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**NOTE:** This Chapter has associated appendices and forms which can be found at [www.dot.ny.gov/plafap](http://www.dot.ny.gov/plafap).
13.1 INTRODUCTION

This chapter is an overview of federal Civil Rights laws, rules, regulations, and presidential executive orders for locally administered federal aid transportation projects. It has always been the New York State Department of Transportation’s (NYSDOT) policy to ensure equal opportunity and to prevent and eliminate discrimination in all of its activities. NYSDOT and project Sponsors share this compliance responsibility in meeting the requirements for federal Civil Rights law on locally administered federal aid transportation projects. Other Chapters in the Procedures for Locally Administered Federal Aid Projects (PLAFAP), NYSDOT's Construction Administration Manual or CAM, the Highway Design Manual or HDM, and the Regional Local Project Liaison’s (RLPL) direction provide more Civil Rights functional guidance.

13.2 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin. Specifically, 42 USC 2000d states that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

As amended, Title VI includes other nondiscrimination statutes affording legal protection, which include protection on the basis of sex, age, and disability through Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 USC 324) [sex], Age Discrimination Act of 1975 [age], and Section 504 of the Rehabilitation Act of 1973/Americans With Disabilities Act of 1990 [disability]. Taken together, these requirements define the Title VI program and requirements.

Title 23 CFR 200 clarifies that programs and activities receiving federal financial assistance from the United States Department of Transportation (USDOT) are required to comply with Title VI requirements. This includes Sponsors who receive Federal Highway Administration (FHWA) funding through NYSDOT. As sub-recipients of federal financial assistance on locally administered federal aid transportation projects, Sponsors must have policies and procedures in place that address Title VI requirements.

13.2.1 Sponsor’s Title VI Requirements

Title VI Assurance is a shared responsibility for all parties involved in delivering federal aid projects. For example, Sponsors must submit minority contracting information to the RLPL prior to awarding any contract and work with NYSDOT staff to assure data and process quality throughout the project delivery and construction processes. NYSDOT requires software reporting, currently in EBO or Equitable Business Opportunities software, to monitor construction contract payments and DBE goals, commitments, and attainments. The results go into NYSDOT’s semi-annual Title VI Compliance Reviews and assist our regular monitoring efforts.

Sponsors are required to implement a system of procedures and actions for Title VI compliance, including:

- Developing Title VI Assurances and a Title VI Policy Statement identifying a Title VI Coordinator, also known as the Sponsor’s Responsible Local Official (RLO).
- The RLO must have a responsible position in the Sponsor’s organization and have ‘easy access’ to the agency’s leadership.
- Notifying all departments in the Sponsor’s organization of the Title VI Coordinator’s responsibilities for initiating and monitoring Title VI activities.
• Developing procedures for processing external discrimination complaints.
• Notifying NYSDOT of any external discrimination complaints and lawsuits.
• Providing accommodations for Limited English Proficient (LEP) persons as needed.
• Ensuring nondiscrimination in the Sponsor’s public participation process.
• Collecting and analyzing data to ensure nondiscrimination in the Sponsor’s policies, programs, and activities.
• Ensuring that contracts contain the appropriate Title VI contract provisions.
• Ensuring non-discrimination in contract awards.

The Title VI Coordinator’s or RLO’s responsibilities include:
• Identifying DBE goals and commitments during the contract pre-award phase and completing the award package and certifications detailed in Chapter 14.
• Assisting program personnel with Title VI problems or any discriminatory practices in the contracting and construction processes by monitoring contract to progress up to contract completion and closeout as outlined in Chapter 15.
• Take appropriate action when notified by NYSDOT of any potential Title VI problems or discriminatory practices.
• Being the point of contact for Title VI implementation and monitoring of programs. Work with industry to meet DBE and EEO goals including Good Faith Efforts or GFE when needed. The Sponsor should post explanations, exceptions, and requests for additional GFE information, under ‘Notes’ in EBO.
• Ensuring that Title VI requirements are included in any internal policy directives and procedures.
• Implementing procedures for the prompt processing of Title VI external discrimination complaints
• Attend training, and assure sponsor’s staff has adequate training, on Title VI and other nondiscrimination activities as needed.
• Coordinating the development and implementation of any needed Title VI and related statutes training programs.
• Developing Title VI information for public dissemination, and where appropriate, in languages other than English.

