicable environmental documents	<ul style="list-style-type: none"> <li>Submit scoping documentation to PC</li> </ul>	Review to ensure compliance with Title VI	N/A
Consultant Procurement	<ul style="list-style-type: none"> <li>Submit RFP to PC for review and possible goal setting by DCRO</li> </ul>	Review RFP and establish goal(s) if appropriate	Review complete within 10 business days
Public Hearing	<ul style="list-style-type: none"> <li>Post and send notice for public hearing to PC</li> <li>Schedule Public hearing in accessible location</li> </ul>	Review public hearing notice. May attend meeting to ensure compliance with Title VI, ADA and Section 504 of Rehabilitation Act	N/A
Project estimate/ bid proposal	<ul style="list-style-type: none"> <li>Submit an estimate or task breakdown to PC for review and goal setting (DBE and OJT) by DCRO</li> </ul>	Review and establish goal(s) if appropriate	<p>Locality submittal required 60 business days prior to advertisement.</p> <p>CR review completed within 20 business days of receipt if all required information is received from Locality</p> <p>Appendix 17A lists required contract provisions</p>
Bid documents/ pre-award	<ul style="list-style-type: none"> <li>Submit low bidder information, C-111/C-49 (GFE) and C-48 to PC for review within 30 days of bid opening</li> </ul>	Review documentation to determine goal or if Good Faith Efforts (GFE) met	Civil Rights review completed within 20 business days of receipt of documents
Title VI Program Assurance	<ul style="list-style-type: none"> <li>Execute and submit assurance to DCRO</li> </ul>	Monitor submittals	
Title VI Program Plan	<ul style="list-style-type: none"> <li>Develop and submit plan to VDOT DCRO</li> </ul>	Download and review plan to ensure inclusion of minimum components required. Request any revisions if needed. File	Civil Rights review completed within 60 business days of receipt of plan
Annual Title VI Program Reports	<ul style="list-style-type: none"> <li>Prepare and submit a revised Title VI plan if needed.</li> <li>Prepare and submit Title VI Accomplishment Report by Oct. 31<sup>st</sup> of each year to DCRO</li> </ul>	<p>Download and review revised plan submittals</p> <p>Download and review annual reports</p>	<p>Civil Rights review completed within 60 business days of receipt of revised plan</p> <p>Civil Rights review completed within 60 business days of receipt of annual report</p>

Title VI Compliance Review	<ul style="list-style-type: none"> <li>• Prepare and submit documentation requested by DCRO for Desk Review by due date</li> <li>• Prepare for On-Site Review</li> </ul>	<p>Notify LPA of review. Conduct Desk Review.</p> <p>Conduct On-Site Review</p>	<p>DCRO notifies LPA of impending review 90 days prior to On-Site visit. Notification includes a timeline</p> <p>DCRO requests documentation to initiate Desk Review</p> <p>DCRO conducts On-Site Review</p>
Preconstruction meeting	<ul style="list-style-type: none"> <li>• Invite the District Civil Rights Office to the preconstruction meeting</li> <li>• Provide executed contract to DCRO</li> </ul>	<p>Attend preconstruction meeting to review CR requirements and forms With contractor</p>	<p>N/A</p>
Construction	<ul style="list-style-type: none"> <li>• Administer CR Program areas (DBE,OJT and EEO) during project</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct DBE Compliance Review on each DBE on each project</li> <li>• Conduct annual EEO Contractor Review as required for contractors with executed contracts</li> </ul>	<p>DBE reviews required on each DBE at least once during the life of the project</p> <p>EEO review required if contractor has not had annual review and has executed contract</p>
Conduct Labor Compliance Review	<ul style="list-style-type: none"> <li>• Review &amp; track contractor's certified payrolls</li> <li>• Davis-Bacon interviews with employees</li> </ul>	<p>N/A</p>	<p>Review first 4 weeks for compliance and then as needed. First 30 days of construction; and quarterly while project is active</p>

## 17.1.4 References

Title VI of the Civil Rights Act of 1964, as amended	29 CFR Part 1614
FHWA 1273	29 CFR Part 1625
Executive Order (EO) 11246 as amended by Executive Order 11375	41 CFR Part 50
USDOT 1050.2A – Appendix A, B, C, D and E	41 CFR Part 60
Executive Order 12898	49 CFR Parts 21, 23, 26, and 27
Executive Order 13166	Section 504 of the 1973 Rehabilitation Act
23 CFR Parts 200, 230, and 633	Restoration Act of 1987
29 CFR Part 3	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
29 CFR chapter V	The Federal Aid Highway Act of 1973
29 CFR Part 790.5	The 1975 Age Discrimination Act

### Other Helpful References

[Davis-Bacon and Related Acts Guidance](#)

[2007 Virginia Department of Transportation Road and Bridge Specifications](#) (Sections 110.02, 110.03, 110.04, 110.06, 518 or 102.01, 107.14, 107.15, 518 respectively)

[Special Provision for Section 107.15](#)

DBE Program Plan

[United States Department of Labor Poster Matrix](#)

[Virginia Construction Alliance OJT Trainee Classification Booklet](#)

[Code of Virginia Section 2.2-4201](#)

[Code of Virginia Section 2.2-4311](#)

[Code of Virginia Section 51.5-40](#)

[Code of Virginia Section 51.5-41](#)

[Code of Virginia Section 51.5-44](#)

[Virginia Department of Labor and Industry](#)

[Virginia Employment Commission](#)

[Virginia Workers Compensation Commission](#)

[Virginia Department of Minority Business Enterprises](#)

[VDOT Civil Rights Division - DBE Information](#)

## 17.2 GENERAL TITLE VI REQUIREMENTS AND EXECUTIVE ORDERS

<b>Applicability</b>		
<i>Federal-aid</i>	<i>State-aid/VDOT</i>	<i>State-aid/LPA</i>
	<i>Maintained</i>	<i>Maintained</i>
X	*	*

\* All recipients of federal aid-funds are required to comply with the requirements of Title VI.

### **GLOSSARY OF TERMS**

**LPA:** *Local Public Agency*

**Title VI:** *The sixth (6<sup>th</sup>) act of the Civil Rights Act of 1964. Title VI prohibits discrimination based upon race, color, and national origin.*

**Title VI Program:** *System of policies and procedures designed to monitor compliance, address complaints and eliminate discrimination when it is found to exist.*

**Title VI Assurance:** *Contract that obligates the sub-recipient to comply with Title VI statutes and confirms the consequences of non-compliance.*

**Title VI Program Plan:** *Document that contains the agency's Title VI Program*

### 17.2.1 Title VI - Requirements

As a sub-recipient of federal assistance, LPAs are required to comply with 23 CFR Part 200 as related to Title VI of the Civil Rights Act of 1964 and related statutes. The LPAs must ensure that no person shall intentionally or unintentionally because of race, color, national origin, sex, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity including, but not limited to the selection and retention of contractors, procurement of materials and leases of equipment.

To ensure nondiscrimination in all of its programs and activities, each LPA must implement a system of procedures and actions which include, at a minimum:

- A signed Title VI Program Assurance
- The Identification of a Title VI Program Coordinator
- The submittal of a Title VI Program Plan
- The annual submittal of Title VI Program Reports
- The inclusion of Title VI language in all contracts.

### Title VI Requirement #1: Assurance



Sub-recipients must execute and submit Title VI Assurances as a condition to receive federal aid (49 CFR 21.7). Where a locality has a current and approved Title VI Plan, the addition of the required U.S. DOT Standard Title VI Assurances may be sufficient as determined by the VDOT District Civil Rights Office. A Title VI Assurance is a contract that obligates the sub-recipient to comply with Title VI statutes and confirms the consequences of noncompliance. The U.S. DOT Standard Title VI Assurance template is included in Appendix 17F. LPAs must submit their signed Title VI Assurances to VDOT District Civil Rights Office.

### Title VI Requirement #2: Title VI Coordinator

LPAs must designate a coordinator for Title VI issues and complaints within the organization. The Title VI coordinator is the focal point for Title VI implementation and monitoring of programs and/or activities receiving financial assistance from VDOT. Responsibilities include: ensuring that Title VI requirements are included in policies, ensuring that procedures for the prompt processing of Title VI external discrimination complaints are implemented, attending/participating in Title VI training, developing/coordinating the dissemination of Title VI information to the public and in languages other than English, when necessary.

### Title VI Requirement #3: Title VI Program Plan



LPAs with population >200,000 are required to develop and implement a plan for their Title VI Program. LPAs with population <200,000 may submit a Nondiscrimination Agreement. A Title VI Plan is a document that contains the agency's Title VI Program (policies and procedures) and is designed to monitor compliance, address complaints and eliminate discrimination when it is found to exist. Each local public agency must submit their Title VI Program Plan to VDOT electronically to the DCRO. Plans will be downloaded and reviewed for the inclusion of the minimum components by VDOT's District Civil Rights staff.

