

## Chapter 8. Civil Rights – Tracking LPA Projects

### A. OVERVIEW

This chapter provides guidance to certified Local Public Agencies (LPAs) to promote compliance with the following ODOT Civil Rights programs on federal-aid projects:

- Disadvantaged Business Enterprise (DBE)
- Equal Employment Opportunity (EEO)
- On-the-Job Training (OJT) / Apprenticeship Training Program (ATP) The basic responsibilities are these:
- FHWA is responsible for overall Civil Rights program oversight.
- ODOT's Office of Civil Rights (OCR) is responsible to develop, implement and monitor DBE, EEO, and OJT programs for FHWA-funded contracts.
- Certified LPAs are responsible to comply with ODOT's Civil Rights programs on the FHWA-funded projects they administer and enforce the program requirements with contractors.

OCR conducts quarterly audits of all LPA-administered federal-aid projects. A finding of noncompliance may result when an LPA fails to verify compliance of its contractor with the Civil Rights program, fails to implement program requirements, or fails to take remedial action at ODOT's or FHWA's request. An LPA found to be in noncompliance may lose federal funds and certification status. The guidance provided in this chapter will help LPAs maintain compliance with ODOT's Civil Rights programs. ODOT staff is also available to help.

The ODOT Local Agency Liaison is the first contact for general advice and assistance on ODOT program matters, including civil rights programs.

Resources:  
- [Office of Civil Rights](#)

However, the LPA may contract OCR directly by email at [OCRInfoRequest@odot.oregon.gov](mailto:OCRInfoRequest@odot.oregon.gov) or contacting the DBE Program Manager directly. During the construction phase of the project, the OCR Field Coordinator is the primary point of contact. Visit ODOT's OCR website for additional information and full list of contacts.

For information about the Title VI (Civil Rights Act of 1964, non-discrimination) and the Americans with Disabilities Act (ADA) requirements, refer to Sections B and D of this manual.

## B. ODOT'S CIVIL RIGHTS PROGRAMS ON FEDERAL PROJECTS

### B.1. Disadvantaged Business Enterprise (DBE) Program

It is the policy of ODOT to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of U.S. Department of Transportation (USDOT) assisted contracts. The intention of ODOT is to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to ODOT's highway construction, procurement and professional service activities. See the full ODOT DBE Policy Statement posted on the DBE Program page of the OCR website.

ODOT is required to establish Overall Annual DBE Goals for state-wide federal-aid programs. FHWA-funded LPA projects contribute to meeting these annual state-wide goals. Therefore, ODOT assigns contract-specific goals for DBE participation on all FHWA-funded contracts, including LPA-administered projects.

LPAs are required to adopt ODOT's DBE Program as their own, in accordance with each LPA's master certification agreement. ODOT's DBE Program Plan is posted on the DBE Program page of the OCR website.

**Disadvantaged Business Enterprise** – Is a defined term in 49 CFR 26.5. A DBE is a for-profit small business concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. The management and daily business operations of the for-profit and small business concern must also be controlled by one or more such owners.

Resources:

- [DBE Program](#)
- [49 CFR 26.5](#)

In order to be part of the Disadvantaged Business Enterprise program, a firm must be certified as a Disadvantaged Business Enterprise. ODOT only accepts Disadvantaged Business Enterprise certification from the Certification Office for Business Inclusion and Diversity (COBID).

Only firms that have DBE certification can be used towards meeting DBE goals (WBE, MBE, SDVBE, ESB firms that do not also have a DBE certification will not qualify).

LPAs must include the applicable ODOT DBE provisions in all FHWA-funded consultant solicitation and contract documents. See subsection C. Consultant Selection Process below.

LPAs must include ODOT's DBE Commitment Requirements and DBE Supplemental Required Contract Provisions in the construction bid book and collect certain information (forms) about prime and subcontractor participation on the projects to allow tracking of DBE utilization. The LPA construction bid book that has been reviewed and approved by ODOT for use on FHWA-funded projects will include these provisions. Please review and become familiar with DBE program provisions, forms, and processes. See the complete checklist in subsection D.8 below

(Please leave publication dates on all documents inserted into Bid Books). See subsection D. Project Delivery Process for forms, roles and responsibilities.

## **B.2. Equal Employment Opportunity (EEO) Program**

The goal of the Equal Employment Opportunity (EEO) Program is to ensure women and minorities are adequately represented in construction work. ODOT has established EEO Aspirational Targets for use on state-wide federal-aid projects. Women and minority participation on all FHWA-funded contracts, including LPA-administered projects contribute to meeting these annual state-wide targets. Likewise, contractors working on LPA-administered projects must comply with ODOT's annual EEO Program reporting requirements for FHWA-funded contracts.

The LPA bid book that has been reviewed and approved for use on FHWA-funded projects will include all EEO provisions listed in the Civil Rights Pre-Advertisement Checklist below. Please review and become familiar with EEO program provisions, forms, and processes. See subsection D of this chapter for Project Delivery Process, forms, roles and responsibilities.

**OJT** – The goals of the On-the-Job Training Program are to develop and encourage the use of women and minorities in construction work and to ensure adequate representation. The OJT Program is for use on Federal-Aid projects only.