Sponsors shall prohibit discrimination during all phases of the work, whether directly or through their consultants and contractors, by monitoring and managing the work for compliance. Some discriminatory examples may include:
• Denying program services, financial aid, prompt payment, or other benefits.
• Providing different program services, financial aid, or other benefits; or providing them in a manner different from that provided to others.
• Segregating or separately treating individuals or groups in any matter related to the receipt of any program service, financial aid, or benefit.
• Restricting in any way the enjoyment of any advantage or privilege enjoyed by others receiving any program service, financial aid, or other benefits.
• Denying persons, the opportunity to participate as a member of a planning, advisory, or similar body; or
• Denying persons, the opportunity to participate in any program or activity that receives Federal financial assistance.

Sponsors have the option of:
• Adopting by resolution NYSDOT’s own Title VI Plan (see Appendix 13-5 Title VI Plan).
• Developing their own Title VI Plan using Appendix 13-5 as a guide.
The State-Local Agreement (SLA) contractually obligates the Sponsor to ensure that all federal civil rights laws, rules, regulations, and presidential executive orders are adhered to in all of their policies, procedures, programs, and activities.

### 13.2.2 Title VI Complaints

The Sponsor shall develop procedures for prompt processing and disposition of external Title VI Discrimination Complaints. The Sponsor's Title VI Coordinator or designee shall conduct a preliminary inquiry to determine the validity and jurisdiction of the complaint, including reasonable attempts to resolve all complaints at the lowest administrative level. Any person who believes that they have been discriminated against based on their race, color, national origin, sex, age or disability in a program, activity, or service may file a complaint with the Sponsor or an agency funded through the Sponsor.

The complaint may be filed by the individual or their representative. A complaint must be filed no later than 180 days after the date of the alleged act of discrimination. Copies of all Title VI Discrimination Complaints received by the Sponsor must be forwarded to NYSDOT’s Office of Civil Rights, with a copy sent to the Regional Local Project Liaison (RLPL). If the complainant is not satisfied with the Sponsor’s investigation or the resolution of the complaint, the complainant may follow-up directly with NYSDOT’s Office of Civil Rights.

Examples that demonstrate compliance include:

- Written procedures for processing and investigating external discrimination complaints
- External discrimination complaints filed under Title VI against the Sponsor in which the Sponsor or its sub-recipient is named as the respondent. (Complaints should be forwarded to NYSDOT’s Office of Civil Rights for investigation within 10 calendar days.)
- Complaint log or method to track complaints that identifies:
  - Each complainant by race, color, sex, and national origin
  - The recipient of the complaint
  - The nature of the complaint
  - The date(s) the complaint was filed and the date the investigation completed
  - The disposition
  - The date of the disposition

Other pertinent information:

- Methods to distribute external discrimination complaint handling procedures to agency personnel
- List of personnel trained in handling external discrimination complaint investigations and the training they attended
- Methods for making the public aware of the procedures for filing a discrimination complaint, such as information on an external Web site or brochure
- External discrimination complaint form

### 13.2.3 Title VI Program Reviews

In accordance with 23 CFR 200.9(b), NYSDOT must conduct Title VI program reviews of sub-recipients, including Sponsors. The purpose of the program reviews is to evaluate the Sponsor’s programs, policies, procedures, contract specifications, manuals, etc. in order to ensure compliance with the requirements of Title VI of the Civil Rights Act of 1964, as amended. Sponsors should summarize how they monitor nondiscrimination in their relevant programs and activities, which could include the following program areas:
• Planning
• Project Development (Design)
• Right-of-Way
• Construction
• Public Involvement
• Research

Formalized reviews must be conducted externally on sub-recipients of federal funds. Sub-recipients include all sponsor agencies through which NYSDOT passes Federal funds, including local agencies, colleges, universities, and MPOs. Because 59% of federal aid projects were delivered by local Sponsors in 2013, this represents a large portion of NYSDOT’s program, making this an important process.

Title **23 CFR 200.9(b)(7)** Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

(13) Establishing procedures for pre-grant and post-grant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.

These formalized compliance reviews are a critical component of a Title VI program, not just because they are required by **23 CFR 200.9**, but because they are the primary mechanism for assuring nondiscrimination in internal NYSDOT functions and sub-recipients. NYSDOT’s program review of Sponsors will consist of formal reviews conducted by the Office of Civil Rights. Staff from NYSDOT’s Office of Civil Rights will initiate and conduct the review after notifying the Sponsor. The RLPL will be copied on all correspondence concerning Title VI program reviews.

