

# Locally Administered Projects (LAP) Manual

## **PART 3**

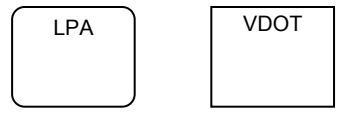
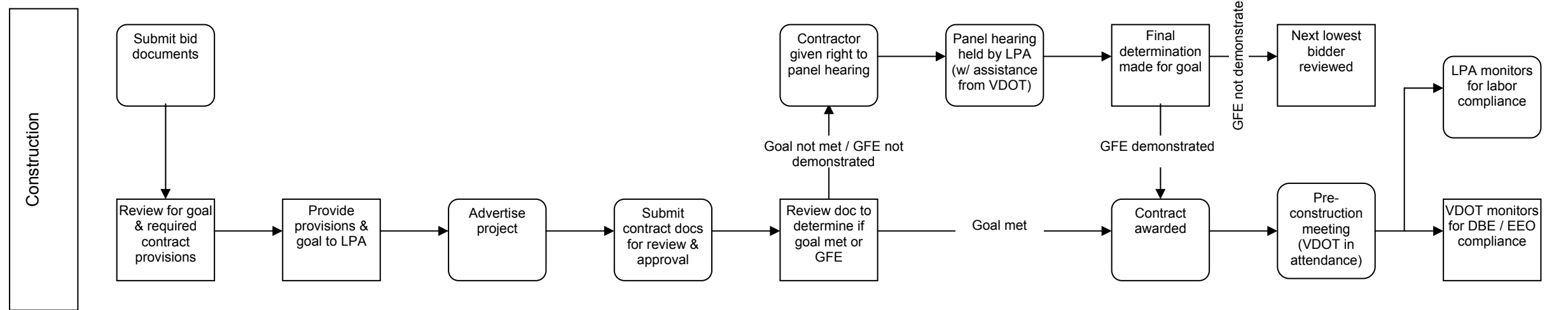
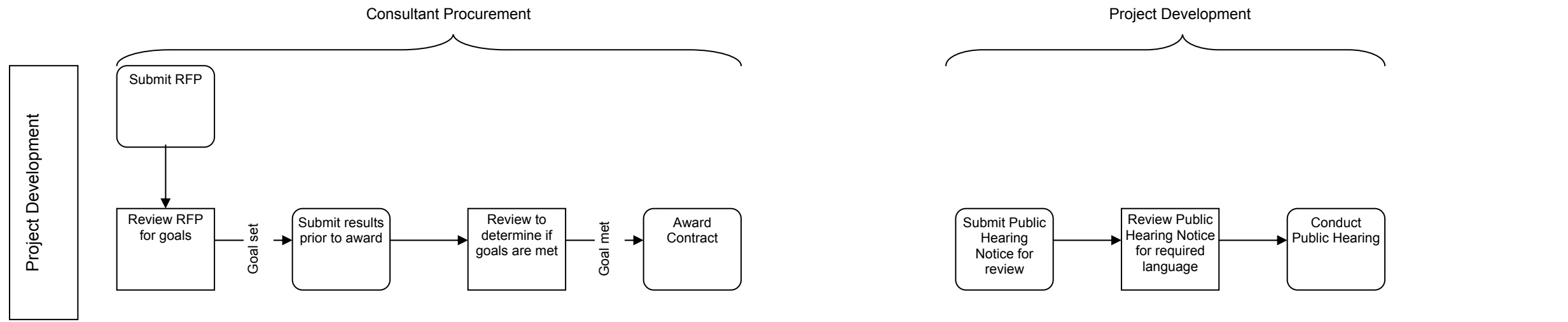
Standards and  
practices for LAP

### **Chapter 17**

Civil Rights and DBE

# CHAPTER 17 - CIVIL RIGHTS PROGRAM REQUIREMENTS

## Civil Rights



## Chapter 17 Civil Rights Requirements

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## **17.1 GENERAL CIVIL RIGHTS REQUIREMENTS**

### **17.1.1 Introduction**

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

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

### **17.1.2 Applicability**

All federal-aid projects must follow the processes defined in this chapter.