Objectives:

- Training and upgrading skills of women and minorities in highway construction trades
- OJT may be used as an affirmative action tool to assist contractors in meeting their Equal Employment Opportunity obligations
- OJT may lead workers into the apprenticeship system and result in journey-level status and a career in highway construction

**ATP** – The Apprenticeship Training Program, which is approved by the Bureau of Labor and Industries, provides a combination of field and classroom trade-specific experience under the supervision of journey-level workers. This is a race and gender neutral program. However, the contractor is still obligated to comply with all applicable EEO requirements.

OCR will determine whether the OJT/ATP provisions apply to a project, and if applicable, LPAs must include Reimbursable Federal On-The-Job and Apprenticeship Training special provisions in the LPA bid book and collect certain information (forms) to track workforce utilization. Please review and become familiar with

**Resources:**

- [Equal Employment Opportunity Contractor Compliance](#)
- [Workforce Development](#)

OJT/ATP program provisions, forms, and processes. See subsection D below for forms, roles and responsibilities.

When OCR determines the OJT/ATP program provisions apply to a Project, a specific number of hours are assigned as a Bid Item with a fixed Bid Item price. The LPA must reimburse the Contractor for qualified hours worked up to 150% of the Bid Item quantity. If the Contractor fails to meet the Bid Item quantity, the LPA must enforce the “disincentive” clause in Section 6 of the applicable provisions.

For more information see the *Equal Employment Opportunity Contractor Compliance* and the *Workforce Development* pages on the ODOT OCR website.

### C. CONSULTANT SELECTION PROCESS

LPAs are required to follow the processes identified for civil rights requirements in the LPA A&E Requirements Guide or LPA Non-A&E PSK Requirements Guide, as applicable.

The DBE goal setting process, required forms and contract award notification requirements are covered in Section 3.4 of both guides.

Resources:

- [LPA A&E Requirements Guide](#)
- [LPA Non-A&E PSK Requirements Guide](#)

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**Note on Consultant Contract Submittals:** DBE forms and related information for consultant contracts are to be submitted to a different email address than used for construction correspondence.

Submit all consultant-related forms and correspondence to [ocr.psk@odot.oregon.gov](mailto:ocr.psk@odot.oregon.gov). Copy the ODOT Local Agency Liaison.

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The LPA shall not set or include any additional civil rights or affirmative action goals as requirements for the contract.

### D. PROJECT DELIVERY PROCESS

This subsection lists the Civil Rights process steps ODOT and LPAs must follow to comply with ODOT’s Civil Rights programs during design, advertisement, bidding and award of FHWA-funded construction contracts. A sample Civil Rights Tracking Sheet is provided in Section D of this LAG Manual for Certified LPAs. LPAs should document the completion of each process step using the tracking log, or equivalent. The tracking sheet is formatted to enable LPAs to track all FHWA-funded construction contracts on a single worksheet, not including consultant contracting.



#### **D.6. Goals Request Date**

This is the date the LPA submits the following to [OCRGOALSREQUEST@odot.oregon.gov](mailto:OCRGOALSREQUEST@odot.oregon.gov) and copies the ODOT Local Agency Liaison at Advance Plans or approximately 90% of PS&E readiness:

- Civil Rights Request for Goals form 731-0663, posted under “Other forms”
- Engineer’s estimate
- Construction schedule

LPA should provide at least five business days for processing goal requests.

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**NOTE:** Advance (90%) PS&E must include all project work to be constructed by the contractor in order to establish the proper civil rights goals (e.g. it cannot exclude a category or work such as landscaping.)

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For additional details regarding PS&E development, refer to Section C, Chapter 11 of this manual.

#### **D.7. Goals Issue Date**

This is the date OCR issues the assigned construction contract DBE goals, EEO aspirational targets and/or OJT training hours. OCR will issue the goals to the LPA and copy the ODOT Local Agency Liaison. The LPA shall publish the civil rights goals in the bid book. The LPA shall not modify ODOT’s assigned goals nor set its own goals for either civil rights or affirmative action. This is an FHWA stipulation.

#### **D.8. Bid Book Submission Date**

This is the date the LPA submits the final PS&E submittal to the ODOT Local Agency Liaison for review (electronic copy is preferred). The ODOT Local Agency Liaison will forward the bid book to OCR for confirmation that civil rights goals and provisions have been correctly included. ODOT Local Agency Liaison will copy the LPA on the email.

These requests should be sent to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov).