### 13.3 AMERICANS WITH DISABILITIES ACT (ADA)

Section 504 of the 1973 Rehabilitation Act (**Public Law 93-112**) prohibits discrimination on the basis of disability in federally assisted programs. Section 504 requirements for the U.S. Department of Transportation (USDOT) are covered in **49 CFR Part 27**, nondiscrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance. The Americans with Disabilities Act (ADA, 1990, **Public Law 101-336**) is a broader civil rights statute that prohibits discrimination against people with disabilities in all areas of public life.

Sponsor’s Oversight Responsibilities must:

- Ensure all municipal departments are informed of their responsibilities to provide accessibility in their activities, programs, services, and facilities (i.e. department’s public rights-of-way)
- Ensure the Sponsor and its sub-recipients are applying appropriate accessibility standards to their transportation facilities as defined in NYSDOT’s Highway Design Manual (HDM).
- Ensure that all complaints filed under Section 504 and/or the ADA are processed in accordance with established complaint procedures
- Ensure that their ADA Transition Plan is in place and updated per Section 13.3.3 ADA Transition Plan.
13.3.1 **Nondiscrimination**

Title 49 CFR 27.7 requires all programs, services, and facilities are made available to and usable by persons with disabilities. The ADA requires public facilities and programs to be accessible regardless of the funding source. The Act also requires effective communication with persons with disabilities, and state and local governments must respond to their requests. Communication venues and media (public meetings, announcements, publicity, etc.) must also be accessible. Any public meetings or outreach during project development shall comply with Title 49 requirements.

13.3.2 **Self-Evaluation**

Title 49 CFR 27.11 requires federal aid recipients and subrecipients to conduct self-evaluations of policies, practices, and programs for compliance with ADA.

Title 28 CFR 35.105 is the USDOJ Title II regulation and requires public entities (whether or not they are the recipient of federal aid) to evaluate their current programs, services, and activities, and to make the self-evaluation available for public comment. A template for self-evaluation, the ADA Transition Plan Checklist, can be found in Appendix 13-2.

13.3.3 **ADA Transition Plan**

Title 28 CFR 35.150(d)(1) requires “a public entity that employs 50 or more persons” to prepare an ADA Transition Plan identifying non-compliant pedestrian routes and facilities in the municipal Sponsor’s public right-of-way. ADA Transition Plans shall also include a plan and schedule for corrective action. Failure to create and maintain an ADA Transition Plan may result in an entity’s ineligibility to receive federal funds.

If a public entity employs fewer than 50 persons, the entity need only conduct self-evaluations (see section 13.3.2).

The ADA Transition Plan should include detailed information about, the condition of the Sponsor’s pedestrian accessible route network, a list of the physical barriers that limit accessibility on pedestrian facilities, and the schedule to correct any noncompliance; this should include identifying the party responsible for planning the corrective action to ensure all Sponsor facilities are accessible to individuals with disabilities. The completed ADA Transition Plan must also be made available for Public Comment. Reference 28 CFR 35.150(d)(3)(i-iv) and (d)(1).

NYSDOT developed Appendix 13-2, ADA Transition Plan Checklist, and Appendix 13-3 ADA Transition Plan (fillable forms), to assist Sponsors in preparing their ADA Transition Plans. Sponsors are strongly encouraged to use the ADA Transition Plan Checklist in Appendix 13-2 as a guide when preparing their own ADA Transition Plan.

NYSDOT has developed its ADA Transition Plan, which includes an inventory of sidewalks and curb ramps alongside state-owned transportation infrastructure, and a rating for accessibility of each. NYSDOT continues to update this inventory as it completes capital work at these locations as well as periodically refreshes the statewide inventory.

NYSDOT may construct sidewalks, curbs, and curb ramps alongside State highways located in Villages (NYS Highway Law Section 46), Towns (NYS Highway Law Section 140), and Cities (NYS Highway Law Section 349-c); however, under the statutory provisions granting NYSDOT such authority, respective Villages, Towns and Cities are responsible for repairing and maintaining sidewalks, curbs, and curb ramps in their respective municipality. Maintenance
includes both preventive and corrective maintenance. For further information, consult the applicable Highway Law Sections provided above.

When NYSDOT alters a State highway that provides pedestrian access, NYSDOT must design and construct the State highway in such a manner that a barrier to the usability of the streets by a protected class (individuals with disabilities) is not created or retained. (See 28 CFR 35.150, 35.151(b and i)). If NYSDOT does not alter the State highway, it remains the municipality’s legal responsibility to comply with applicable ADA accessibility requirements.