Any substantial revisions will require the submittal of a revised Title VI Program Plan. Substantial revisions may include: the filing of the agency's new CEO signature, changes in the Title VI Program administrative structure and changes to any of the procedures included in the plan.

In developing the Title VI Plan, LPAs may choose to adopt the procedures adopted by VDOT (VDOT's Title VI Plan) or adopt another format that includes the minimum components. The required components of a Title VI Plan are:

- a. Policy Statement – The policy statement reflects the agency's commitment to Title VI compliance and it is signed by the agency's Chief Executive Officer (CEO).
- b. Authorities – This section cites all relevant Federal Statutes, regulations, executive orders and other legislation.
- c. Organization and staffing – This section identifies the Title VI Coordinator, includes the agency's organizational chart and provides the names of each of the Title VI representatives for each of the five key program areas: Planning, Research, Design, Right of Way, Construction, Maintenance and Education/Research. The Title VI Coordinator's responsibilities are outlined in this section.
- d. Program Emphasis Areas – This section describes the program area and the Title VI implementation activities for each program area.
- e. Title VI Contract Provisions – This section reinstates the inclusion of USDOT 1050.2A Appendix A and E in every consultant's contract/subcontract and [FHWA-1273](#) in construction contracts.
- f. Complaint Procedures – This section describes the procedures for filing, processing and investigating external discrimination complaints, including the time limits for the submission of complaints and completion of investigations (60 days per 23 CFR 200.9(b) (3)). External discrimination complaints filed against the LPA should be submitted to VDOT. If received by the LPA, the complaint should be forwarded to VDOT. The method for notifying the public regarding these procedures should be explained and a copy of the external discrimination complaint form should be included.
- g. Data Collection – This section outlines the procedures for the collection and analysis of statistical data (race, color and national origin) of participants in, and the beneficiaries of the

agency's program and activities. Examples of methods that demonstrate compliance are forms, surveys, trend analysis documents, data/documents provided by local data-collecting agencies that help identify the demographics of the population affected by the LPA's programs and activities.

#### Title VI Requirement #4: Title VI Program Reports

LPAs are required to submit two annual reports:

a. Annual Title VI Program Plan Update. - Each local public agency is responsible for



submitting an annual update regarding their Title VI Plan. The annual update will contain only minor revisions necessary to keep the document up-to-date. An example of an update may be: changes on the names of staff.

b. Annual Accomplishment Report.- Local Public Agencies that have submitted their Title VI



Program Plan are to provide a Title VI annual report that documents the activities related to the implementation, accomplishments and compliance with their Title VI Program. This annual Title VI Program Report is to be submitted to VDOT electronically to the DCRO by October 31<sup>st</sup> of each year. Reports will be downloaded and reviewed by the responding VDOT Districts Civil Rights staff.

#### Title VI requirement # 5: Title VI language in contracts

The Standard DOT Title VI Assurance commits recipients to include Title VI Provisions in its contracts and subcontracts and to ensure that these provisions are included in all third tier contracts as well. LPAs receiving federal funding must include the clauses of USDOT 1050.2A Appendix A and E in every contract (see section 17.5.3) and the form FHWA-1273 "Federal Requirements for Federal-Aid Construction Contract" in every construction contract (see section 17.5.2). LPAs must also ensure that their subcontracts include the required clauses.

### 17.2.2 Title VI – Compliance Reviews

In conformance with Federal Title VI regulations, VDOT will conduct periodic reviews of LPA's Title VI compliance. The reviews will be scheduled by VDOT's Title VI Specialist in coordination with the Local Assistance Division and District Civil Rights Managers (DCRMs).

VDOT's Civil Rights Division will utilize a risk-based approach to identify a representative sample of LPAs to review. This sample will be compared to the LPA compliance review schedule developed by Local Assistance Division to avoid duplicative reviews. The necessary review arrangements and the actual review will be conducted by the DCRMs in coordination with a staff member from Local Assistance Division.

The review will focus on how effectively the local agency has implemented its Title VI Plan, and it will consist of a Desk (Pre-Site visit) Review and an On-Site Review. The LPA will be asked to gather and submit documentation to the District Civil Rights Office for the Desk Review and to prepare other documentation such as record or contract files for the On-Site Review. Personnel with Title VI responsibilities will be interviewed during the On-Site visit.

Upon conclusion for the On-Site Review, the LPA will be notified by the DCRO of compliance or in the event that deficiencies are found, the local agency will be told of those deficiencies. The LPA will be given 90 days to develop a voluntary Corrective Action Plan to be submitted to VDOT Civil Rights District Office. The submittal of this plan will allow the LPA to develop voluntary corrective actions prior to be found in Non-Compliance. After the LPA corrects all deficiencies, it will be notified in writing that it is in compliance. However, if the LPA does not correct the deficiencies or fails to submit a Corrective Action Plan, it may be subject to sanctions including the suspension of federal funding.

### **17.2.3 Title VI – Environmental Justice and the Public Involvement Process**

Environmental justice refers to the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to transportation programs, policies, or activities. Fair treatment means that no single group shall share a disproportionate burden or impact of a project due to racial, social or economic disadvantage. Executive Order 12898 (Appendix C) requires that all federal agencies and other entities receiving federal funds identify, and address disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low income populations. In application to transportation, environmental justice requires analysis of potential environmental impacts; full and fair public participation by identified populations in the transportation decision making process; and implementation of strategies to avoid, minimize or

mitigate “significant and adverse environmental justice impacts; and procedures to prevent the denial, reduction or delay in benefits received by minority and low-income populations.”

To ensure compliance with Title VI for environmental justice and public access the LPA is responsible for the following (Further guidance can be found in 23 CFR 450.206 through 23 CFR 450.214.)

- Reviewing the project scope and applicable environmental justice documents to ensure compliance with Title VI, as amended.
- Collecting and appropriately using demographic data to determine the equitable distribution of benefits and burden associated with transportation investments which adequately reflect community boundaries, racial and ethnic makeup, income, sex, age, disabilities, available community services, limited English proficiency population, and similar metrics.
- Complying with Public Information requirements outlined in Chapter 12.4
- Providing notice in foreign languages, as applicable, to impacted communities or persons if there is an LEP population according to the guidelines in 17.2.3.
- Scheduling meetings at locations that are accessible (location, time and via public transportation) to persons with disabilities as defined under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, and accessible via public transportation.
- Attending meetings and collecting demographic statistical data of participants (race, color, sex, and national origin) by use of a Survey at the public meetings ([Survey](#)) and forwarding any Title VI concerns or allegations to the District Civil Rights Office.

The Federal Highway Administration provides detailed legislation and guidance to ensure compliance with Title VI and Environmental Justice requirements on its [Environmental Justice Website](#).

*VDOT Responsibilities:*

- *The Project Coordinator will provide project scoping and environmental documents to Civil Rights for review to ensure compliance with Title VI.*

- *Civil Rights will review documents and provide comments (if needed) within 10 business days.*

#### **17.2.4 Limited English Proficiency (LEP) (EO 13166)**

LPA's are required to ensure that LEP persons are provided adequate access to information and programs in order to effectively participate in transportation programs. An LEP person is a person who does not speak English as their primary language and has limited ability to read, speak, write or understand English. Executive Order 13166 instructs agencies and recipients of federal funds to examine their services, and develop and implement processes by which LEP persons can have meaningful access to services. Recipients and sub recipients of federal funding shall take reasonable steps to ensure that LEP persons are given adequate project information, are able to understand that information, and are able to participate effectively in recipient programs or activities, where appropriate. Reasonable steps may include providing interpreting and translation services.

To determine the need for translation services, a four-factor analysis should be conducted based on the following:

- the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
- the frequency with which LEP individuals come in contact with the program;
- the nature and importance of the program activity, or service provided by the program to people's lives; and
- the resources available to the grantee/recipient and costs.

At a minimum, LPAs that would like greater certainty of compliance than can be provided by the four-factor analysis can utilize the "safe harbor" provision. Safe harbor is achieved by providing written translations of vital documents for each eligible LEP language group that constitutes 5 percent of the project area population being served or 1,000 persons, whichever is less. The District Civil Rights Office can provide additional information regarding interpretation and translation services.

LPAs must assure that people who are not proficient in English can effectively participate in, and have meaningful access to programs and activities funded with federal dollars. Failure to

provide access may constitute national origin discrimination prohibited by Title VI and its implementing regulations.

