

## Chapter 8

### Title VI and Related Statutes and DBE Program Provisions for Metropolitan Planning Organizations

#### 8.1 PURPOSE

This chapter provides guidance for reviewing metropolitan planning process consistency with *Title VI of the Civil Rights Act of 1964*, as amended, and related statutes, and 49 Code of Federal Regulations, Part 26.

#### 8.2 AUTHORITY

The authority providing for the joint certification of a metropolitan planning organization (MPO), including the area of Title VI, is found in **Part 23 Code of Federal Regulations (C.F.R.) Section 450.334**.

#### 8.3 SCOPE

This chapter is for the use of Department planning staff when reviewing metropolitan planning process consistency with *Title VI of the Civil Rights Act of 1964*, as amended, and related statutes, and 49 Code of Federal Regulations, Part 26.

#### 8.4 REFERENCES

**42 United States Code (U.S.C.) 2000d-2000d-7 (Title VI of the Civil Rights Act of 1964 as amended)** provides that: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from, participation in, or be denied the benefits of, or be subjected to discrimination under any program, or activity receiving Federal financial assistance.")

**23 U.S.C. 324, 29 U.S.C. 794 (Section 504, Rehabilitation Act of 1973), 42 U.S.C. 12132-12133 (Americans with Disabilities Act of 1990), and 42 U.S.C. 6101 - 6107** (extend the protections under Title VI of the Civil Rights Act of 1964 to prohibit discrimination based on sex, disability, and age.)

**Public Law 100-259 (Civil Rights Restoration Act of 1987)** restored the board, institution-wide scope and coverage of the nondiscrimination statutes to include all

programs and activities of federal-aid recipients, sub-recipients and contractors, whether such programs and activities are federally assisted or not federally-assisted. **23 C.F.R. 450.316(b)(2)** (requires that the metropolitan transportation planning process “[b]e consistent with Title VI of Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall, on the grounds of race, color, sex, national origin, or physical handicap, be excluded from participation in, be denied benefits, or be otherwise subjected to discrimination under any program receiving Federal assistance from the United States Department of Transportation.”

**Procedure No. 275-010-010-e, TITLE VI PROGRAM and RELATED STATUTES Implementation and Review Procedure, Florida Department of Transportation, November 17, 2005**

**Form No. 001-275-00-c Title VI and Related Statutes Nondiscrimination Agreement**

**49 Code of Federal Regulations (C.F.R.), Part 26:** establishes the federal guidelines for participation of Disadvantaged Business Enterprises (DBEs) in U.S. Department of Transportation funded contracts.

**Florida Department of Transportation Disadvantaged Business Enterprise Plan**

**Form No. 001-275-015-i, Disadvantaged Business Enterprise Utilization Policy, March 17, 2006**

## **8.5 CERTIFICATION OF MPO PLANNING PROCESS CONSISTENCY WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

Pursuant to **23 C.F.R. 450.334(a)(3)**, the Florida Department of Transportation and each MPO must “...annually certify to the Federal Highway Administration (FHWA) that the planning process is addressing the major issues facing the area and is being conducted in accordance with all applicable requirements of ... Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794 ...”

## **8.6 TITLE VI AND RELATED STATUTES NONDISCRIMINATION AGREEMENT**

As a sub-recipient of the Florida Department of Transportation, each MPO is required to sign a Title VI and Related Statutes Nondiscrimination Agreement with the State to assure Title VI and related statutes compliance. The official name of the form is [001-275-00-C Title VI and Related Statutes Nondiscrimination Agreement](#). This agreement will soon be available for downloading from the Internet: <http://inonet.dot.state.fl.us/tlofp/default.asp>.

The Nondiscrimination Agreement acts as the MPO's Title VI Plan pursuant to 23 CFR Part 200 and the Federal Highway Administration's Title VI Implementation Guide. It includes all of the Title VI requirements that an MPO agrees to take on in return for receiving Planning (PL) funds from the State, including Title VI Assurances, a nondiscrimination policy statement, a discrimination complaint procedure, and boilerplate language to be included in all MPO bids, contracts, and agreements.

The Title VI and Related Statutes Nondiscrimination agreement must be signed annually by the MPO's signature authority, and submitted with the MPO's annual Unified Planning Work Program (UPWP). The District's Planning staff is encouraged to work with the respective District's Title VI Program Area Officer in Planning to review the MPOs updated Title VI Nondiscrimination Agreement annually to ensure compliance with the Title VI Program and Related Statutes.

## **8.7 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

49 C.F.R. Part 26 establishes the federal guidelines for participation of Disadvantaged Business Enterprises (DBEs) in U.S. Department of Transportation funded contracts. As a recipient of federal planning funds and because DBE is one of the five core areas of MPO certifications, MPOs are impacted by these requirements (**23 C.F.R. 450.334**).