A Sponsor’s ADA Transition Plan shall include a list of locations with physical barriers that limit the accessibility of programs, activities, or services within its jurisdiction, including those identified alongside State highways. However, to ensure a clear understanding of anticipated and upcoming NYSDOT capital work, municipalities should discuss the State inventory and NYSDOT plans with the Regional Local Project Liaison (RLPL).

The Sponsor’s completed ADA Transition Plan must be made available for Public Comment. For more information regarding ADA Transition Plans, contact the RLPL.

13.3.4 Design and Construction

Sponsors must comply with ADA accessibility standards for all facilities they construct, maintain, monitor, or upgrade. Compliance applies to all projects classified as new construction, reconstruction, rehabilitation, or repair, as well as any work undertaken by the Sponsor’s forces. Therefore, existing and proposed pedestrian facilities in a public right-of-way must be provided. The applicability of design and construction standards are addressed in Chapter 9 of this manual.

The Department of Justice and the Federal Highway Administration clarified in the 2013 DOJ/DOT Joint Technical Assistance Informal Guidance Document (https://www.ada.gov/doj-fhwa-ta.htm) that “pavement alteration” activities require a Sponsor to address compliance, and distinguished between “pavement maintenance” activities which do not require such compliance. This guidance further clarifies this requirement stating that whenever a “pavement alteration” is made to a street, roadway, or highway, curb ramps must be provided at locations where there are curbs or other barriers restricting access to sidewalks or other pedestrian walkways. Examples of “pavement alterations” include additions of new asphalt layers, in-place recycling, micro-surfacing/thin lift, mill and fill overlays, open-graded surface courses, cape seals, new construction, rehabilitation, and reconstruction. Curb ramps and detectable warnings are required to be installed before or during the “pavement alteration” project. Examples of “pavement maintenance” include crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub seals, joint crack seals, dowel bar retrofits, spot locations of high-friction surface treatments, diamond grinding, or pavement patching. See NYSDOT Highway Design Manual (HDM) Chapter 7 and Chapter 18 and the DOJ/DOT Joint Technical Assistance Informal Question and Answer Supplemental for more guidance.

13.4 ENVIRONMENTAL JUSTICE (EJ)

Presidential Executive Order (EO) 12898, Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations, directs each Federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States. 23 CFR 450 requires States and Metropolitan Planning Organizations (MPOs) to seek out and consider the needs of those traditionally underserved by
existing transportation systems, including, but not limited to, low-income and minority households. There are three fundamental Environmental Justice principles:

1. To avoid, minimize, or mitigate disproportionately high and adverse human health or environmental effects, including social and economic effects, on minority populations and low-income populations.
2. To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
3. To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority populations and low-income populations.

Sponsors must consider EO 12898, along with existing requirements under Title VI of the Civil Rights Act of 1964, and other statutes and regulations, during project development so that the interests and well-being of minority populations and low-income populations are considered during transportation decision making, including alternative analysis and project selection. For more information concerning Environmental Justice, contact NYSDOT’s Office of Civil Rights.

13.5 LIMITED ENGLISH PROFICIENCY (LEP)

Presidential Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency, contains two major initiatives. The first is designed to better enforce and implement Title VI, which prohibits recipients and sub-recipients of federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who have Limited English Proficiency. The second initiative requires all federal agencies to meet the same standards as federal financial assistance recipients and sub-recipients by providing meaningful access to federally funded programs. Put simply, Sponsors and the federal government must provide materials in other languages or translate at meetings when individuals have Limited English Proficiency.

Sponsors shall consider implementing the following to demonstrate LEP compliance:
- Written translation of the agency’s vital documents
- Language Implementation Plan
- Bilingual staff for translation
- Language needs assessments or efforts to consider the following:
  - The number or proportion of LEP persons in the eligible service population
  - The frequency with which LEP individuals come in contact with the Sponsor’s programs or activities
  - The program’s importance, activity or services provided by the Sponsor
  - The resources available to the Sponsor and the costs