### Civil Rights Pre-Advertisement Checklist

#### **Bid Booklet Preparation and Submittal Notes:**

- Use the **current version** of each set of provisions available under **Part 00000 – Documents and Forms** of the ODOT Boilerplate Special Provisions page.
- Do not revise the ODOT Civil Rights Programs provisions or forms. **Keep the ODOT footer intact** when inserting civil rights programs provisions, forms or processes in the LPA’s bid booklet.
- Subject to ODOT approval, the LPA may add the following or similar provision to their bid book or contract template as applicable to provide context:

*The following programs are administered by the Oregon Department of Transportation (ODOT), Office of Civil Rights (OCR) as a condition of federal funding: Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), On-Site Workforce Affirmative Action (OSWAA), and Reimbursable Federal OJT Apprenticeship Training (OJT). The DBE, EEO, OSWAA and, if applicable, OJT program provisions are set out in **[Sections ## through ##, as outlined in the Table of Contents of the bid book]**, and are hereby incorporated as a part of this Contract. As **[City or County]** is entering into this Contract under authority granted by ODOT and OCR, the DBE, EEO, OSWAA and, if applicable, OJT program provisions apply to this Contract in the same application and manner as if ODOT were the contracting agency. Under this Contract, Contractor shall be required to comply, cooperate and abide by the DBE, EEO, OSWAA and, if applicable, OJT program requirements as set forth in this Contract. It is the **[City or County]**’s responsibility to enforce the contractual obligations in this Contract.*

*Where the DBE program provisions cross-reference a specific section or subsection of the Oregon Standard Specifications for Construction the same or equivalent section or subsection of the **[City or County]** General Conditions, as modified by the project Special Provisions, shall apply to this Contract.*

#### **Disadvantaged Business Enterprise Program**

##### **Bidding Provisions/Forms**

- DBE Commitment Requirements (BB35\_DBE)
- DBE Commitment Certification & Utilization Form (734-2785 or BB38\_DBE)
- DBE Information Page (BB\_74\_DBE\_INFO)

**Contract Provisions**

- ODOT Policy Statement DBE Program (SP00027\_ODOT)
- DBE Supplemental Required Contract Provisions (SP00029\_DBE\_PROV)
- Assigned DBE Contract Goal (SP00030\_DBE)
- Source of Materials (Provision #: 00160.01(a))\*
- Legal Relations and Responsibilities (Provision #:00170.10(g))\*
- Prosecution and Progress (Provision #: 00180.20(d)& (e))\*

\*Either the LPA’s ODOT-approved general conditions for use on federal-aid projects or the LPA’s ODOT-approved boilerplate special provisions for section 00100s must include the current provisions that reference DBE program requirements.

**Equal Employment Opportunity Program**

- Required Contract Provisions for Federal-aid Contracts (FHWA-1273) (SP00017\_FHWA\_1273)
- On-site Workforce Affirmative Action Requirements for Women and Minorities on Federal-aid Contracts (SP00021\_AA\_REQ)
- Equal Employment Opportunity Provisions (SP00023\_EEO\_PROV)
- Equal Employment Opportunity-Aspirational Target Provisions (SP00025\_EEO\_ASP\_TARGET)
- Reimbursable Federal On-the-Job and Apprenticeship Training (If goal is 0 then no need to include) (SP00032\_REIM\_FED\_OJT)

**Miscellaneous**

- First-tier Subcontractor Disclosure Instructions & form (BB71\_SUB\_DISCLOSURE)

Should not include:

- Reimbursable State Apprenticeship Training Contractor supplied diversity training
- Minority Business Enterprise, Women Business Enterprise, and Emerging Small Business (MWESB) Supplemental Aspirational Contract Provisions
- Assigned MWESB aspirational target
- Other Local Diversity Program Goals or Targets

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NOTE: The master certification agreement prohibits the incorporation of DBE Special Provisions by reference.

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Resources:  
[- ODOT Boilerplate Special Provisions](#)



#### **D.9. Bid Book Verification Date**

This is the date OCR completes the bid book verification review, generally within three business days of receipt from the ODOT Local Agency Liaison. OCR will notify the ODOT Local Agency Liaison and LPA by email the results of the review. If corrections are required, LPA shall resubmit corrected bid book for verification. This step must be completed before ODOT will issue NTP to advertise for bid. ODOT Local Agency Liaison submits a copy of the bid book verification letter (email) from OCR to the FHWA Field Operations Engineer with the PS&E package.

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**Note on Demonstration Projects:** ODOT recommends a 4-week advertisement for certification demonstration projects to accommodate a mandatory pre-bid meeting. Consult with ODOT to determine if a mandatory pre-bid meeting should be required for the agency's demonstration project. The pre-bid meeting provides a forum for the LPA to explain the civil rights processes to prospective bidders. The ODOT Local Agency Liaison and Civil Rights Field Coordinator should be invited to attend to answer pre-bid questions from contractors who may be unfamiliar with ODOT Civil Rights Program requirements.

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#### **D.10. Advertised Bid Date**

This is the date listed in the advertisement for bid opening.

#### **D.11. Actual Bid Date**

This is the date the bids are actually opened.

#### **D.12. SSUR Notice Issued Date**

This is the date the LPA sends the Subcontractor Solicitation and Utilization Report (SSUR) form 734-2721 to all bidders. LPA shall send form 734-2721 to all bidders with instructions directing each bidder to submit the form to LPA within 10 calendar days of bid opening. It is recommended LPA distribute this notification on the day following the bid opening to provide sufficient time for bidders to complete the form. Distribution of form 734-2721 is required even when the DBE goal is zero. Upon receipt of the forms from bidders, forward them to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov).