Additional detailed guidance to assist LPAs in meeting LEP requirements is available by accessing the [U.S. Department of Transportation LEP Web site](#)

### 17.3 DBE REQUIREMENTS

<b>Applicability</b>		
<i>Federal-aid</i>	<i>State-aid/VDOT</i>	<i>State-aid/LPA</i>
	<i>Maintained</i>	<i>Maintained</i>
X	*	*

\* Except as noted otherwise, these requirements are **applicable only to Federal-aid projects**

#### 17.3.1 Disadvantaged Business Enterprises (DBE) Policy / Certification

Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, must have the maximum opportunity to participate in the performance of federally funded construction contracts. The Virginia Department of Small Business and Supplier Diversity (SBSD) maintain a list of firms that have been certified by the SBSD and the Metropolitan Washington Airports Authority (MWAA) under the **DBE Directory of Certified Vendors**. Contractors are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the contractor intends to subcontract a portion of the services on the project, the contractor is encouraged to seek out and consider DBEs as potential subcontractors. The contractor is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between a contractor and a DBE whereby the DBE promises not to provide services to other contractors is prohibited.



**It should be noted that DBE compliance and SWAM compliance are different and compliance with one program does not necessarily mean there is compliance with the other.**

A listing of DBE firms may be obtained on-line at [SBSD](#) under the DBE Directory of Certified Vendors or by contacting:

Virginia Department of Small Business and Supplier Diversity  
1111 East Main Street, Suite 300  
Richmond, Virginia 23219  
(804) 786-6585

If portions of the services are subcontracted to a DBE, the following needs to be submitted with the bid:

- Written documents of the prime's commitment to the DBE to subcontract a portion of the services, a description of the services to be performed and the percent of participation.
- Written confirmation from the DBE that it is participating, including a description of the services to be performed and the percent of participation.

49 CFR Part 26 requires VDOT to collect certain data about firms participating in VDOT contracts. This data must be provided on the [Form C-48](#) for construction projects and the Firm Data Sheet for professional/nonprofessional services.

VDOT is also required to capture DBE payment information on all contracts. The successful prime contractor will be required to complete [Form C-63](#) on a quarterly basis throughout construction activity.

DBE firms must become certified (with the SBSB or MWAA) prior to the response being submitted. If a DBE is the prime contractor, the firm will receive full credit for planned involvement of its own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE prime contractors are encouraged to make the same outreach efforts as other contractors. DBE credit will be awarded only for work actually being performed by them. When a DBE prime contractor subcontracts work to another firm, the work counts toward DBE goals only if the other firm is itself a DBE. A DBE prime contractor must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own forces.

DBE certification entitles contractors to participate in VDOT's DBE programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

The following policy statement is to be placed in each federal-aid solicitation:

*It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 must have the maximum opportunity to participate in the performance of federally funded contracts. A list of DBE firms certified by the SBSB and MWAA is maintained on SBSB's website (<http://www.SBSB.virginia.gov>) under the DBE Directory of Certified Vendors. Contractors are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on contract, including participation in any subsequent supplement contracts. If the contractor intends to subcontract a portion of the services on the project, the contractor is encouraged to seek out and consider DBEs as potential subcontractors. The contractor is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between a contractor and a DBE whereby the DBE promises not to provide services to other contractors is prohibited. [Include the following wording on federally funded projects with DBE goals:*

*The DBE contract goal for this procurement is \_\_\_\_\_ %]. [Include the following wording on federally funded projects without DBE goals. The Department (VDOT) believes that these services support \_\_\_\_\_ % DBE participation].*

If portions of the services are subcontracted to a DBE, the following needs to be submitted with the bid:

- Written documents of the prime's commitment to the DBE to subcontract a portion of the services, a description of the services to be performed and the percent of participation.
- Written confirmation from the DBE that is participating, including a description of the services to be performed and the percent of participation.

### 17.3.2 DBE Goal Setting Process



The locality is to submit the estimate for the proposed project, which includes the work activities and their associated costs, and the final total cost assigned to the project to the Project Coordinator to be submitted to the District Civil Rights Office no later than 60 days prior to advertisement for DBE goal determination and to ensure proper contract language and documents/forms are included.

The District Civil Rights Office will provide comments and establish the DBE goal within 20 business days if all required information is received from the locality for review.



Once a construction project has been advertised and bids received, the locality will forward the DBE information regarding DBE participation commitment from the lowest responsive and responsible bidder to the appropriate District Civil Rights Office.

Once a professional or non-professional services contract has been advertised and a firm has been selected, the locality will forward the DBE information regarding DBE participation commitment to the project coordinator for review and recommendations regarding award of the project. The award of all bids must adhere to federal regulations, as promulgated in 49 CFR Part 26, Part 23 and the Department's Special Provision for Section 107.15 (of the Virginia Department of Transportation's Road and Bridge Specifications (Specifications) relative to 'good faith efforts' by contractors/consultants in attaining the required DBE participation. Prior to award, contractors/consultants are required to achieve the established DBE goal or demonstrate that a good faith effort has been made to achieve the goal. After award, the locality will submit a copy of the signed contract and supporting DBE information to the project coordinator.

#### *VDOT Responsibilities:*

- *The Project Coordinator will submit the LPA prepared project estimate and bid documents to Civil Rights for review and goal setting.*
- *Civil Rights will review documents and establish a DBE goal (if needed) within 20 business days of receipt.*

### 17.3.3 Good Faith Efforts

Whether as a bidder or contractor of a federally-assisted contract, good faith efforts are required to meet the contract goal. This applies even if the bidder or prime contractor is a DBE. When a locality has a contract goal on a Federal-aid project, a bidder must, in order to be responsive and responsible, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways.

- First, the bidder can meet the goal by submitting the names of DBE firms to be utilized to meet the DBE goal requirement.
- Second, even if a bidder does not meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

No locality shall require that a bidder meet a DBE goal in order to be awarded a contract. Title 49 CFR Part 26 specifically prohibits federal-aid recipients from ignoring bona fide good faith efforts.

In any situation where a DBE goal has been established and the DBE goal has not been met, the use of good faith efforts must be demonstrated. Each LPA must make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect any bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.

#### *VDOT Responsibilities:*

- *The Project Coordinator will provide the bid tabulation and documentation to meet the DBE goal to Civil Rights for review prior to contract award.*

- *Civil Rights will review documents and determine if the DBE goal has been met or if good faith efforts have been demonstrated within 20 business days of receipt.*
- *Civil Rights will review the Locality's determination regarding the contractor's good faith efforts to ensure the determination is in accordance with 49 CFR 26.53 and 49 CFR 26 Appendix A (What are the good faith efforts procedures recipients follow in situations where there are contract goals), and VDOT's Special Provision for 107.15 Use of Disadvantaged Business Enterprises (DBEs).*
- *Civil Rights will concur if the Locality's determination is in accordance with 49 CFR 26.53, 49 CFR 26 Appendix A, and VDOT Special Provision 107.15. Civil Rights will provide technical assistance to the Locality if the good faith efforts determination by the Locality is found not to be in compliance with 49 CFR Part 26 and 49 CFR 26 Appendix A, and VDOT Special Provision 107.15.*
- *Civil Rights will recommend non reimbursement of funds to any Locality that awards a contract not in accordance with good faith effort regulations.*

### **17.3.3.1 Good Faith Effort Activities**

The following types of activities should be considered by a locality as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate,

breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached for DBEs to perform the work.
  - A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

### 17.3.3.2 Administrative Review

If an established DBE goal is not met, a bidder must, in order to be considered responsible and/or responsive, have demonstrated good faith efforts to meet the DBE goal by documenting commitments for participation by sufficient DBE firms, or document adequate good faith efforts to actively and aggressively obtain participation by a sufficient number of DBE firms. An administrative review (see 49 CFR 26.53) of the good faith efforts must be made prior to award in each instance by the locality. If the locality determines that the apparent successful bidder/offeror has failed to meet the good faith requirements, the local agency must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration in accordance with Section 49 CFR 26.53.

A locality must not use a “conclusive presumption” approach, in which the apparent successful bidder is summarily found to have failed to make good faith efforts simply because another bidder was able to meet the goal. However, the performance of other bidders in meeting the contract can be a relevant factor in a good faith effort determination, in more than one way. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the locality may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. It does not, by itself, prove that the apparent successful bidder did not demonstrate good faith efforts to meet the DBE goal. On the other hand, if the apparent successful bidder fails to meet the goal, but meets or

exceeds the average DBE participation obtained by other bidders, the locality may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

*VDOT Responsibilities:*

- *The Project Coordinator will advise Civil Rights if an Administrative Reconsideration Panel has been requested.*
- *Civil Rights will provide technical assistance with the Administrative Reconsideration Panel.*

### **17.3.3.3 Substitutions**

After a contract has been executed with a DBE goal, adequate good faith efforts and Civil Rights approval are required for any substitution of DBE subcontractors to the extent necessary to meet the contract goal.