State-aid projects must include the civil rights requirements defined in Title 2.2, chapter 43 of the Code of Virginia (the Public Procurement Act) and other applicable state laws. The LPA will certify adherence to those requirements as noted in chapter 5 (state-funded projects) of this manual.

### 17.1.3 Tasks/Submittals Table

<b>Task/Submittal/File Documentation</b>	<b>Locality Responsibility</b>	<b>VDOT CR Responsibility</b>	<b>Submittal Timing/Recordkeeping Requirements</b>
Project Scope and applicable environmental documents	<ul style="list-style-type: none"> <li>• Submit scoping documentation to PM</li> </ul>	Review to ensure compliance with Title VI	N/A
Consultant Procurement	<ul style="list-style-type: none"> <li>• Submit RFP for review and possible goal setting</li> </ul>	Review RFP	Review complete within 10 days.
Public Hearing	<ul style="list-style-type: none"> <li>• Post and send notice for public hearing to PM.</li> <li>• Schedule Public hearing in accessible location.</li> </ul>	Review public hearing notice. May attend meeting to ensure compliance with Title VI, ADA and Section 504 of Rehabilitation Act	N/A
Project estimate/ bid proposal	<ul style="list-style-type: none"> <li>• Submit a detail estimate or task breakdown to DCRO for insertion of proper contract language and goal review (DBE and OJT)</li> </ul>	Insert proper documents and establish goal(s) if appropriate	Locality submittal required 60 days prior to advertisement CR review completed within 20 days of receipt if all required information is received from Locality. Appendix 17A lists required contract provisions
Bid documents/ pre-award	<ul style="list-style-type: none"> <li>• Submit contract/subcontract agreements to DCRO for review</li> </ul>	Review documentation to determine goal or if GFE met	Civil Rights review completed within 20 days of receipt of documents.

Preconstruction meeting	<ul style="list-style-type: none"> <li>• Submit copy of executed contract to the District Civil Rights Office including all relevant DBE forms as identified on the Required Contract Provisions and Forms Matrix. (C-48 and Form C-111 - Minimum DBE Requirements) prior to work beginning.</li> <li>• Submit copies of all subcontract agreements and Form C-111 - Minimum DBE Requirements per applicable Special Provision.</li> <li>• Invite the District Civil Rights Office to the preconstruction meeting.</li> </ul>	Attend preconstruction meeting to review CR requirements and forms	N/A
Construction	<ul style="list-style-type: none"> <li>• Administer CR Program Areas (DBE,OJT and EEO) during project</li> </ul>	Conduct compliance review on each DBE on project for DBE compliance and each contractor for EEO compliance. EEO Reviews are done per contractor with federal project somewhere in the state annually. So if a contractor has more than one project, only one review has to be conducted, not one per project.	DBE reviews required on each DBE at least once during the life of the project. EEO reviews required on contractor at least once during the life of the project.
Conduct Labor Compliance Review	<ul style="list-style-type: none"> <li>• Review contractor's certified payrolls.</li> <li>• Davis-Bacon interviews with employees.</li> </ul>	N/A	At some point during the life of the project.

## 17.1.4 References

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

### Other Helpful References

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

[2002 or 2007 Virginia Department of Transportation Road and Bridge Specifications](#) (Sections 110.02, 110.03, 110.04, 110.06, 518 or 102.01,107.14, 107.15, 518 respectively)

[Special Provision for Section 107.15](#)

[Construction Directive Memoranda \(CD\) such as 2000-6](#)

DBE Program Plan

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

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

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

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

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

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

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

[Virginia Department of Labor and Industry](#)

[Virginia Employment Commission](#)

[Virginia Workers Compensation Commission](#)

[Virginia Department of Minority Business Enterprises](#)

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

## **17.2 GENERAL TITLE VI REQUIREMENTS AND EXECUTIVE ORDERS**

### **17.2.1 Title VI Assurances**

The LPA agrees that it will comply with the Regulations of the United States Department of Transportation (USDOT) and the Code of Virginia relative to nondiscrimination. The LPA must ensure that no person shall intentionally or unintentionally because of race, color, national origin, sex, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity including, but not limited to, in the selection and retention of contractors, procurement of materials and leases of equipment.