#### **D.13. SSUR Received Date**

This is the date the LPA submits the form to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov), and copy the ODOT Local Agency Liaison. All bidders shall submit the Subcontractor Solicitation and Utilization Report (SSUR) (Form 734-2721) to LPA within 10 calendar days of bid opening. All bidders must submit Form 734-2721 even when the DBE goal is zero.

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#### **D.14. OCR & DBE Bid Notification Date**

This is the date LPA submits bid information to OCR. Submit the following **within two working days** of bid opening:

##### **DBE goal greater than 0%:**

- Submit Civil Rights Bid Notification for Certified Agency Projects form 734-2848 and each bidder's DBE Commitment Certification and Utilization form 734-2785 to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov), and copy ODOT Local Agency Liaison.
- LPA shall include any Good Faith Effort documentation submitted by bidders. OCR will determine whether bidders are responsive to DBE goals greater than zero.

##### **DBE goal is 0%:**

- Submit **only** the Civil Rights Bid Notification for Certified Agency Projects form 734-2848 to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov) and ODOT Local Agency Liaison.

#### **D.15. DBE Goal Results Report Date (Only if goal is greater than 0%)**

This is the date OCR issues its DBE Goal Results Report, generally within three business days of receipt of the bid notification and DBE commitments forms 734-2848 and 734-2785 from the LPA. OCR may request supplemental information from the LPA as-needed.

OCR will review and evaluate each bidder's responsiveness to the assigned DBE goal in accordance with the DBE Commitment Requirements in the bid book and report the results to the LPA by email.

If the apparent low bidder is determined to be non-responsive, OCR will provide the LPA with specified language that offers the bidder administrative reconsideration. The LPA shall include the specified language in its notice to the apparent low bidder on LPA letterhead. The LPA shall not change the specified language provided by OCR.

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**Note on DBE Administrative Reconsiderations:** OCR is the sole responsible party for the DBE administrative reconsideration process. The LPA shall not issue the Notice of Award until the allotted time to request administrative reconsideration has passed and there are no outstanding appeals. The reconsideration period typically lasts 5 calendar days.

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#### **D.16. Notice of Award Date (Only if goal is greater than 0%)**

If the DBE goal is greater than zero, and after the notice of intent to award and protest period has passed, then LPA shall require in its Notice of Award that the

Resources:  
[-Form 734-2531](#)

responsive low bidder submit a Committed DBE Breakdown and Certification Form 734-2531 for each DBE firm committed at time of bid to meet the goal. LPA shall include the OCR URL address to the form and instructions in the Notice of Award directing the responsive low bidder to submit the completed 734-2531 forms to the LPA within 10 calendar days of the Notice of Award.

**D.17. DBE Commitment Date (Only if goal is greater than 0%)**

This is the date LPA submits Committed DBE Breakdown and Certification Form 734-2531 to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov) . Copy the ODOT Local Agency Liaison of the results. Responsive low bidder shall submit completed Committed DBE Breakdown and Certification Form 734-2531 to the LPA within 10 calendar days of the Notice of Award. One copy of form 734-2531 is required for each DBE subcontractor used to meet the goal. Submittal of form 734-2531 is not required when the DBE goal is zero. OCR will separately email a PDF copy of the “approved” Committed DBE Breakdown and Certification Form to the LPA to be attached to the Pre-Con Letter. The Local Agency Liaison and Field Coordinator will be copied.

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The LPA must not execute the contract until the LPA receives confirmation from OCR that the awarded bidder is responsive to all DBE commitment requirements.

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**D.18. Award Date**

Within three days of the date of award, LPA shall submit Civil Rights Award Notification for Certified Agency Projects form 734-2849 along with the award letter to the ODOT Local Agency Liaison and to [OCRINFOREQUEST@odot.oregon.gov](mailto:OCRINFOREQUEST@odot.oregon.gov). The LPA shall include the LPA’s contract number on the award notification form.

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NOTE: The Office of Civil Rights should only receive the Award Letter, not the Notice of Intent to Award. The LPA shall not issue the Award Letter until the protest period has passed without challenges from the date on which the Notice of Intent to Award was issued.

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**E. PROJECT CONSTRUCTION PHASE**

For questions regarding project construction activities related to civil rights program matters, the LPA’s first point of contact should be your assigned ODOT Civil Rights Field Coordinator.

To ensure OCR is aware when project work has started, the LPA must notify the ODOT Civil Right Field Coordinator when the LPA issues a Notice to Proceed to the Contractor.

### E.1. OCR Pre-Con Letters

Prior to the Pre-Construction Conference (Pre-Con), the LPA must send the OCR Pre-Con Requirements outlining the Civil Rights Requirements to the Prime Contractor and any committed DBE Subcontractors.

The OCR Pre-Con letter will be emailed to the LPA within three days of the “Award Letter” notification by OCR. The report generated letter will auto-fill the LPA Project Manager's name on the template letter. The corresponding ODOT Civil Rights Field Coordinator (FC) and ODOT Local Agency Liaison will be copied.

**For a Project with a zero DBE goal, the LPA must:**

Resources:  
[- ODOT Civil Rights Field Coordinators](#)

- Add to or create a new cover letter listing the OCR Pre-Con letter as an attachment to the packet of information sent to the Contractor.
- Print or email OCR Pre-Con letter as an attachment to the packet of information sent to the contractor.
- Copy the ODOT FC on the packet sent to the contractor.