Localities must require that a prime contractor not terminate a DBE subcontractor for convenience and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the locality's prior written consent. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the locality must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

### **17.3.3.4 Non-Compliance**

Local agencies must include a provision in each prime contract for appropriate administrative remedies that will be invoked if the prime contractor fails to comply with the good faith efforts requirements during the contract.

## 17.3.4 Bidders' DBE Obligations

### 17.3.4.1 Commitments

Bidders shall identify in their construction bid (on [Form C-111](#), Minimum DBE Requirements or Proposal, Appendix E), all of the DBEs who will participate on the project toward achieving the  DBE goal. The [Form C-111](#) and [C-112](#) (Appendix E) shall be completed and submitted in accordance with Special Provision 107.15 of the Specifications for construction contracts. DBE firms must be certified by either the SBSB or MWAA.

The Bidder shall list on the [Form C-111](#) (Appendix E) the names of each DBE firm which the Bidder intends to utilize for DBE participation credit towards the DBE goal. If the prime contractor or consultant is a DBE firm, the required documentation must reflect such. The following information must be listed on the [Form C-111](#):

- the complete legal business name as it appears on the Directory of Certified Vendors;
- the certification number;
- the type and item numbers of work or task description to be performed;
- each DBE's participation in the contract, expressed as amount of allowable credit per item/task in dollars or percentages at the first submittal of a proposal;
- the percent of work for each DBE on the [Form C-111](#) (Appendix E). The percent allocated for each DBE must be in accordance with commercially useful function provisions;
- the total dollar and the total participation expressed as a percentage of the total bid price. These totals shall include the sum of the following:
- the value of all proposed DBE subcontracts used for credit on the project; and
- the dollar value of all materials and supplies to be provided by DBEs (to be credited as noted above).



The successful bidder on a construction contract is required to submit a fully executed [Form C-112](#) (Appendix E) within three (3) working days after the bids have been opened and the determination of apparent lowest bidder. The Firm Data Sheet is required for consultant contracts.

#### 17.3.4.2 Subcontractor Supplier Solicitation and Utilization



It is a requirement that all vendors, both primes and DBEs who intend to submit a bid as a prime, submit a [Form C-48](#). The form must be completed by each bidder in detail, as the information is sent to the Federal Highway Administration to better track DBE outreach efforts.

### 17.4 ON THE JOB TRAINING (OJT) FOR CONSTRUCTION PROJECTS

<b><i>Applicability</i></b>		
<i>Federal-aid</i>	<i>State-aid/VDOT</i>	<i>State-aid/LPA</i>
	<i>Maintained</i>	<i>Maintained</i>
X	--	--

The contractor shall take all necessary and reasonable steps to ensure training and upgrading of minorities, women, veterans, and other disadvantaged persons toward achieving journeyman status within a given construction trade in accordance with Section 518 of the Specifications. The OJT program seeks to reduce overhead costs associated with training through a stipend reimbursement to the contractor while offering the opportunity to enhance short and long term workforce needs. The contractor will be reimbursed per hour per trainee.

The OJT program requires full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry. It is the intent that each contractor's workforce and construction site should reflect the same diversity as the community.

The DCRO will set a trainee goal for federal-aid construction projects prior to advertisement. The DCRO will approve all trainee enrollments to ensure disadvantaged persons are given opportunities for training utilizing [Form C-65](#) and subsequently recorded on [Form C-67](#).

Trainee work classifications and the requirements of each will follow those already developed by the Virginia Transportation Construction Alliance (“VTCA”). Copies of the OJT Trainee Classification Booklet may be obtained by contacting VTCA.

*VDOT Responsibilities:*

- *The Project Coordinator will provide the detail project estimate and bid proposal to Civil Rights for review.*
- *District Civil Rights Office will review documents and establish OJT goal, as needed.*

**17.5 REQUIRED CONTRACT PROVISIONS**

<b>Applicability</b>		
<i>Federal-aid</i>	<i>State-aid/VDOT</i>	<i>State-aid/LPA</i>
	<i>Maintained</i>	<i>Maintained</i>
X	--	--

**17.5.1 Nondiscrimination Provision**

Construction contractors and consultants must abide by the provisions of Title VI of the Civil Rights Act of 1964 (42 USC 2000 d). Title VI of the Civil Rights Act of 1964 declares it to be the policy of the United States that discrimination on the grounds of race, color, or national origin and other related statuses shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments, agencies, and subrecipients to take action to carry out this policy. 49 CFR Parts 21, 23, 26, and 27 and 23 CFR Parts 200, 230, and 633 are incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds.

For state-funded projects, construction contractors and consultants must abide by Title 2.2, chapter 43 of the Code of Virginia (the Public Procurement Act) that declares it to be the policy of the Commonwealth of Virginia that discrimination on the grounds of race, color, or national origin shall not occur in connection with programs and activities receiving state financial assistance.

### 17.5.2 FHWA-1273 for Construction Projects

FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts," (Appendix B) contains contract provisions and proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. 23 CFR Section 633.102 requires that the contract provisions of the FHWA-1273 be physically incorporated in every federal-aid construction contract as well as any subcontract. The required contract provisions contained in FHWA-1273 shall apply to all work performed on the contract by the contractor's own organization and to all work performed on the contract by piecework, station work, or by subcontract.

The contractor shall insert in each subcontract except as excluded by law or regulation, the required contract provisions contained in FHWA-1273 and further require its inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of FHWA-1273 shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of [FHWA-1273](#).

### 17.5.3 USDOT 1050.2A Title VI Assurances (Non-Construction Solicitations)

USDOT 1050.2A Title VI Assurance – The Title VI Program Assurance template, Appendix 17 E is required to be physically placed in each Request for Proposal (RFP) and prohibits discrimination on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. These provisions inform the subcontractors of their obligations relative to nondiscrimination under the contract.

In all solicitations, either by competitive bidding or negotiation, made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

#### **17.5.4 Equal Employment Opportunity (Executive Order 11246)**

LPA's must ensure that all contractors comply with the applicable provisions of Presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity (EEO). The contractor shall cooperate with the Department in carrying out EEO obligations and in the department's review of activities under the Contract. The contractor shall comply with the specific EEO requirements of this section and shall include Executive Order 11246 in every subcontract of \$10,000 or more with such modification of language as may be necessary to make them binding on the subcontractor.

#### **17.5.5 DBE Special Provision (for Construction Projects Only)**

Any contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the USDOT DBE Program in accordance with Title 49 Code of Regulations (CFR) Part 26, the USDOT DBE Program regulations, VDOT's Road and Bridge Specifications, and the VDOT DBE Program rules and regulations. Special Provision for Section 107.15 of the Specifications (Appendix B) is to be physically included in every supply or work/service subcontract and/or purchase order that it makes or executes with a subcontractor having work for which it intends to claim credit.

#### **17.5.6 Affirmative Action to Ensure Equal Employment Opportunity**

Executive Order 11246 (EO 11246) as amended by EO 11375 (Appendix B), prohibits federal contractors and federally-assisted construction contractors and subcontractors, who perform over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. Except in contracts exempted by the Secretary of Labor in accordance with Section 204 of this Order, all government contracting agencies shall include in every government contract provisions identified in executive order 11246 as amended by EO 11375.

The Executive Order also requires government contractors to take affirmative action to insure that equal opportunity is provided in all aspects of their employment. Such action shall include, but not be limited to the following; 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.

The EO 11246 is administered by the Employment Standards Administration's Office of Federal Contract Compliance Programs (OFCCP) within the U. S. Department of Labor.

### 17.5.7 Prevailing Wage Rates for Construction Projects

The [Davis Bacon and Related Acts \(DBRA\)](#) (Appendix B) requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The federal minimum wage rates are determined by the Secretary of Labor for inclusion in all federally funded construction contracts.

In addition to the Davis Bacon Act itself, Congress added Davis-Bacon prevailing wage provisions to approximately 60 laws—"related Acts"—under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. Examples of the related Acts are the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act. Generally, the application of prevailing wage requirements to projects receiving federal assistance under any particular "related" Act depends on the provisions of that law.

#### *VDOT Responsibilities:*

- *The Project Coordinator will provide the detail project estimate and bid proposal to Civil Rights for review at least 60 days prior to advertisement.*
- *Civil Rights will provide the proper contract language within 20 days of receipt.*

## 17.6 CONTRACT/CONTRACTOR COMPLIANCE AND REPORTING

<b>Applicability</b>		
<i>Federal-aid</i>	<i>State-aid/VDOT</i>	<i>State-aid/LPA</i>
	<i>Maintained</i>	<i>Maintained</i>
X	*	--

\* Only the EEO Provisions as outlined in 17.6.1.1 are applicable.

