ODOT Office of Civil Rights DBE Program

Improving Understanding, Function and Procedural DBE Compliance

ODOT Certified Local Public Agencies Training
Presented by: ODOT Office of Civil Rights
November 1, 2018
ODOT DBE Program Purpose

The Oregon Department of Transportation is committed to a Civil Rights Program to encourage the participation of Disadvantaged Business Enterprises (DBE's) in contracting opportunities.
Disadvantaged Business Enterprise (DBE) Program Components

- ODOT Office of Civil Rights monitors and reports program compliance
- DBE Program required on all Federally funded projects
DBE Program Goals

- **ODOT Overall Annual Goal**
  - 11.6% for 2017
- **Disparity Studies**
- **Race-conscious**
- **Race-neutral**

- **ODOT Individual Contract Goals**
  - Prime must commit sufficient work to DBE subcontractors to meet the goal
DBE Policy Statement:

- Signed by ODOT’s Director
- Non-discrimination on the basis of race, color, sex or national origin
- Narrowly tailored program
- Level playing field for DBE’s to compete
- Only eligible firms participate
- Help remove contracting barriers
- Assist in development of firms to compete outside the DBE program

- The DBE program is given the same priority as compliance with all other equal obligations incurred by ODOT under its USDOT agreements
A&E
Contracts
Consultant Selection Goals

LPA A&E Requirements Guide (7/26/18), Section 3.4, page 8

Set DBE goal before release of RFP

DBE goal questions for A&E contracts go to:

Include ODOT Liaison on all Civil Rights communications

ocr.psk@odot.state.or.us
A&E Goal Standards

For any contract that includes $1 or more of FHWA funding:

0% Goal –
If any of the following applies:
- Under $100,000 (includes any anticipated amendments)
- Single discipline contracts, any $ amount

Emergency Repair (ER) contracts to restore essential travel, minimize damage, or protect the remaining facilities

3% Goal –
- $100,000 or more AND includes 2-4 disciplines

8.5% Goal –
- $100,000 or more AND includes 5 or more disciplines
- Goal Exception Request - For phased projects, contact OCR Personal Services Contracts
- To request a different goal, submit the DBE Goal Calculation Worksheet

Goal Exception Request –
- For phased projects, contact OCR Personal Services Contracts
- To request a different goal, submit the DBE Goal Calculation Worksheet
Consultant Solicitation

- Include the DBE “Goal” or “No-Goal” in the solicitation (if applicable) and contract

- Ensure contract and solicitation documents include the applicable “Goal” or “No-Goal” DBE provisions are included in Contract provisions and templates

- Once the project has been awarded, email the Execution Notice to the OCR PSK mailbox (ocr.psk@odot.state.or.us) within 3 days of contract award

- Email a copy of all amendments that include FHWA funding (this includes “Goal” and “No-Goal” contracts) to: ocr.psk@odot.state.or.us
Required DBE Forms for A&E Projects
Submit Forms to:  odot.psk@odot.state.or.us

Committed DBE Breakdown
- Submit prior to contract execution
- Goal greater than “0”
- Complete form for each DBE subcontractor
- “cc” ODOT Liaison

Paid Summary Reports
- Complete form for each payment period
- Report on all projects regardless of goals
- Include all subs, DBE or not
Construction Contracts
Pre-Construction Timeline

- Goal Setting
- Bid Book Review
- Bid Notification
- SSUR Submissions
- DBE Commitment Certification Review and DBE Goal Results Report
- Committed DBE Breakdown Review
- Award Notification *(Contract number)*
- Pre-Con Letters
Goal Setting Process

LAG Manual Section C, Chapter 8, page 8-7

Goals Requested

LPA submits to OCR and cc’s the ODOT LAL at Advance (90%) PS&E:

- Civil Rights Request for Goals (Form 731-0663, aka “yellow sheet”)
- Engineer’s estimate
- Construction schedule

Submit to: OCRGoalsRequest@odot.state.or.us

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

Goals Issued

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

- Goal expiration – 90 days (Resubmit updated documents to OCR for review)
Bid Book Review