**For a Project with a DBE goal greater than zero:**

OCR will separately email a PDF copy of the “approved” Committed DBE Breakdown and Certification Form (Form 2) to the LPA to be attached to the Pre-Con Letter. The FC will be copied. **Do not send the OCR Pre-Con letter to the contractor until the “approved” Committed DBE Breakdown and Certification Form has been received.**

**Once received, the LPA must:**

- Create a new cover letter listing the OCR Pre-Con requirements as an attachment to the packet of information sent to the Contractor.
- Print and/or email Pre-Con requirements and the approved Committed DBE Breakdown and Certification Form as an attachment to the packet of information sent to the Contractor.
- Copy the ODOT FC on the packet of information sent to the Contractor.

### E.2. OCR “Internal Pre-Con” Meeting / Pre-Con

The ODOT FC will schedule an “internal pre-con” meeting with the LPA to review the requirements and assure that expectations are clear on what is expected of them. These meetings are intended to be Project-specific and identify the focus of the reviews and

oversight. The LPA must ensure appropriate staff attends these meetings, and neither prime nor subcontractors are permitted to attend.

The LPA must also copy the ODOT FC on all civil rights program related communications.

The ODOT FC may provide guidance on the content of communications.

At the pre-construction conference with the Contractor, the LPA should address each requirement for the civil rights programs included in the Project. The LPA shall notify the FC and the ODOT local Agency Liaison of when the pre-construction conference meeting will occur and may request assistance from the ODOT FC.

### **E.3. OCR Quarterly Reviews**

Between First and Second Notification, or LPA's equivalent, the ODOT FC will conduct, at a minimum, quarterly project reviews to determine missing paperwork and project compliance status. The ODOT FC will review the following documents:

- Subcontracts (including specialty Subcontractors)
- Report on Contractor's Request for Subcontract Consent, form 734-1395
- Contractor's Request for Subcontract Consent, form 734-1964
- Actual First and last day worked for each Subcontractor
- Paid Summary reports (PSR) form 734-2882
- DBE Work Plans (Form 3A) 734-2165A
- DBE Commercially Useful Function (CUF) form 3B 734-2165
- Contract Change Orders form 734-1169, affecting total contract dollars or work
- Monthly Employment Utilization Reports (MEUR) form 731-0668
- Training Program Approval Request (TPAR) form 734-2880
- Apprentice/Trainee Approval Request (ATAR) form 734-2878
- Apprentice/Trainee Monthly Progress Record (MPR) form 734-2879
- Discrepancies from last audit report
- Tribal Employment Rights Ordinance (TERO) goal progress, if applicable

The ODOT FC will send an electronic summary of the civil rights quarterly audit review and send it to the LPA and copy the ODOT Local Agency Liaison. The LPA should resolve any outstanding issues before the next FC quarterly audit review.

The quarterly audit review report shows all the known DBEs on the Project, commitment amount, contract payment amounts, whether a CUF review has been completed, and whether Form 3A has been logged as received. The report also includes workforce tracking, including Training Goal progress, MEURs missing on the Project, Contract Payment System versus Monthly Progress Reports, workforce rates for women and minorities on the Project.

After Second Notification, or LPA's equivalent, is issued, the ODOT FC will perform a final review listing any missing documents that need to be received prior to the LPA's issuance of Third Notification, or LPA's equivalent. A final review summary will be emailed to the LPA and ODOT Local Agency Liaison, and will list performance measures for any applicable DBE goal, OJT/Apprenticeship goal, TERO goal, (if applicable), and any missing documents that need to be received prior to the LPAs issuance of Third Notification, or LPA's equivalent.

#### **E.4. Disadvantaged Business Enterprise (DBE) Program – Federal Funded**

##### **a. Subcontracts**

LPA must forward copies of all Contractor's Request for Subcontract Consent form 734-1964 and Report on Contractor's Request for Subcontract Consent form 734-1395 with **copies of the full subcontract for DBE subcontractors** to the ODOT FC. Upon receipt of each subcontract, the ODOT FC will enter data into the Civil Rights Compliance Tracking (CRCT) system for tracking related payments, DBE, OJT/Apprenticeship and Equal Employment Opportunity (EEO) compliance. LPA shall record the date on which all DBE subcontracts have been received.

##### **b. Termination and Substitutions of Committed DBEs**

The contractor is required to have "good cause" to terminate and/or substitute a committed DBE. The contractor is required to notify ODOT in writing and obtain written consent before terminating and/or substituting the committed DBE that was a condition of Contract Award. The contractor also has notice requirements under the DBE Provisions, Section 10.00(b) and is required to notify the affected DBE.

The LPA must:

- First consult with the ODOT FC and DBE Program Manager if needed before providing written concurrence with a DBE termination and/or substitution. Copy the ODOT FC and the DBE Program Manager on the correspondence;
- Consider the DBE's response under the DBE Provision, Section 10.00(b) prior to concurrence of DBE terminations and/or substitutions; and
- Be aware that self-performance by the Prime Contractor of Work committed to the DBE is considered a termination or a partial termination of the DBE and would require prior written consent.