### 17.6.1 Contract/Contractor Compliance Reviews

Activities on construction projects are monitored through compliance reviews conducted by VDOT to ensure contractors comply with contract requirements and must be coordinated with the Construction Project Monitor (ACE).

#### *VDOT Responsibilities:*

- *The Project Coordinator will ensure that Civil Rights is provided with a copy of the executed contract and is invited to the Preconstruction Meeting.*
- *Civil Rights will attend the Preconstruction Meeting.*

#### 17.6.1.1 Equal Employment Opportunity (EEO) Contractor Compliance

EEO compliance reviews are conducted by the VDOT to ensure that all contractors and subcontractors awarded work meet contractual Equal Opportunity (“EO”) requirements under Executive Order 11246, as amended, 23 U.S.C. Section 140, FHWA 1273 (23 CFR Part 633), Specifications Section 107.14 and Title VI of the Civil Rights Act of 1964, as amended. All  contractors and subcontractors will submit to the DCRO the required information such as EEO Policy, EEO Officer, EEO meeting minutes, company employment (Form [C-64](#)) and monthly project site employment reports (Form [C-57](#)) as indicated in Section 107.14 of the 2007 VDOT Road and Bridge Specifications.

#### *VDOT Responsibilities:*

- *Civil Rights will perform EEO review of the contractor at least once during the life of the project.*

### 17.6.1.2 DBE Compliance Review

The contractor must take every reasonable step to ensure that DBEs committed to perform work under contract perform a commercially useful function (“CUF”). It is the VDOT’s responsibility to determine compliance with the commercially useful function requirement that is described in 49 CFR Part 26.55. The DCRO will monitor construction activity to ensure that DBE firms are performing work in accordance with federal regulations. The DCRO will conduct DBE Compliance Reviews on each DBE firm performing work for goal attainment on each project. Compliance monitoring includes: site visits, review of documents such as material tickets, subcontracts, lease agreements, etc. and any other information needed to render a compliance determination.

#### *VDOT Responsibilities:*

- *Civil Rights will perform a DBE Compliance Review of the contractor at least once during the life of the project.*

### 17.6.1.3 Labor Compliance

The locality must take every reasonable step to ensure that employees are paid in accordance with Davis-Bacon and Related Acts. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. It is the contractor’s responsibility to determine compliance with prevailing wage rates as described in 29 CFR Part 1, Part 3, and Part 5. The locality is responsible for conducting all Labor Compliance Reviews to verify certified payrolls ([WH347](#)). However, oversight responsibility rests with VDOT. Projects with a contract value greater than \$2,000, except for those off the right of way, on urban and rural local roads, or rural collector roads will be reviewed to determine compliance with the Davis-Bacon Act.

#### *VDOT Responsibilities:*

- *Civil Rights will review documentation of the locality’s review and provide comments as needed.*

## 17.6.2 Posters (Construction Projects and Professional Services)

Virginia and federal laws require bulletin board posters to be posted in the workplace for the benefit of employers and employees. Each poster must be displayed in a conspicuous place where employees and applicants for employment can see it. Two bulletin boards must be displayed at all locations even if there are no eligible employees. Appendix 17-B lists all required posters.

## 17.6.3 Reporting

### 17.6.3.1 Annual Employment Report

All contractors and subcontractors having a contract or subcontract of at least \$10,000 or more are required to submit an annual employment report (Form [C-57](#)) to the DCRO in accordance with 23 CFR Part 230.121. The report reflects all employees on site during the last pay period of July during which work is performed. This information will be submitted to the DCRO on [Form C-57](#) indicating number of the employees in each work classification, by race and gender. All employees on site must be accounted for by race and gender for journeymen level, trainees and apprentices.

The annual employment report will be submitted to the DCRO via the locality by the contractor for each federally assisted project no later than the second week of August.

### 17.6.3.2 Trainee Information

VDOT requires that the contractor maintain records and documents of trainee enrollments to include: name of trainee, race, gender, trainee work classification, hourly wage rates, start date, completion date and wage increments as training progresses. This information will include reason(s) trainees do not complete the training program and number of dropouts and terminations prior to completion of the training program. WEEKLY trainee records will be  submitted to the DCRO via the locality's inspector on [Form C-67](#)\*. Information on the [Form C-67](#)\* is utilized as documentation to support reimbursement for hours of training provided during the estimate period. (**\*Form C-67 is applicable only to federal-aid projects**).

The DCRO will maintain records and documents supporting the reimbursements to contractors for each trainee hour achieved via the OJT program. These records will include: contractor's name, project number, location of project, name of trainee(s), trainee(s) work classifications, and number of hours completed by each trainee(s). The Civil Rights Certificate of Achievement will be presented to each trainee completing the OJT program. Copies of these certificates will be part of the OJT trainee records.

If the Contract has a stipulation or requirement for trainees, the contractor shall submit to the locality semiannual training reports in accordance with the instructions shown on the forms furnished by the department. If the contractor fails to submit such reports in accordance with the instructions, his monthly process estimate for payment may be delayed.

# CH 17 – Civil Rights Checklist

CH 17 - Civil Rights
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LPA's are responsible for complying with processes and responsibilities associated with Civil Rights for federal-aid projects. These procedures are intended to support LPA compliance with Title VI of the Civil Rights Act of 1964, as amended and all other presidential executive orders, rules and regulations governing nondiscrimination, equal employment opportunity, the Disadvantaged Business Enterprise (DBE) and On the Job Training (OJT) Programs.

<i>REQ'd</i>	<i>COMPL</i>	<i>F</i>	<i>S-V</i>	<i>S-L</i>	<i>T-A</i>	<i>UCI</i>	<i>Requirement</i>	<i>Chapter / Section</i>	
	<input type="checkbox"/>	X					Submit scoping documentation. Review for Title VI Compliance	17.2	
	<input type="checkbox"/>	X					Submit IFB for review and possible goal setting. Determine required Contract Provisions have been included	17.3	
	<input type="checkbox"/>	X					Submit a detail estimate or task breakdown to DCRO for insertion of proper contract language and goal review (DBE and OJT)DBE Requirements	17.4 17.5	
<input type="checkbox"/>	<input type="checkbox"/>	X					Compliance Reporting & Reviews	17.6	

See Appendices 17A, 17B and 17C for specific requirements.

## Appendix 17A - Required Contract Provisions and Forms Matrix

Document	Applicable with Funding Source		Construction		Professional Services		Required in contract
	Federal	State	With Goal	W/O Goal	With Goal	W/O Goal	
FHWA 1273	•		•	•			•
EO 11246	•		•	•			•
USDOT 1050.2A Title VI Assurance Appendix A & E	•				•	•	•
Form C-28 - Basic Hourly Rate Paid By Contractor	•		•	•			
Form C-48 - Subcontractor/Supplier Solicitation and Utilization Form	•		•	•			•
Form C-49 - DBE Good Faith Efforts Documentation	•		•		•		•
(WH-347) Certified Payroll	•		•	•			
Form C-56 (WH-348) - Statement of Compliance	•		•	•			
Form C-57 -Highway Construction Contractors Monthly EEO Report	•	•	•	•			
Form C-58 - Notice on Title 18 US Code Section 1020	•		•	•			
Form C-59 - Wage Rate Information	•		•	•			
Form C-63 - DBE/SWaM Payment Compliance Report	•		•	•	•	•	
Form C-64 - EEO Information Request	•	•	•	•			
Form C-65 - Trainee Enrollment Form On-the- Job Training	•		•	•			
Form C-67 - Weekly Trainee Report	•		•	•			
Form C-111 - Minimum DBE Requirements	•		•	•			•
Form C-112 Certification of Binding Agreement	•		•	•			•
Firm Data Sheet	•				•	•	•
Title VI Evaluation Report	•				•	•	
Davis-Bacon Prevailing Wage Rates	•		•	•			•
Section 107.13 - Labor and Wages of the 2007 Virginia Road and Bridge Specifications	•		•	•			
Special Provision for Section 107.15 Use of Disadvantaged Business Enterprises (DBEs)	•		•				•
Section 107.15 Use of Minority Business Enterprise (MBE) of the 2007 Virginia Road and Bridge Specifications							•
Section 518 of the Specifications Trainees on Construction Projects of the 2007 Virginia Road and Bridge Specifications	•		•	•			
DBE Policy Statement	•		•	•	•	•	•

## Appendix 17B - EEO Bulletin Board Posters for Civil Rights Requirements

Poster	Federal Project	State Project
EEOC-P/E-1 (Equal Opportunity is the Law)	•	•
Contractor's EEO Policy Statement	•	•
Actual Davis Bacon Wage Rates (Prevailing Wages)	•	
FHWA 1022 ("NOTICE" Federal Aid Projects)	•	
FHWA 1495 (Wage Rate Information)	•	
FHWA 1495A (Wage Rate Information-Spanish Version)		
USDOT 1321 ("Notice to Employees" on federally funded projects)	•	
WHD 1088 (Federal Minimum Wage Rate)	•	

