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SECTION C

CERTIFIED AGENCY

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:

1. Disadvantaged Business Enterprise (DBE)
2. Equal Employment Opportunity (EEO)
3. On-the-Job Training (OJT) / Apprenticeship Training Program (ATP)

The basic responsibilities are these:

- I. FHWA is responsible for overall Civil Rights program oversight.
- II. ODOT's Office of Civil Rights (OCR) is responsible to develop, implement and monitor DBE, EEO, and OJT programs for FHWA-funded contracts.
- III. Certified LPAs are responsible to comply with ODOT's Civil Rights programs on the FHWA-funded projects they administer.

The Office of Civil Rights 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 (LAL) is the first contact for advice and assistance on Civil Rights matters, including EEO, OJT and DBE program requirements. The Office of Civil Rights assists the [ODOT LAL](#) in responding to LPA questions and issues. Visit ODOT's [Office of Civil Rights](#) website for additional information.

Subsection B of this Chapter provides a brief description of ODOT's DBE, EEO and OJT/ATP programs and provides links to additional requirements, forms, and resources.

Subsection C of this chapter lists the Civil Rights process during design, advertisement, bidding and award. Use the tracking worksheet provided in Appendix 1 to document completion of each Civil Rights program step and submit to ODOT prior to awarding each FHWA construction project.

Subsection D outlines the process LPAs must follow to comply with ODOT's Civil Rights programs, including submission, monitoring, and reporting activities for construction projects.

Subsection E outlines the process LPAs must follow to comply with ODOT's Civil Rights programs, including submission, monitoring, and reporting activities for A&E consultant selection.

Subsection F of this chapter provides a comprehensive list of OCR forms.

See LAG Manual Section A, Chapter 7 for Title VI program requirements (Civil Rights Act of 1964, non-discrimination).

B. ODOT'S CIVIL RIGHTS PROGRAMS ON FEDERAL PROJECTS

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 at: http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_prog_plan.aspx

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 Office of Civil Rights website at: http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_prog_plan.aspx

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.

LPAs must include ODOT's DBE Commitment Requirements and DBE Supplemental Required Contract Provisions in the bid book and collect certain information (forms) about prime and subcontractor participation on the projects to allow tracking of DBE utilization. The LPA bid book that has been reviewed and approved for use on FHWA-funded projects will include these provisions. Please review and become familiar with DBE program provisions, forms, and processes, See complete checklist below in section C8 (please leave publication dates on all documents inserted into Bid Books). See subsection C. Project Delivery Process for forms, roles and responsibilities.

For additional information about the DBE Program, see ODOT's DBE program page:
http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_prog_plan.aspx

2. Equal Employment Opportunity (EEO) Program

The goal of the Workforce Development 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.

The LPA bid book that has been reviewed and approved for use on FHWA-funded projects will include all EEO provisions listed in the LPA PRE ADVERTISEMENT CHECKLIST in section 8 below. Please review and become familiar with EEO program provisions, forms, and processes. See subsection C of this chapter for Project Delivery Process, forms, roles and responsibilities.

More information on the ODOT Workforce Development Program is available on the OCR website at: http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/contractor_workforce.shtml

3. On-the-Job Training (OJT) / Apprenticeship Training Programs (ATP)

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.

- 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 (BOLI), 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 OJT/ATP program provisions, forms, and processes. See subsection C. Project Delivery Process 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.

More information on the ODOT OJT/ATP Programs is available on the OCR website at:
http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/ojt_program.aspx

C. 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 projects. A tracking worksheet is provided in Appendix 1. LPAs shall document the completion of each process step using the tracking worksheet. The worksheet is formatted to enable LPAs to track all FHWA-funded projects on a single worksheet.

ODOT Office of Civil Rights periodically uploads a [master tracking sheet](#) to the OCR website. This spreadsheet is an OCR tool showing the status of submittals for certified LPA projects currently going through the project delivery process.