Bidding Provisions & Forms
- BB35 DBE – Commitment Requirements
- BB38 DBE – Commitment Certification & Utilization Form
- BB 74 DBE INFO – DBE Information Page

Contract Provisions
- SP00027 ODOT – Policy Statement
- SP00030 DBE – Assigned DBE Contract Goal *(also check for OJT Goal)*

Workforce & EEO Programs
- SP00021 AA REQ – On-Site Workforce Affirmative Action Requirements
- SP00025 EEO ASP TARGET – EEO Aspirational Target Provisions
- SP00032 REIM FED OJT – Reimbursable Federal On-the-Job & Apprenticeship Training *(For projects with OJT goals only)*
Bid Book Review (Cont.)

Miscellaneous Provisions
- BB71 Sub Disclosure – First-Tier Subcontractor Disclosure Form & Instructions
- 00160.01(a) Notification of Sour of Supply and Materials
- 00170.10(g) – Paid Summary Reporting Requirements
- 00180.20(d)(e) – Subcontracting Limitations

Provisions That Must NOT Be Included on Federally Funded Projects
- SP00049 STATE Apprenticeship – Reimbursable State Apprenticeship Training
- SP00051 CONT DIV PLAN – Contractor Submitted Diversity Training
- SP00054 MWESBSDV – Assigned Aspirational Target

NOTE:
For Federally Funded Projects Only
DBE & OJT Goals Checked for Inclusion
**Bidding Phase**

**Note:** The mandatory pre-bid meeting provides a forum for the LPA to explain the civil rights processes to prospective bidders. The ODOT LAL and ODOT Regional Field Coordinator should be invited to attend to answer pre-bid questions from contractors who may be unfamiliar with ODOT civil rights program requirements.

---

**Advertised Bid Date**

Date the project is advertised and bidding opens

**Bid Opening (Actual Bid Date)**

Date contractor bids are actually opened and bidding closes

OCR Bid Notification Form 734-2848 Refers to this as “Bid Close”
Low Bidder has 10 days to submit to LPA
Good Faith Efforts must be included
OCR will review within 3 days
DBE Goal Results Report Created by OCR

Bidders who do not meet the goal are considered non-responsive
LPA must not execute the contract until OCR confirms low bidder is responsive
SSUR Forms due within 10 days of bid “opening” (‘0%’ goals also apply)
Administrative Reconsideration

Special Provision BB35_DBE_Commit_REQ, pages 11-12

- LPA/OPO will send non-responsive notice to low bidder within 15 days of bid opening
- OCR will provide the LPA specific language for the non-responsive letter
- Bidder has 4 days to request administrative reconsideration and provide support documentation
- Bidder has opportunity to meet review committee in person
- Review Committee has 4 days to make decision.
- Committee will notify bidder within 5 calendar days
- ODOT Procurement Office officiates hearings
Contract Intent to Award

Committed DBE Breakdown & Certification Form

Form 734-2531

Due to OCR within 10 calendar days of Notice of Award

LPA must not execute contract until OCR confirms DBE’s

OCR to review form(s) and respond to LPA within 3 days
Award Notice & PreCon Letters

Award Notification Form due to OCR

PreCon letters sent by OCR to LPA within 3 days of Award Notice

Include PreCon Letters and Committed DBE Breakdowns in packet for Prime

Relay Contract Number to OCR
DBE Tools

- OCR Forms Page
- OCR’s DBE Webpage
- DBE Flow Diagram (see slide 12)
- LAG Manual, Section C, Chapter 8
- Special Provisions 2018
Construction Phase
Construction Phase

CUF Reviews

Monthly Paid Summary Reports (PSR’s)

Changes or Termination of DBE’s
DBE Work Plan Proposal

Required from all DBE subcontractors prior to DBE starting work

- Tells us how the DBE will perform work – include details
- Opportunity to identify and head off potential CUF and crediting issues
- Identify potential CUF issues and provide feedback to Prime & DBE
- Try to correct problems before they happen
- Baseline to compare CUF Review - Form 3B
CUF Reviews