**Appendix 17 C – Civil Rights Requirements During Construction**

Form	Purpose / Description	Frequency	Prepared by	Signed by	Verified by (also signs form prior to submission)	Document Preparer to submit original form to	Document Preparer to submit copy of form to	Reviewed by	Provision (Reference for Requirement)
<b>All Subcontractor Agreement(s)</b>									
C-65	Trainee Enrollment Form	Prior to trainee beginning work	VDOT Civil Rights <sup>3</sup>	Trainee, Contractor, Local Government Construction Inspector, VDOT Civil Rights	VDOT Civil Rights <sup>4</sup>	Local Government	VDOT - Civil Rights <sup>5</sup>	VDOT - Civil Rights	FHWA 1273 IV (4)(b)(3) 2007 VDOT Rd. & Br. Specs §518.02 (b)
C-67	Weekly Training Report	Weekly when training provided	Contractor or sub-contractor who hired trainee	Contractor or Subcontractor	Local Government	Local Government (Contractor should submit to Co, then Co verify and submit to VDOT)	VDOT - Civil Rights <sup>7</sup>	VDOT - Civil Rights	2002 VDOT Rd. & Br. Specs §518.03
<b>DBE (Disadvantaged Business Enterprise)</b>									
C-111	Minimum DBE Requirements	Once - received with bid proposal	Contractor	Contractor	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	49 CFR Part 26,
C-112	Certificate of Binding Agreement	Once - received with bid proposal	Contractor	Contractor	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	49 CFR Part 26,
All Subcontractor Agreement(s)	Ensure consistency with C-112. This is a subcontract between the prime and the subcontractor. All subcontract agreements must have FHWA-1273 attached.	Before work begins	Contractor	n/a	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights <sup>8</sup>	FWHA-1273
Schedule B	DBE Compliance Program	As needed when significant change in work patterns, crews, equipment, etc.	Locality Inspector	Locality Inspector	n/a	VDOT - Civil Rights	Local Government	VDOT - Civil Rights	DBE Compliance Instructional Guide
DBE Liaison Designation	Point of contact	Every six (6) months	Contractor	n/a	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	2007 VDOT Rd. & Br. Specs §107.14
DBE Activity Narrative	Document DBE activity	Within 30 days after NTP and prior to 1st estimate	Contractor	Contractor	n/a	Local Government	VDOT - Civil Rights <sup>10</sup>	VDOT - Civil Rights	2007 VDOT Rd. & Br. Specs §107.14
C-63	DBE Payment Compliance Report	Quarterly, five days after quarter ends: October 5, January 5, April 5, and July 5.	Contractor	Contractor	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	49 CFR Part 26, 2007 VDOT Rd. & Br. Specs §107.15
<b>Contractor/Subcontractor Responsibilities - EEO (Equal Opportunity)</b>									
C-64	Contractor /Subcontractor Equal Employment Opportunity Information Request	Posted to CRD Portal per Contractor; submitted to CO CRD every six months as long as contractor has active contract	Contractor or Subcontractor <sup>11</sup>	Contractor or Subcontractor <sup>11</sup>	n/a	Local Government	VDOT Civil Rights <a href="#">Central Office CO</a>	VDOT - Civil Rights	2007 VDOT Rd. & Br. Specs §107.15
Company EEO Meeting Minutes	Document meetings where contractor reviews and explains EEO policies to employees	Posted to CRD Portal per Contractor; submitted to CO CRD every six months as long as contractor has active contract	Contractor or Subcontractor <sup>11</sup>	Contractor or Subcontractor <sup>11</sup>	n/a	Local Government	VDOT - Civil Rights <sup>13</sup> <a href="#">Central Office CO</a>	VDOT - Civil Rights	FHWA-1273, 2007 VDOT Rd. & Br. Specs §107.14
Equal Opportunity Officer Designation	Contractor designates an employee to promote and implement the contractor's EEO Program	Posted to CRD Portal per Contractor; submitted to CO CRD every six months as long as contractor has active contract	Contractor or Subcontractor <sup>11</sup>	n/a	n/a	Local Government	VDOT - Civil Rights <sup>14</sup> <a href="#">Central Office CO</a>	VDOT - Civil Rights	FHWA-1273, 2007 VDOT Rd. & Br. Specs §107.14
C-57	Total Project Employment	Monthly during 1 <sup>st</sup> three (3) months of project activity and annually by August 15 for last payroll period preceding July month end	Contractor or Subcontractor <sup>11</sup>	Contractor or Subcontractor <sup>11</sup>	VDOT Civil Rights <sup>15</sup>	Local Government	VDOT - Civil Rights – local District office	VDOT - Civil Rights	FHWA-1273, 2007 VDOT Rd. & Br. Specs §107.14
<b>Labor Compliance</b>									
C-28	Hourly Wage Rates	Prior to second estimate. Every 90 days throughout project.	Contractor and Subcontractor <sup>16</sup>	Contractor and Subcontractor <sup>16</sup>	Locality Inspector	Local Government	Kept on-site	VDOT - Civil Rights	FHWA-1273(IV)(1), Davis Bacon Act Fair Labor Standards, 2007 R&B Spec. §107.13
Davis Bacon Worksheets	These worksheets are to make sure employees are earning the amount listed on the payroll. This excludes superintendents, foremen and clerical.	One random interview per quarter that may include prime and/or subcontractors <sup>17</sup>	Local Government	Local Government	n/a	Local Government	Kept on-site	VDOT - Civil Rights	FHWA-1273
Certified Payrolls	Payrolls must agree with the predetermined wage rates that are contained in the contract.	Within two (2) weeks after workweek.	Contractor and Subcontractors	Contractor and Subcontractor <sup>16</sup>	n/a	Local Government	Kept on-site	VDOT - Civil Rights	FHWA-1273
C-56/WH-348	Statement of Compliance	Review first payroll of prime and subs thoroughly, then as needed to ensure that conformance with wage provisions of the contract are attained. Payrolls to be sent to District Civil Rights Manager's offices	Contractor and subcontractors	Contractor and Subcontractor <sup>16</sup>	n/a	Local Government	Kept on-site	VDOT - Civil Rights	FHWA – 1273 (V)(3), Copeland "Anti-Kickback) Act, Davis Bacon Act
<b>Items Contractor to Post on Project Bulletin Board</b>									
1) Federal Minimum Wage Poster 2) Job Safety & Health Protection Poster 3) Your Rights under the FMLA Poster			4) Employee Polygraph Protection Act Poster 7) C-60 Poster 5) C-58 Poster 8) Pre-determined wage rates (General Provisions pp. 91-94) 6) C-59 Poster 9) EEO Officer / DBE Liaison			10) EEO Policy 11) EEO is the Law Poster 12) FHWA 1022			13) FHWA 1495 & 1495a 14) USDOT 1321

## Appendix 17 D – Good Faith Efforts (GFE) Administrative Review Process

### Virginia Department of Transportation Good Faith Efforts (GFE) Guidelines

Good Faith efforts may be determined through use of the following list of the types of actions the bidder may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

- Include the following completed forms:
  - Form C-111 - Minimum DBE Requirements
  - Form C-112 - Certification of Binding Agreement
  - Form C-48 - Contractor/Supplier Solicitation and Utilization Form
  - Form C-49 - Summary of GFE Documentation
  - Copy of the Request for Bid Solicitation to DBEs
  
- Solicit through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to certified DBEs who have the capability to perform the work of the contract. Examples include: advertising in at least one daily/weekly/monthly newspapers of general circulation as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised.
  
- Solicit DBEs no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation.
  
- Follow up initial solicitations as evidenced by documenting such efforts on Department standard DBE good faith documentation form, C-49.
  
- Select portions of the work to be performed by certified DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items completely or with its own forces.
  
- Provide interested certified DBES with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation.
  
- Provide evidence of names, addresses, and telephone numbers of DBEs that were considered for the solicitation; dates DBEs were contacted, a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting, and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work.

- For DBE bids declared noncompetitive, include copies of DBE and non-DBE bid quotes. DBE quotes may be rejected as noncompetitive if the DBE sub's quote is more than 10% higher than the non-DBE's quote, as verified by supporting documentation. The prime must contract with the non-DBE sub when declaring a DBE firm non-competitive.
- Offer assistance to DBEs in obtaining bonding, lines of credit, or insurance.
- Offer assistance to DBEs with information about securing equipment, supplies, materials, or related assistance/services.
- Effectively utilize the services of appropriate personnel from VDOT, the Virginia Department of Small Business and Supplier Diversity, the Metropolitan Washington Airports Authority, and other organizations in the recruitment and utilization of qualified DBEs.

