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Chapter 4. Civil Rights

4.1 Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 and other Federal Nondiscrimination statutes prohibit discrimination based on race, color, national origin and sex (gender) in the provision of benefits and services in programs and activities receiving Federal funds. The U.S. Department of Transportation's (USDOT) implementing regulations are contained in 49 CFR Part 21 and 23 CFR 200. These regulations require: Recipients to execute Title VI Assurances as a condition of Federal aid. These Federal regulations require GDOT to ensure that all local agencies receiving USDOT funds administered by GDOT are in compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, Executive Order 12250, Executive Order 12898, Executive Order 13166, 49 CFR Part 21, 23 CFR Part 200.

The Federal Highway Administration (FHWA) requires each LG that receives Federal funds through GDOT to establish a Title VI Program to prevent discrimination in the provision of benefits and services on federally funded transportation programs and activities. This Title VI Program is a system of policies and procedures designed to monitor agency (and sub-recipient agency) compliance, address complaints, and eliminate discrimination when found to exist.

A LG serving a population of 100,000 or more is required to have a Title VI Plan (as provided by the Civil Rights Act of 1964). A local government serving a population less than 100,000 may use an abbreviated Title VI Plan, a Nondiscrimination Agreement. The Civil Rights Restoration Act of 1987 broadened the scope of Title VI coverage by expanding the definition of the terms "programs and activities" to include all programs and activities of Federal aid recipients, sub-recipients, and contractors, whether such programs and activities are federally funded or not.

The policies and procedures to address nondiscrimination must be included in the LG Title VI Plan. Their Plan for implementing Title VI must be presented to the GDOT Equal Opportunity Division (EOD) for review and approval. Contact information for the GDOT EOD and District Offices is found at the GDOT web site.

4.2 Title VI Plan Development

A Title VI Plan is a legal document that imposes individual legal liabilities to the signatory agency that are nontransferable. Each LG must develop a Title VI compliance document that reflects its individual Federal-aid transportation program structure. The GDOT EOD will provide each LG the technical support it needs to develop a Title VI Plan or a Title VI Nondiscrimination Agreement for agencies with populations of less than 100,000. It is the LG responsibility to coordinate with the EOD for content and format of the Title VI Plan. The Title VI Plan will describe how recipients of Federal financial assistance will implement their Title VI Program

4.3 Title VI Standard Assurances

The DOT Order 1050.2 and 23 CFR 200.9(b) (3) requires Standard Title VI Assurances to be included by reference in every contract, grant or property regardless of its funding source. The agency's CEO signs these assurances. GDOT EOD will provide the local agency with Title VI reporting requirements to GDOT.

4.4 Annual Title VI Update and Accomplishment Report

All agencies with approved Title VI Plans or Nondiscrimination Agreements are to annually prepare a report of their Title VI Program implementation compliance activities. This report is due one year from the date of approval of the Title VI plan and then annually on that same date. This is to describe the accomplishments that occurred during the year. This Annual Title VI Update and Accomplishment Report will be completed by the local agency and forwarded to the District Title VI Liaison, who will forward it to the Title VI Coordinator, at GDOT EOD for review and approval. Each report will attach a completed questionnaire that addresses its Federal-aid transportation program. A copy of the questionnaire will be provided to local agency with GDOT EOD Title VI Plan or Nondiscrimination Agreement approval.

4.5 Revisions to the Local Agency Title VI Plan or Nondiscrimination Agreement

The Plan will always contain current information on names of staff and any other needed revisions. Substantial revisions are to be submitted to the Title VI Coordinator immediately for review and approval by the GDOT EOD. Substantial revisions are to be submitted to the District Title VI Liaison immediately for review and approval by the Title VI Coordinator at GDOT EOD. Local agencies only need to submit a revised Title VI document when program changes such as the ones described above take place.

4.6 Title VI Complaint Investigations

All complaints shall be forwarded to the Title VI Coordinator at GDOT EOD. The Title VI Coordinator will immediately forward the complaint to the FHWA Headquarters Civil Rights Office (HCR) to determine who is to investigate the complaint. No agency is allowed to investigate a complaint against itself. All findings from state or local investigations are preliminary and subject to the concurrence of FHWA HCR. FHWA HCR will render final decisions on all cases. There are no administrative appeal forums in Title VI complaints. Once FHWA HCR issues its final agency decision (FAD), a complainant in disagreement with such determination may file an appeal with the appropriate U.S. District Court.