Link to the Master Tracking Sheet page:

http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/forms.aspx#other_form

LPA shall:

- Use the tracking worksheet provided in Appendix 1 to document completion of each Civil Rights program step.
- Submit required forms to ODOT’s Office of Civil Rights as specified in this subsection.
- Copy the [ODOT LAL](#) on each submission.
- Send updated tracking log to the ODOT [LAL](#) upon request.

The [ODOT LAL](#) will:

- Periodically upload LPA’s tracking worksheet to the Certification SharePoint website.
- Address LPA and ODOT Office of Civil Rights questions related to this process.

Note: *The column numbers on the tracking worksheet (Appendix 1) matches the process points that follow. Rows are for multiple projects by the same LPA. An excel version is available from ODOT.*

Appendix 1 example on next page

1. Key Number

All projects are identified by the ODOT Key Number (found in the STIP).

2. Project Name

The project name must be the same name identified in the STIP and the Certification Supplemental Project Agreement.

3. LPA Project Manager Contact Information

The [ODOT LAL](#) shall ensure that ODOT's [Regional Civil Rights Field Coordinator](#) (FC) has the project manager's name and phone number.

4. Supplemental Project Agreement Number (IGA #)

The Supplemental Project Agreement number is the project-specific intergovernmental agreement (IGA) number assigned by ODOT. This is not the same as the LPA's construction contract number.

5. Federal-Aid Number

The federal-aid number is assigned by FHWA. Each project phase will have a unique federal-aid number.

6. Goals Request Date

This is the date the LPA submits the following to OCRGOALSREQUEST@odot.state.or.us and copies the [ODOT LAL](#) at Advance (90%) PS&E:

- [Civil Rights Request for Goals](#) (Form 731-0663, previously "the yellow sheet")
- Engineer's estimate
- Construction schedule

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

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 of work such as landscaping).

For additional details regarding PS&E, please refer to LAG Manual Section C, Chapter 11.

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 LAL](#). 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.

8. Bid Book Submission Date

This is the date the LPA submits the final PS&E submittal to the [ODOT LAL](#) for review (electronic copy is preferred). The LAL will forward the bid book to the Office of Civil Rights for confirmation that civil rights goals and provisions have been correctly incorporated. LAL will copy the LPA on the email. These requests should be sent to OCRINFOREQUEST@odot.state.or.us.

LPA PRE ADVERTISEMENT CHECKLIST

Note: Use the most recent version of each set of provisions available at:
http://www.oregon.gov/ODOT/HWY/SPECS/Pages/manuals_forms_etc.aspx#Publications

Note: Please include the publication date of the provision, form or process in your bid book.

Disadvantaged business enterprise program

Bidding Provisions/Forms

DBE Commitment Requirements
DBE Commitment Certification & Utilization Form
DBE Information Page

Contract Provisions

ODOT Policy Statement DBE Program
DBE Supplemental Required Contract Provisions
Assigned DBE Contract Goal (AFDBE & SADBE)
Source of Materials (Provision #: 00160.01)
Legal Relations and Responsibilities (Provision #:00170.10)
Prosecution and Progress (Provision #: 00180.20)

Equal Employment Opportunity Program

Required Contract Provisions for Federal-aid Contracts (FHWA-1273)
On-site Workforce Affirmative Action Requirements for Women and Minorities on Federal-aid Contracts
Equal Employment Opportunity Provisions
Equal Employment Opportunity-Aspirational Target Provisions
Reimbursable Federal On-the-Job and Apprenticeship Training (If goal is 0 then no need to include)

Miscellaneous

First-tier Subcontractor Disclosure Instructions & form

Correctly does 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

NOTE: The Master Certification Agreement prohibits the incorporation of DBE Special Provisions by reference.

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 LAL. OCR will notify the ODOT LAL 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 LAL submits a copy of the bid book verification letter (email) from the office of civil rights to the FHWA Field Operations Engineer with the PS&E package.

NOTE: ODOT recommends a 4-week advertisement for certification test projects to accommodate a mandatory pre-bid meeting. The pre-bid meeting provides a forum for LPA to explain the civil rights processes to prospective bidders. The [ODOT LAL](#) and [ODOT Regional 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.