In order to be classified as a DBE, the company must meet several criteria including:

- **Ownership:** The company must be 51% owned by a socially and economically disadvantaged individual(s).
- **Disadvantaged:** Women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian-Pacific Americans, or other minorities found to be disadvantaged by the U.S. Small Business Administration (SBA).

- **Business Size Determination:** The company must not have annual gross receipts over \$19.57 million in the previous three fiscal years.
- **Personal Net Worth:** The personal net worth of the owner must be less than \$750,000.
- **Independence:** The company must not be tied to another firm in such a way as to compromise its independence and control.
- **Control:** The owner must possess power to direct or cause the direction of the management and policies of the firm.
- **Burden of Proof Allegation:** Applicants for DBE certification carry the initial burden of proof regarding their eligibility.

MPOs are not responsible for determining the eligibility of any particular company to be certified as a DBE. However, they do have several responsibilities when it comes to participation of DBEs in the consultant contracts that they put out to bid. The Department has developed and implemented a Unified Certification Program that all recipients of USDOT dollars must use as their DBE directory. A list of certified UCP DBEs is maintained by the Department's Equal Opportunity Office at <http://www.bipincwebapps.com/biznetflorida/>

### **8.7.1 DBE Plan**

MPOs must have a USDOT approved DBE plan. An MPO may adopt the FDOT DBE plan as its own, or it may create its own DBE plan. If an MPO chooses the latter, it must submit it to the FDOT Equal Opportunity Office for review. FDOT will review the DBE plan and forward it to the Florida Division of FHWA with a recommendation for approval or disapproval. The mailing address for the FDOT Equal Opportunity Office is:

Florida Department of Transportation  
Equal Opportunity Office  
605 Suwannee Street, M.S. 65  
Tallahassee, Florida 32399  
Attn: DBE Coordinator

Though a city or county DBE plan may have already been approved by another federal agency, the MPO still must receive the approval of USDOT as there are specific federal requirements for transportation contracts that may not be addressed in other parts of the Code of Federal Regulations.

The Department's DBE Program for highways is a race neutral program which means that it expects to achieve our DBE goal through the normal competitive bid process. The Department's DBE goal is adjusted annually for the federal fiscal year. For MPOs that choose to adopt the Department's DBE plan, it can be found online at [www.dot.state.fl.us/equalopportunityoffice/DBEProgram.htm](http://www.dot.state.fl.us/equalopportunityoffice/DBEProgram.htm)

### **8.7.2 DBE Materials for MPOs**

Regardless of whether an MPO creates its own DBE plan or adopts the Department's plan, there are several materials that MPOs should use. They include:

- **Bid Opportunity List ([Form 275-030-10](#))**: This form should be included with all Requests for Proposals and completed by consultant bidders.
- **DBE Participation Statement ([Form 375-030-21](#))**: This form should be included with all Requests for Proposals and completed by consultant bidders.
- **Equal Opportunity Reporting System (BizWeb)**:
  - [www.bipincwebapps.com/bizwebflorida/](http://www.bipincwebapps.com/bizwebflorida/)
  - This online reporting tool is used to report actual payments to DBEs.
- **DBE Directory**:
  - [www.bipincwebapps.com/biznetflorida/](http://www.bipincwebapps.com/biznetflorida/)
  - This online DBE directory is maintained by the Department and is updated daily.

### **8.7.3 DBE Contract Assurances**

Under 49 C.F.R. 26.13, MPOs are required to have a signed policy statement expressing their commitment to DBE participation. A sample statement is included at the end of this chapter as well as the UPWP chapter of the MPO Handbook (Chapter 3). MPOs are encouraged to include this signed statement in their final UPWP. The same federal regulation requires that each contract that an MPO signs with a consultant and/or subconsultant include the following assurance:

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

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PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN  
DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

It is the policy of the (insert name of MPO) that disadvantaged businesses, as defined by 49 Code of Federal Regulations, Part 26, shall have an opportunity to participate in the performance of MPO contracts in a nondiscriminatory environment. The objectives of the Disadvantaged Business Enterprise Program are to ensure non-discrimination in the award and administration of contracts, ensure firms fully meet eligibility standards, help remove barriers to participation, create a level playing field, assist in development of a firm so it can compete successfully outside of the program, provide flexibility, and ensure narrow tailoring of the program.

The (insert name of MPO), and its consultants shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform the contract work of the (insert name of MPO) in a non-discriminatory environment.

The (insert name of MPO) shall require its consultants to not discriminate on the basis of race, color, national origin, sex, age, disability, religion, or familial status in the award and performance of its contracts. This policy covers in part the applicable federal regulations and the applicable statutory references contained therein for the Disadvantaged Business Enterprise Program Plan, Chapters 337 and 339, Florida Statutes, and Rule Chapter 14-78, Florida Administrative Code.

Chairperson

Name of MPO

Date