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

Environmental justice refers to the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to transportation programs, policies, or activities. Fair treatment means that minority and low-income groups should not bear a disproportionate share of the negative environmental impacts of government actions. Executive Order 12898 (Appendix C) requires that all federal agencies and other entities receiving federal funds identify, and address disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low income populations. In application to transportation, environmental justice requires analysis of potential environmental impacts; full and fair public participation by identified populations in the transportation decision making process; and implementation of strategies to avoid, minimize or mitigate “significant and adverse environmental justice impacts; and procedures to prevent the denial, reduction or delay in benefits received by minority and low-income populations.”

The LPA shall ensure the data collected is utilized to examine and evaluate the equitable distribution of benefits and burdens of transportation investments. The data collected should reflect community boundaries racial, and ethnic make up, income level, sex, age, disabilities, community services, limited English proficiency populations, etc.

To ensure compliance with Title VI to environmental justice and public hearings it is the locality’s responsibility to:

- Review the project scope and applicable environmental justice documents to ensure compliance with Title VI, as amended.
- Submit the notice for public information meetings and public hearings for review. Notices will be reviewed to ensure that the meetings will be conducted at convenient and accessible locations at convenient times and that the appropriate Title VI language is included (locality ensures nondiscrimination and equal employment in all programs and activities in accordance with Title VI and Title VII of the Civil Rights Act of 1964. If you need more information or special assistance for persons with disabilities or limited English proficiency, contact ....).
- Provide the notice in foreign languages, as applicable, to communities or persons impacted if there is an LEP population according to the guidelines in 17.4.1.1.
- Schedule meetings in locations accessible (location, time and via public transportation) to persons with disabilities as defined under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, and accessible via public transportation.
- Attend meetings, collecting demographic statistical data of participants (race, color, sex, and national origin) and forward any Title VI concerns or allegations to the District Civil Rights Office.

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

**This is not required for state-funded projects.**

*VDOT Responsibilities:*

- *The project coordinator will provide project scoping and environmental documents to Civil Rights for review to ensure compliance with Title VI.*
- *Civil Rights will review documents and provide comments ( if needed) within 10 days.*

### 17.2.3 Limited English Proficiency (LEP) (EO 13166)

EO 13166 instructs agencies and recipients to examine their services, and develop and implement processes by which LEP persons can have meaningful access to their services. A LEP person is a person who does not speak English as their primary language and has limited

ability to read, speak, write or understand English. The key to providing meaningful access to LEP persons is to ensure that recipients and LEP beneficiaries can communicate effectively and act appropriately based on that communication. Thus, recipients and sub recipients of federal funding should take reasonable steps to ensure that LEP persons are given adequate information, are able to understand that information, and are able to participate effectively in recipient programs or activities, where appropriate. Reasonable steps may include providing translation services.

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

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

Sub recipients that would like greater certainty of compliance than can be provided by the four-factor analysis can utilize the "safe harbor" provision. The sub recipient can provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1000, whichever is less of the population of persons eligible to be served. Safe Harbor, however, does not affect the requirement to provide meaningful access to LEP individuals through oral language services if needed. Contact the District Civil Rights Office for additional information regarding translation services.

The failure to assure that people who are not proficient in English can effectively participate in, and have meaningful access to, programs and activities funded with federal dollars may constitute national origin discrimination prohibited by Title VI and implementing regulations.

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

**This is not required for state-funded projects.**

## **17.3 REQUIRED CONTRACT PROVISIONS**

### **17.3.1 Nondiscrimination Provision**

Construction contractors and consultants must abide by the provisions of Title VI of the Civil Rights Act of 1964 (42 USC 2000 d). Title VI of the Civil Rights Act of 1964 declares it to be the policy of the United States that discrimination on the grounds of race, color, or national origin and other related statues shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments, agencies, and sub-recipients to take action to carry out this policy. FHWA 1273 is a required contract provision for federal-aid projects and must be physically incorporated in every federal contract. 49 CFR Parts 21, 23, 26, and 27 and 23 CFR Parts 200, 230, and 633 are incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds.