### **c. Commercially Useful Function**

#### **i. DBE Work Plan Proposal – Form 3A**

The Form 3A is required for all DBEs participating as Subcontractors on the Project, including non-committed DBEs.

The DBE Work Plan Proposal Form (3A) 734-2165A (Form 3A) is completed by the DBE and submitted to the Prime Contractor. The contractor is required under the DBE Provision, Section 7.00 to submit the DBE Work Plan Proposal to the LPA at the pre-con meeting, for all known and committed DBE(s).

The completed Form 3A should show sufficient description of the DBE Work to support a DBE Commercially Useful Function Form 734-2165 (CUF) review. Contact the ODOT FC for any technical advice and assistance.

The LPA will:

- Review the Form 3A for all DBEs (committed and non-committed) for completeness, including supporting documentation.
- Review and compare the Form 3A for committed DBEs, for consistency with the Committed DBE Breakdown and Certification Form 734-2531.
- Verify that the subcontract is consistent with the Form 3A and Committed DBE Breakdown and Certification Form 734-2531, as appropriate.
- Send a copy of all documents to the FC. The ODOT FC will review Form 3A and any supporting documentation for compliance.
- Send a copy of the reviewed Form 3A to the Contractor.
- Coordinate with the ODOT FC if CUF compliance issues are identified.
- If the ODOT FC or project manager determines corrective action is needed, provide written comments to the Contractor.

The Contractor must comply with all requirements of the DBE Supplemental Required Contract Provisions that are included in the Contract. Those provisions must also be incorporated into all subcontracts, at all tiers.

#### **ii. Commercially Useful Function (CUF) Review – Form 3B**

The LPA or designated representative must perform a Commercially Useful Function (CUF) evaluation of each DBE performing Work on the Project, including committed and non-committed DBEs.

The LPA must complete and sign a DBE Commercially Useful Function Form 734-2165 and submit it, along with any other needed information, to the FC.

The LPA or designated representative must perform at least one CUF review per DBE:

- For each twelve month period, for Projects where the DBE's Work lasts longer than twelve months.
- Whenever a significant change in the operation of the DBE occurs (when new Equipment is used or Work crews change).
- Whenever a replacement or substitution of a DBE occurs (for the new DBE).
- Whenever a significant Change Order changes or affects the Work to be accomplished by the DBE (when a new type of Work is added).

If the ODOT FC or the LPA note any discrepancies or CUF issues on Form 3B, they will coordinate to determine any needed corrective action.

#### **d. DBE Truck Monitoring**

This section is specific to Projects in which the contractor is using DBE trucking to meet the committed DBE goal for the Project.

The following is in addition to all other DBE responsibilities of the LPA:

##### **i. DBE Trucking - Work Plan Proposal – Form 3A**

Whenever a DBE trucking firm is being used to meet an assigned contract goal, DBE contractor/subcontractor must individually identify all trucks intended for use on the project on its DBE Work Plan Proposal Form 3A or an attached list.

The LPA will request the DBE contractor/subcontractor supply detailed information about each driver, each truck and any required supporting documentation must be provided, including:

- The driver's name, craft classification, and whether regularly employed by the DBE. If not regularly employed, list the recruitment source.
- The truck information, including:
  - License plate/truck Number.
  - Who owns the truck and whether or not the owner is a DBE firm.
  - Type of truck (end dump, belly dump, etc.).
  - Make and model of tractor and trailer.
  - Whether the truck, tractor or trailer is owned or leased by the DBE.



- Copy of lease agreements for any trucks, tractors or trailers leased by the DBE.

The DBE firm may add trucks to the Form 3A at any time prior to the truck being utilized on the Project.

For any owner/operators being utilized, the contractor will also need to provide the information as required in 00170.65(b) (4), General Provisions.

#### **ii. DBE Trucking – Daily DBE Trucking Log Form 734-2916**

The DBE trucking subcontractor(s) are required to maintain a daily DBE trucking log of all trucks used on the Project. The form 734-2916 or an alternate form must include the same information. This log shall identify the truck used by either license plate number or some other specific identification system, truck owner, and the number of hours it was used for each day.

The DBE contractor/subcontractor is required to submit to the LPA the Daily DBE trucking log within 14 days of the first recorded date of the Work, and then on a weekly basis thereafter.

#### **iii. DBE Trucking – CUF Review - Form 3B and Full Shift Verification**

In addition to the CUF review, the LPA is also responsible for performing an independent verification of all trucks used on the Project for a full work shift. The LPA must, without prior notice to any contractor or subcontractors, independently verify at least 10% of the total value of DBE trucking services being provided on the Project.

The LPA will generate the shift verification listing of trucks from one of the following methods below:

- Use truck tickets for weighed material delivery, where appropriate.
- Use an inspector to maintain a log or photograph of all trucks entering the project for the selected day.
- For projects where it is not practical to identify every truck on the project for a given Day, the LPA will develop and document an alternate plan in cooperation with the ODOT FC.

Again, the LPA office should not provide advance notification to the DBE subcontractor for days performing the independent verification.