10. Advertised Bid Date

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

11. Actual Bid Date

This is the date the bids are actually opened.

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.state.or.us.

Local Agency Guidelines – Section C Ch8

13. SSUR Received Date

This is the date the LPA submits the form to OCRINFOREQUEST@odot.state.or.us, and copy the [ODOT LAL](#). 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.

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.state.or.us, and copy the OCR [Small Business/DBE Program Manager](#) and [ODOT LAL](#).
 - 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.state.or.us and [ODOT LAL](#).

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 two 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.

NOTE: The Office of Civil Rights 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.

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 responsive low bidder submit a [Committed DBE Breakdown and Certification Form](#) (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. The URL for form 734-2531 is: <http://www.odot.state.or.us/forms/odot/highway734/2531.pdf>

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

This is the date LPA submits [Committed DBE Breakdown and Certification Form](#) (Form 734-2531) to OCRINFOREQUEST@odot.state.or.us and the ODOT [Small Business/DBE Program Manager](#), who will evaluate continued responsiveness and notify the LPA of the results. Copy the [ODOT LAL](#) on the email. Responsive low bidder shall submit completed [Committed DBE Breakdown and Certification Form](#) (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.

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.

18. Award Date

On 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 LAL](#) and the OCRINFOREQUEST@odot.state.or.us in the Office of Civil Rights.

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.

D. 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 FC.

http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/contact_us_directory.aspx

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 PreCon letter will be emailed to the LPA within three (3) days of the “Award Letter” notification. The report generated letter will auto-fill the LPA Project Manager's name on the template letter. The corresponding ODOT FC and LAL will be copied.

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

- Add to or create a new cover letter listing the OCR PreCon letter as an attachment to the packet of information sent to the Contractor.
- Print and/or email OCR PreCon 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:

The Office of Civil Rights 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 PreCon Letter. The FC will be copied. ***DO NOT*** send the OCR PreCon letter 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.

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.

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

The Civil Rights 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 LAL of when the pre-construction conference meeting will occur and may request assistance from the ODOT FC.

3. OCR Quarterly Audits

Between First and Second Notification, the ODOT FC will conduct, at a minimum, quarterly project audits to determine missing paperwork and project compliance status. The ODOT FC Quarterly Audit will look at the following:

- Subcontracts (including specialty Subcontractors).
- First and last day worked for each Subcontractor.
- Paid Summary reports.
- DBE Work Plans Form 3A.
- DBE Commercially Useful Function (CUF) Form 3B.
- Change Orders affecting total contract dollars or work.
- Monthly Employment Utilization Reports (MEUR).
- Training Programs (TP).
- Apprentice/Trainee Approval Request (ATAR).
- Apprentice/Trainee Monthly Progress Record (MPR).
- Discrepancies from last audit report.

The ODOT FC will fill out a *Civil Rights Quarterly Audit Report* and send it to the LPA and copy the ODOT LAL. The LPA should resolve any outstanding issues before the next FC audit.

Monthly, the ODOT FC will also distribute the DBE Tracking Report to the LPA offices. This 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.

After Second Notification is issued, the ODOT FC will perform a final audit report listing any missing documents that need to be received prior to the LPA's issuance of Third Notification.

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

a) Subcontracts

LPA must forward copies of all Contractors' 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 ODOT's [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 before providing written concurrence with a DBE termination and/or substitution and copy the OFOT 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

1) 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 [8.00](#) 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 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 FC if CUF compliance issues are identified.
- If the ODOT FC or PM 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.

2) 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:

1) 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 170.65(b) (4).

2) 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 LPA will request from the DBE Contractor/Subcontractor that the Daily DBE trucking log is submitted to the LPA on a weekly basis and within 14 days of the first recorded date of the log.

3) 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 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 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.

4) DBE Crediting for Trucking Firm Services

The LPA will be responsible for determining the crediting for the DBE Trucking firm.

To determining 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 Agency.

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 by the 5th of each month, after each payment is received from the Agency.