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

### **17.3.2 FHWA-1273 for Construction Projects**

FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts," (Appendix B) contains contract provisions and proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The required contract provisions contained in FHWA-1273 shall apply to all work performed on the contract by the contractor's own organization and to all work performed on the contract by piecework, station work, or by subcontract.

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

**This is not required for state-funded projects.**

### 17.3.3 USDOT 1050.2 Title VI Assurance

USDOT 1050.2 Title VI Assurance – Appendix A (Attachment A) is required to be physically placed in each construction contract and Request for Proposal (RFP) and prohibits discrimination on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment.

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

**This is not required for state-funded projects.**

### 17.3.4 Equal Employment Opportunity

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

**This is not required for state-funded projects.**

### 17.3.5 DBE Special Provision (for Construction Projects Only)

Any contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the USDOT DBE Program as the terms appear in Part 26 of the Code of the Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations and VDOT's Road and Bridge Specifications and DBE Program rules and regulations. Special Provision for Section 107.15 of the Specifications (Appendix B) is to be physically included in every supply or work/service

subcontract and/or purchase order that it makes or executes with a subcontractor having work for which it intends to claim credit.

**This is not required for state-funded projects.**

### 17.3.6 Affirmative Action to Ensure Equal Employment Opportunity

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

The Executive Order also requires government contractors to take affirmative action to insure that equal opportunity is provided in all aspects of their employment. Such action shall include, but not be limited to the following; employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

**This is not required for state-funded projects.**

### 17.3.7 Prevailing Wage Rates for Construction Projects

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

In addition to the Davis Bacon Act itself, Congress added Davis-Bacon prevailing wage provisions to approximately 60 laws—"related Acts"—under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. Examples of the related Acts are the Federal-Aid Highway Acts, the Housing and Community Development Act

of 1974, and the Federal Water Pollution Control Act. Generally, the application of prevailing wage requirements to projects receiving federal assistance under any particular "related" Act depends on the provisions of that law.

**This is not required for state-funded projects.**

*VDOT Responsibilities:*

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

## **17.4 DBE REQUIREMENTS**

### **17.4.1 Disadvantaged Business Enterprises (DBE) Policy**

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

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

- Written documents of the prime's commitment to the DBE to subcontract a portion of the services, a description of the services to be performed and the percent of participation.

- Written confirmation from the DBE that it is participating, including a description of the services to be performed and the percent of participation.

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

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

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

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

**This is not required for state-funded projects.**

#### 17.4.2 Certification

In order for a contractor to receive participation credit for utilization of a DBE on a federally funded project, the firm must meet certain eligibility criteria. Requests for DBE certification by the Virginia Department of Minority Business Enterprise (VDMBE) or Metropolitan Washington Airports Authority (Airports Authority) may be obtained by submitting the Uniform Certification

Application. A listing of DBE firms may be obtained on-line at [DMBE](#) and [MWA](#) or by contacting:

Virginia Department of Minority Business Enterprise  
1111 East Main Street, Suite 300  
Richmond, Virginia 23219  
(804) 786-6585

Metropolitan Washington Airports Authority  
1 Aviation Circle  
Washington, DC 20001  
(703) 417-8625

The list does not represent all DBEs available in the trade or specialty areas required by this contract, but merely those firms that have applied to VDMBE or the Airports Authority and have been granted certification.

#### **17.4.3 DBE Goal Setting Process**

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

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

Once a construction project has been advertised and bids received, the locality will forward the DBE information regarding DBE participation commitment from the lowest responsive and responsible bidder to the appropriate District Civil Rights Office. Once a professional or non-professional services contract has been advertised and a firm has been selected, the locality will forward the DBE information regarding DBE participation commitment to the project coordinator for review and recommendations regarding award of the project. The award of all bids must adhere to federal regulations, as promulgated in 49 CFR Part 26, Part 23 and the Department's Special Provision for Section 107.15 (Appendix B) of the Virginia Department of Transportation's Road and Bridge Specifications (Specifications) relative to 'good faith efforts'

by contractors/consultants in attaining the required DBE participation. Prior to award, contractors/consultants are required to achieve the established DBE goal or demonstrate that a good faith effort has been made to achieve the goal. After award, the locality will submit a copy of the signed contract and supporting DBE information to the project coordinator.