The LPA will:

- Choose random peak trucking days to perform the verification.
- Verify all trucks in use on the project for a full shift.
- Compare the PM's listing of trucks on the project to the appropriate daily log provided

by the DBE subcontractor.

- Contact the ODOT FC if there is a discrepancy in the comparison and to assist in investigating the discrepancy.
- Document the resolved discrepancy.

If the discrepancy is unresolved, the verification will be expanded until the LPA and ODOT FC are satisfied that appropriate DBE credit is being given on the project.

DBE credit will be given based on the total subcontractor trucking logs, provided the comparison validates the contractor's Daily DBE Trucking Log.

#### **iv. DBE Crediting for Trucking Firm Services**

The LPA will be responsible for determining the crediting for the DBE Trucking firm. To determine the crediting, the LPA will:

- Compare the dollar value of the DBE trucks to the non-DBE trucks that work for the DBE trucking firm.
- Determine the credit by evaluating to the total value of the DBE trucks the DBE Trucking firm provides, plus the equal value of the non-DBE trucks that performed work on the project.

For instance, a DBE Trucking firm has both DBE trucks and non-DBE trucks performing work on a Project. If the dollar value of the DBE trucking work performed is determined to be \$50,000 and the non-DBE trucking work performed is determined to be \$72,000. The total DBE credit for the trucking services will be limited to \$100,000 and not \$122,000.

#### **e. Contractor Payments to Subcontractors**

The DBE Supplemental Required Contract Provisions include the requirements of ORS 279C.580, requiring the contractor to pay each of its subcontractors within 10 days after receiving payment from the LPA.

The contractor is required to certify payments made to subcontractors. On each project, the contractor is also required to complete and submit a Paid Summary Report form 734-2882 to the LPA 20 days after receipt of payment from the LPA.

The LPA is responsible for forwarding a copy of the completed Paid Summary Report forms to the ODOT FC for all subcontracts. The ODOT FC will review the report and alert the LPA if there are any discrepancies.

#### f. Corrective Action

If the LPA or ODOT FC identifies any failure to perform by either the Prime Contractor or any Subcontractor on Projects covered by Federal regulation or State statute, the LPA must initiate any actions needed to correct violations of the DBE Program.

Resources:  
- [Chapter 35-Termination and Breach of Contract](#)

The LPA must:

- Notify the Prime Contractor in writing to require that the violation is corrected in a timely manner.
- Consider use of all legally allowed sanctions and penalties to achieve DBE Program compliance including those actions listed in the ODOT Construction Manual Chapter 35 – Termination and Breach of Contract if, as a result of failure by the Prime, the DBE commitment is not met.
- Copy the ODOT FC on all actions.

#### E.5. Equal Employment Opportunity (EEO) Program - Reports

By the date designated in the contract, the contractor and all subcontractors must complete and electronically submit the **Monthly Employment Utilization Report (MEUR)** form 731-0668 as required by the supplemental provisions. Each contractor or subcontractor (on contracts that require certified payrolls) shall complete and submit the form for each calendar month whether or not work was performed. A calendar month begins on the 1st and ends on the last day of the month.

The LPA will review all MEURs submitted by the prime contractor and its subcontractors monthly. The LPA will review all forms for completeness and accuracy and must verify that the following items are correct:

- Contractor's and subcontractor's name
- The ODOT Contract number
- Subcontract number
- Report month and year

The LPA should also review whether the report is new or revised. If the "No Work performed" box is checked, verify that no Work was performed by the contractor for that month. Instructions on the MEUR are available on the form.

If acceptable, the LPA will approve the MEUR by forwarding the MEUR Form to the FC.

If unacceptable, the LPA will return the original email and attachment (MEUR pdf file) to the prime contractor. The LPA should:

- Indicate in the subject line that the MEUR is being returned (example: MEURxxx - Possible Errors).
- In the body of the email, give a brief explanation of the question and/or discrepancy.
- Provide a due date to the contractor to ensure that the MEUR is corrected and re-submitted timely.

Once the revised MEUR is submitted and accepted by the LPA, the LPA will forward it to the ODOT FC.

If the ODOT FC reviews the MEUR and determines the MEUR has an error and is not acceptable, the ODOT FC will return the email and MEUR to the LPA for correction.

The FC should:

- Indicate why the MEUR is being returned.
- Give a brief explanation of the question and/or discrepancy in the body of the email.
- Request the MEUR is corrected and re-submitted timely.

**Contractor Annual Reporting Requirement:** All Contractors and Subcontractors with active (in First Note) federal-aid contracts in Oregon funded through ODOT shall submit Form PR-1391 each July for the duration of the Project. This report shall be sent directly to the ODOT Office of Civil Rights. The collection of information is required by law and regulation 23 USC 140a and 23 CFR Part 230. All Contractors or Subcontractors with qualifying contracts will receive a notice each July with instructions and the FHWA 1391 form. For further information, contact the ODOT Office of Civil Rights.