An annual log of complaints must be maintained by the local agency. The log of complaints must contain the following information for each complaint filed:

- Name and address of the person filing the complaint
- Date of complaint
- Basis of complaint
- Disposition of complaint
- Status of complaint

Only qualified, well-trained investigators should conduct these investigations. No agency is allowed to investigate a complaint against itself. All findings from state or local investigations are preliminary and subject to the concurrence of FHWA Headquarters Civil Rights (HCR). FHWA HRC will render final decisions in all cases. There are no administrative appeal forums in Title VI complaints. Once FHWA HCR issues its final agency decision (FAD), a complainant in disagreement with such determination may file an appeal with the appropriate US District Court.

4.7 Title VI Compliance Reviews

GDOT/FHWA will conduct periodic reviews of compliance with Federal Title VI regulations. Compliance review is initiated by the GDOT Title VI Coordinator by notifying the District Title VI Liaison to make arrangements to conduct periodic compliance reviews of local agencies with approved Title VI Plans. The compliance review will focus on how effectively the local agency has implemented its approved Title VI Plan. Documentation is gathered and individuals with Title VI responsibilities are interviewed as part of the review process. The local agency will be notified in writing of the scheduled date and the documents that will be required for the on-site review.

A Local Government is found to be in compliance if no deficiencies are found during the on-site review. The LG will be told at the conclusion of the review and be notified in writing that it is in compliance.

A Local Government will be found in non-compliance if deficiencies are identified during the review. The LG will be notified in writing of the deficiencies and will have 90 days to correct them. After an agency corrects deficiencies, it will be notified in writing that it is in compliance. If a local agency does not correct Title VI Program deficiencies identified by GDOT or FHWA, it may be subject to sanctions including the suspension of FHWA funding.

4.8 Other Nondiscrimination Statutes Related to Title VI

Limited English Proficiency – LEP (Executive Order 13166) is one of the bases covered under Title VI is national origin. One type of national origin discrimination is discrimination based on a person's inability to speak, read, write, or understand English. The Federal government and those receiving Federal financial assistance (recipients, sub-recipients, contractors) must take reasonable steps to ensure that LEP persons have meaningful access to the programs, services, and information those entities provide. This may require providing written and/or oral communications in a language other than English. More information regarding LEP responsibilities can be found at: [Federal Agency LEP Guidance and Language Access Plans](#) and at www.usdoj.gov/crt/cor/lep/dotlep.htm.

4.9 Environmental Justice (Executive Order 12898)

Procedures for addressing Environmental Justice can be provided by the Title VI Coordinator at GDOT EOD or may be found in Appendix C or at:

<http://www.dot.ga.gov/PS/DesignManuals/EnvironmentalProcedures>

4.10 Construction Contracts EEO Requirements

To effectively assure Equal Employment Opportunity (EEO), it is the policy of the Federal Highway Administration (FHWA) to require that all Federal aid highway construction contracts include specific requirements related to 23 CFR Part 200, 23 CFR Part 230, 23 USC Section 140, 23 CFR 230 Subpart A and Subchapter A 1.36, as well as, other requirements to implement the Title VI Program, related civil rights laws, and regulations. These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more. To be eligible for Federal aid funds, the local agency must comply with the civil rights requirements.

Local agencies and their contractors must each designate an EEO officer to ensure compliance with the EEO, Title VI, Section 504, and training policy. The GDOT Equal Opportunity Division (EOD) will monitor both the local agency and its contractors for compliance as part of the normal project management reviews and through contract compliance reviews of selected contracts.

The local agency, by signature to the Local Agency Agreement, agrees to the following:

- a. To assist and cooperate actively with the state in obtaining contractor and subcontractor compliance with the equal opportunity clause and rules, regulations, and relevant orders of the FHWA and/or Secretary of Labor.
- b. To furnish the state such information as it may require for the supervision of such compliance and otherwise assist the state in the discharge of its primary responsibility for securing compliance.