*VDOT Responsibilities:*

- *The project coordinator will provide a detail project estimate and bid documents to Civil Rights for review and goal setting.*
- *Civil Rights will review documents and establish goal (if needed) within 20 business days of receipt.*

#### **17.4.4 Good Faith Efforts**

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

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

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

In any situation in which a contract goal has been established, the use of good faith efforts must be allowed. Each locality must make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important to consider the

quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.

*VDOT Responsibilities:*

- *The project coordinator will provide the bid tabulation and goal documentation to Civil Rights for review prior to contract award.*
- *Civil Rights will review documents and determine if goal has been met or good faith effort has been made within 20 days of receipt.*

#### **17.4.4.1 Anticipated Actions**

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

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached for DBEs to perform the work.
- Rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime

contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

#### 17.4.4.2 Administrative Reconsideration

If the goal is not met, a bidder must, in order to be responsible and/or responsive, have made good faith efforts to meet the DBE goal by documenting commitments for participation by sufficient DBE firms, or document adequate good faith efforts to actively and aggressively obtain participation by a sufficient number of DBE firms. An administrative review (see Section 26.53, CFR 49 Part 26) and judgment call of the good faith efforts should be made prior to award in each instance by the locality. If the locality determines that the apparent successful bidder/offeror has failed to meet the good faith requirements, the local agency must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration in accordance with Section 26.53, CFR 49 Part 26.

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

#### *VDOT Responsibilities:*

- *The project coordinator will advise Civil Rights if an Administrative Reconsideration Panel has been requested.*
- *Civil Rights will provide technical assistance with the Administrative Reconsideration Panel, as needed.*

### 17.4.4.3 Substitutions

After a contract has been executed, which specified goals for DBE participation, adequate good faith efforts are required for any needed substitution of DBE subcontractors to the extent needed to meet the contract goal.

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

### 17.4.4.4 Non-Compliance

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

## 17.4.5 Bidders' DBE Obligations

### 17.4.5.1 Commitments

Bidders shall identify in their construction bid (on [Form C-111](#), Minimum DBE Requirements or Proposal), (Appendix E), all of the DBEs identified to participate in the project, regardless of their percent of participation. The [Form C-111](#) and [C-112](#) (Appendix E) shall be completed and submitted in accordance with Special Provision 107.15 of the Specifications for construction contracts. DBE firms must be certified by either VDMBE or the Airports Authority.

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

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

The successful bidder on a construction contract is required to submit a fully executed [Form C-112](#) (Appendix E) within two (2) working days after the bids have been opened and the determination of apparent lowest bidder. The Firm Data Sheet is required for consultant contracts.

#### **17.4.5.2 Subcontractor Supplier Solicitation and Utilization**

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

### **17.5 ON THE JOB TRAINING (OJT) FOR CONSTRUCTION PROJECTS**

The contractor shall take all necessary and reasonable steps to ensure training and upgrading of minorities, women, veterans, and other disadvantaged persons toward achieving journeyman status within a given construction trade in accordance with Section 518 of the Specifications. The OJT program seeks to reduce overhead costs associated with training

through a stipend reimbursement to the contractor while offering the opportunity to enhance short and long term workforce needs. The contractor will be reimbursed per hour per trainee.

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

The DCRO will set a trainee goal for highway construction projects prior to advertisement. The DCRO will approve all trainee enrollments to ensure disadvantaged persons are given opportunities for training utilizing [Form C-65](#) and subsequently recorded on [Form C-67](#). Trainee work classifications and the requirements of each will follow those already developed by the Virginia Transportation Construction Alliance ("VTCA"). Copies of the OJT Trainee Classification Booklet may be obtained by contacting VTCA.