- Match up work performed with stated work in DBE Certification Form and subcontract
- Have conversation with DBEs
- Be familiar with DBE workers and equipment
- Inspect during peak construction activity
- Complete DBE CUF Form 3B
- PM reviews
- FC reviews
DBE Firms Must Maintain

**Operational Control**
- Experience in the industry
- Independently make basic decisions about daily operations
- Technical competence in the industry

**Managerial Control**
- Power to hire/fire
- Make independent and unilateral decisions to guide business
- Contracted management is sufficient if ultimate decision on contracted managers rests in the business
- Inability to Bind S&E firms
A DBE does NOT perform a CUF if

It is merely an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of DBE participation.
The lease must indicate that the DBE has exclusive use of and control over the truck

Lease gives the DBE absolute priority for use of the leased truck

Leased trucks must display the name and identification number of the DBE

Owner/operator requirements also apply

Lease Must Indicate: Lessors Names, List of Trucks to be Leased, VIN, Agreed Upon Amount of the Cost and Method of Payment
Prompt Payment

- Subs are paid within 10 days of ODOT payment
- All forms and other payments must be complete
- Applies to all subcontractors (DBE or non-DBE)
DBE Regulations require ODOT monitor and ensure prompt payment to all subcontractors.

ODOT required to report DBE/MWESB utilization and payment to:

1) FHWA
2) Governor’s Office
3) Legislature
Monthly Summary Reports

Prime submits monthly Paid Summary Report Forms for all Subcontractors

OCR Inputs payment data into Payment Tracking System

ODOT send Uniform Report of DBE Commitments, Awards & Payments to FHWA
Reviewing Monthly Summary Reports

Project Manager
- Payment amount
- Activities paid
- Industry rates vs pay rates for activity
- Match activity paid with CUF reviews & project milestones

Field Coordinator
- All data entered
- Enters into OCR tracking system
Changes, Subcontracts & Terminations

- Prime makes written request of permission to PM prior to any actions occurring
- Prime provides written notice to DBE of intent to terminate/replace
- PM reviews and forwards to OCR
- OCR reviews and makes determination

OCR makes determination prior to Prime taking any action against a DBE firm.
Equal Employment Opportunity (EEO)
Equal Employment Opportunity

Ensures equal employment opportunity to all individuals regardless of:

- Race
- Religion
- Sex
- Color
- National Origin
- Age
- Disability
Equal Employment Opportunity is the **LAW**
Equal Employment Opportunity

- Ensure EEO is applied to all conditions of employment, including hiring, layoff, transfer, and training/advancement opportunities

- Investigate allegations of discrimination

- Annual EEO Report

- Electronic Monthly Employment Utilization Reports

- EEO Reviews on External Contracts
Annual EEO Report

- Each July, Contracts and Subcontracts in the amount of $10,000 or more shall submit the Form PR-1391 found at: http://www.oregon.gov/ODOT/CS/CIVILRI_GHTS/forms/html

- This notice is sent to the appropriate contractors by ODOT Office of Civil Rights

- Form must be sent to OCR in electronic format by specified date in August

- The data collected is reported to FHWA
Monthly Employment Utilization Report

- Per Contract, submit MEURs monthly for all contractors and subcontractors that require certified payrolls.

- Due each month from the first month to last month of work, *even if work was not performed*. 
On-The-Job Training (OJT) / Apprenticeship Program

Program Purpose

- Provide career opportunities
- Develop skilled workforce
- Increase workforce diversity
- Support construction industry development needs

Office of Civil Rights
Resources for Equity and Opportunity in Oregon Transportation

BOLI
On-The-Job (OJT) / Apprenticeship Program

1. Form 734-2880 Training Program Approval Request (TPAR)

2. Form 734-2878 Apprentice/Trainee Approval Request (ATAR)

3. Form 734-2879 Apprentice/Trainee Monthly Progress Report (MPR)
OCR Resources

Where to find…

OCR Homepage:

OCR Forms Page:
https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx

LAG Manual:

LPA A&E Requirements Guide:
https://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/LpaAE requirements.pdf

Certification Homepage:
https://www.oregon.gov/ODOT/LocalGov/Pages/Certification.aspx
Questions?
Thank you.