The local agency must consult the *Specifications*, the *General Provisions*, the *Special Provisions*, and the *GDOT Construction Manual* <http://www.dot.ga.gov/PS/Business/Source> to administer the EEO and training programs.

4.11 EEO Contract Administrations

The local agency has the responsibility to:

- a. Ensure all federal regulations are inserted into the prime contract and subsequent subcontracts as applicable. Including but not limited to FHWA 1273, Prompt Payment, DBE Special provision – Criteria for Acceptability, Executive Order 11246, etc. Copies of federal provisions are available through the GDOT Project Manager.
- b. Conduct preconstruction conferences during which EEO and training Special Provisions for Federal aid contracts are discussed with the contractor.
- c. Ensure that the contractor posts and maintains notices and posters setting forth the contractor's EEO policy. A supply of Office of Federal Contract Compliance Programs (OFCCP) Poster No. 1420, Equal Employment Opportunity are available online.
- d. Monitor on-site compliance with the EEO and training Special Provisions of Federal aid contracts.
- e. Ensure that their contractors locate, qualify, and increase the skills of minority groups, women employees, and applicants for employment as specified in the training provisions.
- f. Prepare and/or ensure the preparation of the required EEO and training reports.
- g. Perform labor interviews and payroll inspections to verify compliance with the Davis Bacon Act.
- h. Perform Commercial Useful Function (CUF) inspections on all participating DBEs. Refer to Appendix F for CUF Inspection form for Construction projects and instructions. <http://www.dot.ga.gov/PartnerSmart/Business/Pages/DBE.aspx#tab-6>

4.12 Construction Contractor and Subcontractors EEO Reports

The contractor and subcontractors must submit the *Monthly Employment Utilization Report* for all the employees in the work force including an ethnic breakdown and the classification for each employee in each trade on their Federal aid highway construction projects under construction during each month. The report is a summation of employees on their monthly payroll period. The local agency retains this form in its project files. The local agency then summarizes these reports received from all contractors and subcontractors that were working on Federally-assisted projects. This report is prepared by the local agency and sent to the GDOT Project Manager.

4.13 Civil Rights Monitoring During Construction

During the project construction, the local agency must monitor the contractor's performance to ensure compliance with its Title VI, Section 504 and EEO. The local agency's designated EEO Officer will conduct reviews with the contractor, maintain records, reports, and required Title VI statistical data concerning the contractor's performance, and ensure that the local agency itself is in compliance with its EEO policy.

The contractor will submit certified detailed invoices showing the related weekly payroll number, name of the trainee, total hours trained under the program, previously paid hours, hours due, and the dollar amount due this estimate. These invoices must be kept with the project records and will become part of the temporary final records to be retained for three years after acceptance of the project by GDOT and FHWA. Refer to the GDOT Construction Manual and procedures for reviewing contractor payrolls.

4.14 Contractor Compliance Review

A 23 CFR 230 Contractor Compliance review may be performed by the GDOT EEO Office anytime during the life of the project. Upon notification, the local agency's designated EEO Officer shall assist in compliance review process.

4.15 Contractor Provided Training

The Contractor shall provide training according to the approved training program and the contract provisions. Approved training programs are contained in the Georgia On-The-Job Training Program Manual available online. The Contractor training plan and individual trainees must be forwarded to the GDOT EEO Office for concurrence prior to local agency approval being granted to the contractor.

When training hours are assigned to the project, the local agency must verify that the trainee is on the project by periodically conducting interviews to determine if training is beneficial and in accordance with the approved program. The "Trainee Questionnaire" form or similar forms should be used by the LG to document the employee interviews and the contractor's compliance with the training requirement. For examples of the form the GDOT Project Manager should be contacted.

4.16 Overview - Disadvantaged Business Enterprises (DBE)

Requirements of the DBE Program, as prescribed in 49 CFR Part 26, apply to all recipients (and Sub-recipients) of highway, transit, and airport funds. GDOT establishes an annual goal submitted

to FHWA August 1, every year for acceptance. The annual goal is reached through an approved methodology. A local agency, when participating in programs funded in whole or in part with funds made available by the GDOT, must either adopt GDOT DBE Plan, or develop an equivalent plan for approval by USDOT.