#### **E.6. Federal Reimbursable On-the-Job and Apprenticeship Training Provision Processes**

The following procedures apply when the contract includes the Reimbursable Federal On-The-Job and Apprenticeship Training special provisions:

##### **a. Pre-Construction Conference (“Pre-Con”)**

At or prior to the Pre-Construction Conference, the LPA needs to require the contractor to electronically submit completed Training Program Approval Request form 734-2880 prior to trainee/apprentice working. The contractor is ultimately responsible for meeting the OJT/Apprenticeship requirement. However, the contractor may choose to have one or more of its subcontractors fulfill part of, or the entire, OJT/Apprenticeship requirement. If the contractor fails to submit the Training Program Form(s) at the Pre-Con, the LPA should set a

deadline for the form(s) to be submitted (prior to the contractor beginning work) and follow up with the contractor.

The LPA will forward the submitted Training Program form(s) to the ODOT FC. Upon approval/denial, the form(s) will be returned to the LPA for distribution back to the contractor.

**b. First Notification**

**i. Apprenticeship/Trainee Approval Request (ATAR)**

Before the contractor can begin receiving credit/payment toward the OJT/Apprenticeship Bid Item, the contractor shall complete and submit an Apprenticeship/Trainee Approval Request (ATAR) form 734-2878 to the LPA for each apprentice to be credited toward the bid item. The LPA shall forward the ATAR(s) to the ODOT FC. Upon approval or denial, the form(s) will be returned to the LPA for distribution back to the contractor.

**ii. Monthly Progress Record (MPR)**

Each approved Apprenticeship/Trainee shall complete an Apprenticeship/Trainee Monthly Progress Record (MPR) form 734-2879 for each month in which the apprentice or trainee worked on that project. The contractor is required to submit the MPR to the LPA by the 10th of each month.

The LPA is required to:

- Verify that the contractor has an approved training program and approved ATAR for the apprentice or trainee.
- Verify the hours claimed on the MPR match the hours recorded on the certified payrolls.
- Verify the classification/craft on the certified payrolls match the approved Training Program and ATAR.
- Verify that the hours to date are correct.
- Verify that the MPR has all required signatures.
- Track the hours monthly and overall to ensure the contractor meets at least 100% of the goal, but payment does not exceed 150% of the item.
- Return any discrepancies to the contractor for correction.

Once hours have been verified, the LPA shall note the total hours to be paid on the record, ensure that the contract number is on each record, and forward to the ODOT FC each month for monitoring and reporting.

The LPA may use the MPR for “pay note” source documentation. The LPA must submit copies to the ODOT FC.

### c. Second Notification

The LPA will notify the ODOT FC when Second Notification, or LPA equivalent, is issued so the ODOT FC can determine if any paperwork is missing prior to the LPA's issuance of Third Notification, or LPA equivalent.

The LPA should also verify that the amount paid matches the amount tracked on the Apprentice/Trainee Monthly Progress Report (MPR) form 734-2879.

If, at the Second Notification, or LPA equivalent, the contractor has not achieved the Training Goal there will be a disincentive to the contractor. See Section 6 of the applicable Special Provisions.

### F. CIVIL RIGHTS FORMS LIST

A comprehensive list of OCR forms includes the following, which can be found on the Office of Civil Rights webpage linked in the Resources box.

Resources:  
- [Office of Civil Rights Forms](#)

#### Consultant Contracts

- DBE Goal Calculation Worksheet A&E
- Committed DBE Breakdown & Certification Form AE form 734-5235
- Award Notification ODOT OCR for Certified Agency Projects form 734-2849

#### Goals Request and Project Forms (Pre-Construction Phase)

- Civil Rights Request for Goals form 731-0663 & Goal Setting Issues & Resolution Process
- DBE Commitment Certification & Utilization Form (734-2785)
- Bid Notification ODOT OCR for Certified Agency Projects form 734-2848
- Subcontractor Solicitation and Utilization Report form 734-2721
- Committed DBE Breakdown and Certification form 734-2531
- Award Notification ODOT OCR for Certified Agency Projects form 734-2849

#### DBE Forms (Construction Phase)

- Paid Summary Report form 734-2882
- DBE Work Plan Form 3A form 734-2165A
- DBE CUF Review Form 3B form 734-2165
- Daily Trucking Log form 734-2916

- Contractor's Request for Sub-contract Consent form 734-1964
- Request for Release of Retainage for Subcontracted Work form 734-2510

**Equal Employment Opportunity (Construction Phase):**

- Monthly Employment Utilization Report (MEUR) form 731-0668
- Complaint Form - External Civil Rights

**OJT/Apprentice (Construction Phase)**

- Apprentice/Trainee Approval Request (ATAR) form 734-2878
- Apprentice/Trainee Monthly Progress Report (MPR) form 734-2879
- In House Trainee MPR Templates:
  - Carpenter
  - Cement Mason
  - Construction Assistant
  - Iron Worker
  - Utility
- Monthly Progress Record (MPR) form 0332
- Training Program Approval Request (TPAR) form 734-2880
- Training Program Form (TP) form 0335

**ADA and Title VI**

- ADA Accessibility Request Form Video
- ADA Comment, Questions, Concern or Request - Web Form
- ADA Comment, Questions, Concern or Request form 734- 5061
- Discrimination Complaint form 734-5008
- Department of Justice ADA Complaint Online Form