## **Good Faith Efforts Administrative Reconsideration Panel Hearing File**

The Panel Hearing File should consist of bid documents received at the time of bid or in accordance with Special Provision 107.15 Use of Disadvantaged Business Enterprises. Panel Hearing File should consist of the following required documents:

- Form C-111 Minimum DBE Requirements
- Form C-112 Certification of Binding Agreement
- Form C-48 Subcontractor/Supplier Solicitation and Utilization Form
- Form C-49 Summary of GFE Documentation
- Copy of the Request for Bid Solicitation to DBEs

The Panel Hearing File should be distributed to the Administrative Reconsideration Panel Hearing Members and the Virginia Department of Transportation Civil Rights Division for review before the hearing.

## Administrative Reconsideration Panel Hearing Check List

Name of Contractor:

Address:

City, State, Zip

Telephone:

Email:

Project No.

### Hearing Information

Date:

Location:

Time:

Member(s) of Panel Hearing:

Court Reporter:

Telephone No:

Schedule VDOT District Civil Rights Office:  Yes  No

Name of Representative:

Date Hearing confirmed with Contractor regarding date, time and location:

**Good Faith Efforts  
Administrative Reconsideration Panel Hearing Proceedings  
Easy Reference Guide**

- 1) Call proceedings to order
- 2) Brief statement of reason for hearing:

*This Administrative Reconsideration Hearing is being held at the request of XYZ Company as a result of their failure to meet the DBE requirements at the award stage on project number XYZ.*

- 3) Introduce panel members, resource person(s), and observers.
- 4) Explain proceedings:
  - This is an informal administrative hearing
  - The only real formality is the presence of a court reporter, and the swearing in of those asking questions and/or making statements
  - The contractor will be given an opportunity to present an overview and any additional facts that may justify good faith efforts that he/she has made
  - The panel and resource person(s) will have an opportunity to question the contractor
  - The contractor will make closing remarks, if he/she wishes to
  - Ask if there are any questions
- 4) Ask the court reporter to swear in those persons asking questions and/or making statements.
- 5) Ask the contractor to give any opening statements he/she wishes to make.
- 6) Mark any new exhibits received, ask panel members if they will accept new information.
- 7) Following opening statements from the contractor, ask each panel member if he/she has questions.
- 8) Ask resource person(s) if they have questions or would like to make a statement.
- 9) Ask the contractor for closing remarks.
- 10) Thank the contractor for his/her statements.
- 11) Explain to the contractor that he/she will be advised within seven (7) days of the panel's decision and that the panel will now go into executive session.

Panel goes into executive session to discuss the panel hearing file, statements from the contractors, answers given to questions, and additional new information provided by the contractor.

- 12)** Panel renders a decision as to whether good faith efforts have been demonstrated. Civil Rights will concur if the Locality's determination is in accordance with 49 CFR 26.53, 49 CFR 26 Appendix A, and VDOT Special Provision 107.15. Civil Rights will provide technical assistance to the Locality if the good faith efforts determination by the Locality is found not to be in compliance with 49 CFR Part 26 and 49 CFR 26 Appendix A, and VDOT Special Provision 107.15.
- 13)** Write the decision and disseminate to the VDOT Civil Rights District Office and notify the contractor of the panel's decision.

## **GOOD FAITH EFFORTS PANEL HEARINGS**

Procedures for Good Faith Efforts Reconsideration Hearings Held Pursuant to VDOT  
Special Provision for Section 107.15 of the 2008 Road and Bridge Specifications and Amendments - Use of  
Disadvantaged Business Enterprises

### **Preface**

The Department of Transportation, in its procurement activities, owes its primary responsibility to the general public and citizens of Virginia. The Department also desires to afford to Contractors (hereinafter termed "respondents") fair and reasonable procedures in the hearing of Good Faith Efforts (GFE) reconsideration matters, while insuring its vital procurement activities involving road construction, maintenance, and repair are conducted with dispatch. This is because there is a direct relationship between the safety of all highway users and the modernity and good repair of the roads upon which they must travel.

It is intended that GFE reconsideration hearings shall be of an informal nature in order that all necessary facts and procurement documents may be reviewed in a comfortable and fair atmosphere.

### **GENERAL**

#### **Panel Organization**

This panel is to be a standing body, appointed by the LPA, and shall consist of a presiding officer and three (3) voting members, one of which will be a representative from the VDOT Civil Rights Division. Counsel for the LPA may be present for panel hearings and its deliberations, but will not have any voting rights.

#### **Time Limits**

The following time limits are established for the DBE Reconsideration Panel procedures found herein with regard to specific issues listed below:

- A. Failure to show, during the award process, how DBE goal will be achieved.
  - (1) The apparent low bidder must submit a request for a panel hearing to the project engineer, in writing. Such request must be received within five (5) days of notification from the Local Public Agency (LPA) that initial good faith efforts were not demonstrated. Written requests may be submitted to the project engineer electronically by email.
  - (2) The panel will notify the apparent low bidder as to the time, date, and place of the panel hearing.
  - (3) The panel will render its decision within seven (7) days of the close of the hearing; and such decision is administratively final.

- B. Failure to conform to the approved DBE progress schedule, or failure to obtain the required participation at project completion.
- (1) The Contractor must submit a written request for a panel hearing to the project engineer in writing; such request must be received within 14 days of the date of the letter notifying the Contractor that he/she may be enjoined from bidding, or the letter advising them of a negative administrative review determination, as applicable. Written requests may be submitted to the project engineer electronically by email.
  - (2) The panel will notify the Contractor as to the time, date, and place of the hearing.
  - (3) The panel will render its decision within seven (7) days of the close of the hearing; such decision being administratively final.

### **Continuances**

Postponements should be granted only for the most compelling of reasons. While respondents may secure the assistance of counsel at these hearings, the unavailability of a particular attorney of the respondent's choosing will not be permitted to delay or postpone these hearings. This particular circumstance is all too common, and unless the postponements were ruled out on such a ground, it is believed that the substantial and costly delay would be "built in," so to speak, to the hearings ab initio.

### **Subpoenas and Evidentiary Rules**

There is no provision of law that grants to the Department subpoena power. Similarly, the formal rules of evidence do not apply. The hearing is an administrative hearing rather than a judicial one. However, where it appears from the circumstances that the quality of evidence produced by either VDOT or the respondent is inferior to that which may have been reasonably available to them, the panel may, in weighing an item of evidence, consider that with the exercise of reasonable diligence, VDOT or the respondent could have produced a more authoritative or original source for testimony or evidence offered. Each party, both VDOT and the respondent bear their own burden or persuasion with the administrative reconsideration panel.

The panel may elect to take notice of any general or well established matter that has come before any member of the panel in the ordinary course of their official duties including, of course, their specific duties as a panel member. However, such matter may not be used as a basis for decision until and unless the respondent is first confronted with the matter and given an opportunity to respond thereto.

### **Documentary Evidence**

Any document a respondent wishes to have considered by the reconsideration panel should be forwarded to the Department along with their request for hearing. Documents not forwarded at the time of panel request will potentially be subject to exclusion at the panel Chairman's discretion.

## Hearing Procedure

1. **The Chairman shall call the hearing to order** – VDOT will furnish the reconsideration panel sufficient documents prior to the hearing to
  - (1) support and illuminate their initial decision which is being reconsidered, and
  - (2) allow the reconsideration panel an opportunity to review the matter generally before the actual hearing date, including all those relevant documents previously submitted by the respondent
2. A respondent may, but need not, be represented by counsel of his choosing.
3. The panel shall consist of at least three voting panel members and a Chairman. The decision of the panel shall be determined by majority vote of such members. In the event of a tie vote, the Chairman shall cast the tie breaking vote. Except to break a tie vote, the Chairman shall not vote.
4. **Opening Statements** – The respondent or their counsel may, if they desire, make an opening statement. The respondent shall be required to swear to the best of their knowledge and belief to the truth of the averments stated in the attorney’s statement or, in lieu thereof, to state which, if any, are not true while swearing to the truth of the remainder in the aforementioned manner. Where a respondent is not represented by counsel, or where they may otherwise so choose, they may make their own opening statement. In that event, such opening statement shall be preceded by an oath administered by the court stenographer to the effect that the statement to be made and all responses to questions thereafter propounded by members of the panel shall be true and correct to the best of the respondent’s knowledge and belief. The opening statement shall contain all of the matters which the respondent believes are worthy of the panel’s consideration in deciding whether the Contractor has employed those good faith efforts called for by the VDOT Road and Bridge Section 107.15 Use of Disadvantaged Business Enterprises (DBEs) and 49 CFR Part 26.