While GDOT EOD has the overall responsibility for administration and implementation of GDOT DBE Program, local agencies (as sub-recipients) also have responsibility to ensure that their Federally-assisted contracts are administered in accordance with the State's approved DBE Program Plan, which is available on the GDOT web site.

GDOT EEO Officer may conduct compliance reviews of the local agency's administration of the DBE Plan. A local agency that is found to be in noncompliance may be subject to formal enforcement action (suspense or loss of Federal funds and/or CA status).

Each Federally-assisted contract/subcontract must include the following assurance:

The contractor, sub-recipient 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.

4.17 Local Government DBE Compliance Procedures

The GDOT establishes an annual aggregate DBE goal for all Federal-aid highway projects. To achieve this aggregate goal, the GDOT sets an individual goal for each federally assisted highway project as described in GDOT Policy and Procedure 8201-1.

The local agency is responsible for ensuring program compliance and monitoring its contractor's DBE activities. To obtain a DBE Goal, the local agency must send a cost estimate for the proposed services in electronic format to the GDOT Project Manager. The GDOT EEO Office will propose a goal to a GDOT DBE Committee for approval. The specific DBE Goal is included in the Project Agreement and the bid documents. The local agency is responsible for insuring that the contractor proposes to use qualified DBE firms to meet the goal for their projects. The monitoring of DBE participation will be tracked using the amounts paid DBE participants. See DBE Special Provision: Criteria For Acceptability.

GDOT will maintain and make available to interested persons a directory identifying all firms eligible to participate as a DBE in its program. The DBE directory/UCP Directory is available online. Information is also available at the following:

Georgia Department of Transportation
Equal Opportunity Division
Equal Opportunity Director
One Georgia Center
600 West Peachtree Street, N.W. 7th Floor
Atlanta, GA 30308
(404) 631-1972

Bidders failing to meet the DBE goal requirement must show that they made good faith efforts to meet the goal, in order to be awarded the contract. After opening bids, the local agency must submit to the GDOT Project Manager the successful bidder's certified DBE subcontractors, also known as the DBE commitment list.

The local agency is responsible for the enforcement of the DBE regulations and policies during the construction projects. The local agency shall comply with these policies and regulations by assuming the duties and responsibilities of the Acquisition Division, Bidding Administration, the District Office, and the Area Engineer. The local agency will submit the required reports to the Area Engineer and the information will be submitted to GA EOD and FHWA as needed. The local agency must demonstrate good faith efforts in monitoring DBE participation. In the event of a goal shortfall, the local agency shall assess the contractor's good faith efforts and forward a copy of their decision to the Area Engineer.

4.18 Americans with Disabilities Act (Ada)

The LG will ensure compliance with the Americans with Disabilities Act as found in the Title II ADA and Section 504 of the Rehabilitation Act.

The Title II regulation covers "public entities". "Public entities" include any State or local government and any of its departments, agencies, or other instrumentalities.

If a LG project includes pedestrian facilities, the facility must provide pedestrian access for persons with disabilities in compliance with ADA Title II. Federal, State and local governments must provide pedestrian access for persons with disabilities whenever a pedestrian facility exists in compliance with Section 504 standards. Information regarding the design of transportation facilities and compliance may be found at ROADS-Repository for Online Access to Documentation and Standards (<http://www.dot.ga.gov/PS/DesignManuals>).

All activities, services, and programs of public entities are covered and must ensure that individuals with disabilities are not excluded from services, programs and activities because buildings are inaccessible. State and local governments must ensure effective communication with individuals with disabilities. Where necessary to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids.

Unlike Section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, Title II extends to all the activities of State and local governments whether or not they receive Federal funds.

Complaints

Any individual who believes that he or she is a victim of discrimination prohibited by the regulation may file a complaint. Complaints on behalf of classes of individuals are also permitted.

Complaints should be in writing, signed by the complainant or an authorized representative, and should contain the complainant's name and address and describe the public entity's alleged discriminatory action.

Complaints may be sent to:

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, DC 20035-6738

Complaints may also be sent to agencies designated to process complaints under the regulation, or to agencies that provide Federal financial assistance to the program in question.

Visit the following FHWA web page for additional information relating to ADA requirements:
http://www.fhwa.dot.gov/civilrights/ada_qa.htm#q1.