**This is not required for state-funded projects.**

*VDOT Responsibilities:*

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

## **17.6 COMPLIANCE AND REPORTING**

### **17.6.1 Compliance Reviews**

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

*VDOT Responsibilities:*

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

- *Civil Rights will attend the Preconstruction Meeting.*

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

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

##### *VDOT Responsibilities:*

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

#### **17.6.1.2 DBE Compliance Review**

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

##### *VDOT Responsibilities:*

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

### 17.6.1.3 Labor Compliance

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

#### *VDOT Responsibilities:*

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

### 17.6.2 Posters (Construction Projects and Professional Services)

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

### 17.6.3 Reporting

#### 17.6.3.1 Annual Employment Report

**All contractors and subcontractors having a contract or subcontract of at least \$10,000 or more is required to submit an annual employment report (Form [C-57](#)) to the DCRO in accordance with 23 CFR Part 230.121. The report reflects all employees on site during the last pay period of July during which work is performed. This information will be**

submitted to the DCRO on [Form C-57](#) indicating number of the employees in each work classification, by race and gender. All employees on site must be accounted for by race and gender for journeymen level, trainees and apprentices.

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

#### 17.6.3.2 Trainee Information

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

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

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

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

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

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

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

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

Form	Purpose / Description	Frequency	Prepared by	Signed by	Verified by (also signs form prior to submission)	Document Preparer to submit original form to	Document Preparer to submit copy of form to	Reviewed by	Provision (Reference for Requirement)
<b>All Subcontractor Agreement(s)</b>									
C-65	Trainee Enrollment Form	Prior to trainee beginning work	VDOT Civil Rights <sup>3</sup>	Trainee, Contractor, Local Government Construction Inspector, VDOT Civil Rights	VDOT Civil Rights <sup>4</sup>	Local Government	VDOT - Civil Rights <sup>5</sup>	VDOT - Civil Rights	FHWA 1273 IV (4)(b)(3) 2007 VDOT Rd. & Br. Specs §518.02 (b) CD 94-4
C-67	Weekly Training Report	Weekly when training provided	Contractor or sub-contractor who hired trainee	Contractor or Subcontractor	Local Government	Local Government (Contractor should submit to Co, then Co verify and submit to VDOT)	VDOT - Civil Rights <sup>7</sup>	VDOT - Civil Rights	2002 VDOT Rd. & Br. Specs §518.03
<b>DBE (Disadvantaged Business Enterprise)</b>									
C-111	Minimum DBE Requirements	Once - received with bid proposal	Contractor	Contractor	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	49 CFR Part 26, CD2002-2
C-112	Certificate of Binding Agreement	Once - received with bid proposal	Contractor	Contractor	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	49 CFR Part 26, CD2002-2
All Subcontractor Agreement(s)	Ensure consistency with C-112. This is a subcontract between the prime and the subcontractor. All subcontract agreements must have FHWA-1273 attached.	Before work begins	Contractor	n/a	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights <sup>8</sup>	FWHA-1273
Schedule B	DBE Compliance Program	As needed when significant change in work patterns, crews, equipment, etc.	Locality Inspector	Locality Inspector	n/a	VDOT - Civil Rights	Local Government	VDOT - Civil Rights	Construction Division Memorandum CD 2002-2 CD 2000-4 DBE Compliance Instructional Guide