The respondent and/or their counsel may, if they choose, offer a written opening statement in lieu of an oral one, or offer written remarks supplementary to an oral opening statement.

Before such written statement(s) may be accepted by the panel, the respondent shall swear that to the best of their knowledge and belief the averments contained therein are true. If an opening statement is presented to the panel, it will be read by the Chairman and entered into record.

The opening statement of the respondent should identify any person(s) present at the hearing that can verify or corroborate any claim of the respondent made therein.

5. **Exclusion of witnesses** - The panel Chairman may, on his own motion or motion of a panel member, exclude witnesses from the hearing room before commencing with questions to a witness, or may do so upon any motions at any stage of the proceedings where he believes that any exclusion will be of assistance in determining the truth of any matter.
6. **Questioning of Witnesses by Panel** - Immediately following the opening statement of counsel or the respondent, the respondent or the panel may question the respondent and their witnesses in any order they choose. Upon the recall of a witness, neither the respondent nor counsel for the respondent may propound questions to the respondent or other witnesses recalled without the consent of the panel Chairman.
7. **Re-Direct Examination by Respondent** - Upon conclusion of the examination of a respondent or each of his witnesses by members of the panel, counsel for the respondent may re-direct additional questions to the

respondent or each witness for the purpose of clarifying any matter covered by the examination by the panel, or any matter, while not covered by the panel, that was covered in the opening statement. Questions will not be permitted which exceed the scope of the opening statement and/or the panel's direct examination.

The panel may, if it so chooses, hear evidence from persons other than those produced by the respondent. The panel will not hear evidence from any person that is not first sworn.

8. **Suspension of Proceedings** – By a majority vote, panel members may suspend and continue the hearing proceedings on their own motion or on motion of the respondent, but they are cautioned to exercise this power sparingly and only for the most compelling reasons so that the Department's vital procurement activities are not unduly hindered or delayed.
9. **Burden of Persuasion of the Respondent** – Because the proceeding is administrative and not adversarial or judicial in nature, and because, further, by the practical circumstances, most evidence bearing on the issues before the panel generally will be solely within knowledge of the respondent, the burden of persuasion shall be on the respondent to show that they have used reasonable good faith efforts to meet the DBE goal by a clear and decisive preponderance of the evidence.
10. **Executive Sessions** – The panel may, if it so chooses, in its deliberation and deciding of the issues, meet in executive session to consider the facts provided in the hearing.
11. **The Panel Decision** – The panel shall render its decision within seven (7) days.
12. **Written Opinions** – The panel will provide to the respondent a written opinion regarding the basis for its decision within 10 days of the panel decision.

**Sample Notification Letter to Low Bidder Regarding  
Panel Decision of Failure to Demonstrate Good Faith Efforts**

(DATE)

**CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

Mr. John Doe, President  
ABC, Inc.  
12345 ABC Highway  
Anywhere, Virginia XXXXX

**PANEL RECOMMENDATION AT AWARD**

Project No.  
FHWA No.:  
County:

Dear Mr. Doe:

On (date) the Virginia Department of Transportation's Administrative Reconsideration Panel was convened at your request as a result of your firm's failure to meet the DBE requirements and to establish good faith efforts in attempting to achieve the required participation at the award stage of the above captioned project. The purpose of this hearing was to give your firm an opportunity to discuss the issue and present your evidence to establish good faith efforts in attempting to achieve the required participation.

(Reason for failure to demonstrate GFE)

A review of the documents which you provided to the Panel indicated that you had obtained a sufficient number of reasonable quotes from DBE firms to attain the goal of 8% established for this project prior to your bid, and that your low bid was submitted with only 4.79% DBE participation. Your failure to submit a bid meeting the established DBE goal for this project in light of the reasonable DBE quotes that you received prior to your bid resulted in the Panel determining that your firm failed to show good faith efforts at the award stage.

Additionally, we found that you failed to timely supply the required C-48 VDOT form and, under the RFP terms, this would render your bid non-responsive.

The aforementioned resulted in the Panel determining that you failed to produce sufficient evidence to the DBE Administrative Reconsideration Panel to show that the initial determination made by VDOT should be overturned; and that you also failed to produce sufficient evidence to the DBE Administrative Reconsideration Panel to show that you submitted the required C-48 VDOT Form in a timely manner. As a result, the Reconsideration Panel found: (1) that your firm failed to show good faith efforts to meet the established DBE goal at the award stage, and (2) that you failed to submit your C-48 VDOT Form in a timely manner as required by the Bid Specifications.

The decision is administratively final. The Panel has declared the bid to be non-responsive, and the project should be awarded to the next lowest responsive and responsible bidder.

Sincerely,

**Sample Notification Letter to Low Bidder Regarding  
Panel Decision that Good Faith Efforts were Demonstrated**

(DATE)

**CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

Mr. John Doe  
President, ABC Company, Inc.  
1234 ABCD Street  
Anywhere, Virginia XXXXX

**PANEL RECOMMENDATION**

Project No.:  
FHWA No.:  
Order No.:  
ABC County

Dear Mr. Doe:

On (Date), the Virginia Department of Transportation's Administrative Reconsideration Panel was convened at your request as a result of your firm's failure to meet the DBE requirements. The Panel met specifically to reconsider whether you exhibited good faith efforts in attempting to achieve the required DBE participation goal at the bid stage of the above captioned project. The purpose of the reconsideration hearing was to give your firm an opportunity to provide written documents and/or argument concerning the issue of whether you met the DBE goal or made adequate good faith efforts to do so. The Panel allowed you the opportunity to provide any written documents or argument which you desired in an effort to establish exhibited good faith efforts in attempting to achieve the required DBE participation goal.

I am pleased to inform you that you and your firm carried the burden of persuasion and produced sufficient evidence to the DBE Administrative Reconsideration Panel to show that the initial determination made by VDOT should be overturned.

The decision is administratively final. The Panel has declared that you exhibited the requisite good faith efforts to meet the DBE goal in submitting your bid, that the contract DBE goal for this project appears capable of being met as ABC Company, Inc. has performed this work on similar VDOT contracts and has been given prior DBE credit for said work, that your bid was therefore responsive, and accordingly that the contract for this project be awarded to your firm at the DBE established goal of x percent.

Sincerely,

## Appendix 17 E - Title VI Program Assurance Template

**(Name of Local Public Agency)**  
**TITLE VI / NONDISCRIMINATION ASSURANCE**  
**(DOT Order No.1050.2A)**

The Enter Name of Local Public Agency, (herein referred to as the "Recipient"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the *Federal Highway Administration*, is subject to and will comply with the following:

### Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department of Transportation - Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

### General Assurance

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*"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 otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

### Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted Highway Program:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal-Aid Highway Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*"The Enter name of Local Public Agency in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Enter name of Local Public Agency also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the *USDOT* access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by *USDOT*. You must keep records, reports, and submit the material for review upon request to *USDOT*, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Enter name of Local Public Agency gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the *Federal-Aid Highway Program*. This ASSURANCE is binding on the *Commonwealth of Virginia*, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors, transferees, successors in interest, and any other participants in the *Federal-Aid Highway Program*.

\_\_\_\_\_  
(Enter name of Local Public Agency)

by \_\_\_\_\_

\_\_\_\_\_  
(Enter printed name of Authorized Official)

DATED \_\_\_\_\_

## Appendix 17 F – U.S. DOT 1050.2A

### APPENDIX A

#### **Contractor/ Consultant/Supplier Agreement: U.S. DOT 1050.2A -- Appendix A**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally- assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non• discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**APPENDIX B**  
**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Enter name of Local Public Agency will accept title to the lands and maintain the project constructed thereon in accordance with the Virginia General Assembly, the Regulations for the Administration of the Federal-Aid Highway Program and the policies and procedures prescribed by the *Federal Highway Administration* of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. §2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Enter name of Local Public Agency all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the Enter name of Local Public Agency and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Enter name of Local Public Agency, its successors and assigns.

The Enter name of Local Public Agency in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the Enter name of Local Public Agency will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above- mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**APPENDIX C**  
**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER**  
**THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Enter name of Local Public Agency pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the Enter name of Local Public Agency will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Enter name of Local Public Agency will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Enter name of Local Public Agency and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**APPENDIX D**  
**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER**  
**THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the Enter name of Local Public Agency pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
  
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Nondiscrimination covenants, the Enter name of Local Public Agency will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
  
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Enter name of Local Public Agency will there upon revert to and vest in and become the absolute property of the Enter name of Local Public Agency and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX E

### Contractor/ Consultant/Supplier Agreements: U.S. DOT 1050.2A -- Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non- discrimination statutes and authorities; including but not limited to:

#### **Pertinent Nondiscrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).