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 PM 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.

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](#)

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– Termination and Breach of Contract If, as a result of failure by the Prime, the DBE commitment is not met.

- Copy the FC on all actions.

5. Equal Employment Opportunity (EEO) Program – Federal Funded

a) EEO Reports

1) Monthly Employment Utilization Report (MEUR)

By the date designated in the contract, the Contractor and all Subcontractors must complete and electronically submit the Electronic [Monthly Employment Utilization Report \(eMEUR\), Form 731-0668](#) as required by the supplemental provisions. Each Contractor or Subcontractor must 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 eMEURs 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 checked, verify that no Work was performed by the Contractor for that month.

Instructions on the MEUR are available on the OCR website at:

http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/workforce/eo/docs/0668_meur_instructions.pdf

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

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

- Indicate in the subject line that the electronic MEUR is being returned (example: MEURxxxx – Possible Errors).
- In the body of the email, give a brief explanation of the question and/or discrepancy.

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- Provide a due date to the Contractor to ensure that the electronic MEUR is corrected and re-submitted timely.

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

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 the Pre-Con, the Contractor will submit completed [Training Program, \(Form 731-0335\)](#). 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

1) Apprentice/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 [Apprentice/Trainee Approval Request](#) (ATAR, Form 731-0294) to the LPA for each apprentice to be credited toward the Bid Item. The LPA shall forward the ATAR(s) to the FC. Upon approval/denial, the form(s) will be returned to the LPA for distribution back to the Contractor.

2) Monthly Progress Record (MPR)

Each approved Apprentice/Trainee shall complete an [ODOT Apprentice/Trainee Monthly Progress Record \(Form 731-0332\)](#), for each month in which the Apprentice/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 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 is issued so the FC can determine if any paperwork is missing prior to the LPA’s issuance of Third Notification.

The LPA should also verify that the amount paid matches the amount tracked on the ODOT Apprentice/Trainee Monthly Progress Record, form 731-0332.

If, at the Second Notification, the Contractor has not achieved the Training Goal there will be a disincentive to the Contractor. [See [Section 6 of the applicable Special Provisions](#)]

E. A&E CONSULTANT SELECTION PROCESS

Requirements for A&E and Related Services Contracts

“A&E” refers to architectural, engineering, photogrammetric mapping, transportation planning and land surveying services.

Please follow the processes identified for civil rights requirements in the LPA Requirements Guide Overview of Federal, State and ODOT Requirements for Federally Funded A&E Procurements.. Civil Rights program requirements are included in the A&E Overview for LPAs, available at:

<http://www.oregon.gov/ODOT/CS/OPO/docs/aepage/LPAaeRequirements.doc>.

Note: DBE goal requests for A&E contracts come to a different email than for construction: ocr.psk@odot.state.or.us. Copy the ODOT [ODOT LAL](#).

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

F. OCR Forms List

A comprehensive list of OCR forms includes the following, which can be found on the OCR webpage at: <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/forms.aspx>

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

- [Civil Rights Request for Goals](#) (Form 731-0663)
- [Subcontractor Solicitation and Utilization Report](#) (Form 734-2721)
- [Committed DBE Breakdown and Certification Form](#) (Form 734-2531)

DBE Forms (Construction Phase):

- [Summary Report of Subcontractors Paid](#) (Form 734-2722) - Bid before 10/23/2014
- [Paid Summary Report](#) (Form 734-2882) - Bid on/after 10/23/2014
- [DBE Work Plan Form 3A](#) (Form 734-2165A)
- [DBE CUF Review Form 3B](#) (Form 734-2165)
- [Daily Trucking Log](#), (Form 734-2916)

EEO/OJT/ATP Forms (Construction Phase):

- [Training Program Form](#) (Form 731-0335)
- [ODOT Apprentice/Trainee Monthly Progress Record](#) (Form 731-0332)
- [Apprentice/Trainee Approval Request](#) (Form 731-0294)
- Electronic [Monthly Employment Utilization Report \(eMEUR\)](#) (Form 731-0668)