DBE Liaison Designation	Point of contact	Every six (6) months	Contractor	n/a	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	2007 VDOT Rd. & Br. Specs §107.14
DBE Activity Narrative	Document DBE activity	Within 30 days after NTP and prior to 1st estimate	Contractor	Contractor	n/a	Local Government	VDOT - Civil Rights <sup>10</sup>	VDOT - Civil Rights	2007 VDOT Rd. & Br. Specs §107.14
C-63	DBE Payment Compliance Report	Quarterly, five days after quarter ends: October 5, January 5, April 5, and July 5.	Contractor	Contractor	n/a	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	49 CFR Part 26, 2007 VDOT Rd. & Br. Specs §107.15, CD 2007-5, CD 2007-6, CD 2002-2
<b>Contractor/Subcontractor Responsibilities - EEO (Equal Opportunity)</b>									
C-64	Contractor /Subcontractor Equal Employment Opportunity Information Request	Posted to CRD Portal per Contractor; submitted to CO CRD every six months as long as contractor has active contract	Contractor or Subcontractor <sup>11</sup>	Contractor or Subcontractor <sup>11</sup>	n/a	Local Government	VDOT Civil Rights	VDOT - Civil Rights	2007 VDOT Rd. & Br. Specs §107.15 CD 97-20
Company EEO Meeting Minutes	Document meetings where contractor reviews and explains EEO policies to employees	Posted to CRD Portal per Contractor; submitted to CO CRD every six months as long as contractor has active contract	Contractor or Subcontractor <sup>11</sup>	Contractor or Subcontractor <sup>11</sup>	n/a	Local Government	VDOT - Civil Rights <sup>13</sup>	VDOT - Civil Rights	FHWA-1273, 2007 VDOT Rd. & Br. Specs §107.14 CD 97-20
Equal Opportunity Officer Designation	Contractor designates an employee to promote and implement the contractor's EEO Program	Posted to CRD Portal per Contractor; submitted to CO CRD every six months as long as contractor has active contract	Contractor or Subcontractor <sup>11</sup>	n/a	n/a	Local Government	VDOT - Civil Rights <sup>14</sup>	VDOT - Civil Rights	FHWA-1273, 2007 VDOT Rd. & Br. Specs §107.14 CD 97-20
C-57	Total Project Employment	Monthly during <sup>18</sup> three (3) months of project activity and annually by August 15 for last payroll period preceding July month end	Contractor or Subcontractor <sup>11</sup>	Contractor or Subcontractor <sup>11</sup>	VDOT Civil Rights <sup>15</sup>	Local Government	VDOT - Civil Rights	VDOT - Civil Rights	FHWA-1273, 2007 VDOT Rd. & Br. Specs §107.14
<b>Labor Compliance</b>									
C-28	Hourly Wage Rates	Prior to second estimate. Every 90 days throughout project.	Contractor and Subcontractor <sup>16</sup>	Contractor and Subcontractor <sup>16</sup>	Locality Inspector	Local Government	Kept on-site	VDOT - Civil Rights	FHWA-1273(IV)(1), Davis Bacon Act Fair Labor Standards, 2007 R&B Spec. §107.13
Davis Bacon Worksheets	These worksheets are to make sure employees are earning the amount listed on the payroll. This excludes superintendents, foremen and clerical.	One random interview per quarter that may include prime and/or subcontractors <sup>17</sup>	Local Government	Local Government	n/a	Local Government	Kept on-site	VDOT - Civil Rights	FHWA-1273
Certified Payrolls	Payrolls must agree with the predetermined wage rates that are contained in the contract.	Within two (2) weeks after workweek.	Contractor and Subcontractors	Contractor and Subcontractor <sup>16</sup>	n/a	Local Government	Kept on-site	VDOT - Civil Rights	FHWA-1273
C-56/WH-348	Statement of Compliance	Review first payroll of prime and subs thoroughly, then as needed to ensure that conformance with wage provisions of the contract are attained. Payrolls to be sent to District Civil Rights Manager's offices	Contractor and subcontractors	Contractor and Subcontractor <sup>16</sup>	n/a	Local Government	Kept on-site	VDOT - Civil Rights	FHWA – 1273 (V)(3), Copeland "Anti-Kickback) Act, Davis Bacon Act, CD 2005-1
<b>Items Contractor to Post on Project Bulletin Board</b>									
1) Federal Minimum Wage Poster 2) Job Safety & Health Protection Poster 3) Your Rights under the FMLA Poster 4) Employee Polygraph Protection Act Poster 7) C-60 Poster 5) C-58 Poster 8) Pre-determined wage rates (General Provisions pp. 91-94) 6) C-59 Poster 9) EEO Officer / DBE Liaison 10) EEO Policy 11) EEO is the Law Poster 12) FHWA 1022 13) FHWA 1495 & 1495a 14) USDOT 1321									