The resources available to the Sponsor and the costs:
- Translated external Web site
- Methods to provide oral interpretation either in person or via telephone interpretation services and the procedures used by staff to access those services
- Training attended by staff that focused on helping staff better communicate with LEP persons
- Notices detailing the Sponsor's Title VI obligations and complaint procedures that have been translated into languages other than English:
- Notification to Limited English Proficiency customers of the availability of language services
- Monitoring and evaluation of efforts to provide language access
Outreach materials, including public hearing announcements, must be made available in languages understood by the affected population. Public hearings should be held at locations that are both geographically and structurally accessible. Public announcements should indicate that accommodations, to the extent possible, will be provided for individuals with disabilities and populations with LEP; and, if requested, spoken and sign language interpreters and alternately formatted materials will be provided at no cost. NYSDOT maintains LEP maps of New York State which can be used by Sponsors to assist them in identifying the LEP communities in their jurisdiction; and, the languages into which materials must be translated or for which interpreters are needed. For more information concerning NYS LEP maps, contact NYSDOT's Office of Civil Rights at (518) 457-1129.

13.6 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

The Federal aid Highway Act of 1968 [23 USC 140(a) and 23 CFR 230] ensure nondiscrimination in employment on the basis of race, color, creed, or national origin on any federally aided projects. Sponsors are required to include EEO provisions in all their federal aid construction contracts -- contained in Form FHWA 1273, Required Contract Provisions Federal Aid Construction Contracts, which must be incorporated in the contract proposal. EEO provisions are contained in the EEO section of Appendix 12-1 Construction Contract Proposal Package; the Contract Award process in Chapter 14; and the Contract Administration process in Chapter 15.

For federally aided projects, Sponsors must identify employment goals for each specific contract. These goals are contained in the Special Notes, Goals for Equal Employment Opportunity Participation, in the contract proposal. Contractors are required to submit workforce data to Sponsors during the performance of their construction contracts. Employees and work hours must be entered into EBO on a weekly basis. Sponsors shall review EEO reporting and compare to a certified payroll and payroll audit, with the RLPL also monitoring to ensure compliance. EEO goals and attainments are also monitored by both the RLPL and Sponsor.

13.7 TRAINING

Training is one of the Civil Rights activities which may be used to address the under-utilization of minorities, females, and economically disadvantaged persons in highway construction and engineering contracts. Should a Sponsor wish to include a training requirement, it must develop its own provision in accordance with 23 CFR 230.111; the provision must be reviewed and approved by both NYSDOT and FHWA. Only FHWA-approved On-the-Job Training (OJT) programs or NYS Department of Labor (NYSDOL)/U.S. Department of Labor (USDOL) registered apprenticeship programs may be used to fulfill training requirements. NYSDOL should be contacted for questions about registered apprenticeship programs. The review and approval process is extensive; therefore, appropriate time should be budgeted for the approval process. NYSDOT has online training available upon request. An overview of FHWA’s Civil Rights Program for Local Public Agencies including training videos may be found at http://www.fhwa.dot.gov/federal-aidessentials/index.cfm.

13.8 DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

Title 49 CFR 26.45 requires NYSDOT to submit a programmatic DBE plan to the USDOT. NYSDOT's DBE plan is available at https://www.dot.ny.gov/main/business-center/civil-rights. Sponsors must use NYSDOT's approved DBE Program Plan or develop their DBE Program Plan (in accordance with 49 CFR 26.45) which must be reviewed and approved by both NYSDOT and FHWA. The review and approval process is extensive; therefore, an appropriate amount of time needs to be allocated for review and approval.
Only firms certified through the New York State Unified Certification Program (NYSUCP) as DBEs may be used to fulfill DBE utilization goals set on federal aid contracts. The NYSUCP DBE Directory is the sole resource for identifying DBEs. The Directory is located at https://nysucp.newnycontracts.com/. Firms not certified as DBEs can obtain an application for certification from any of the Certifying Partners listed on the Directory’s home page. NYSDOT does not pre-qualify nor recommend particular firms for utilization.

13.8.1 **DBE Contract Requirements / Establishing DBE Plan and Goals**

13.8.1.1 Consultant and Professional Services

13.8.1.1.1 Architectural & Engineering (A&E) Consultant Contracts

All A&E consultant contracts should encourage utilization. The Project Manager shall monitor DBE participation as the project progresses. The prime consultant shall report attainment data to the Sponsor each time a payment request is submitted. For consultant selection procedures, see Chapter 6.

13.8.1.1.2 Non-Architectural & Engineering (Non-A&E) Consultant Contracts

For non-A&E contracts such as real estate, legal, accounting, auditing, and public relations, the Sponsor in coordination with the RLPL will determine the DBE goal during the final stages of drafting the Request for Proposals (RFP). This goal is based on the value of the contract, the type of work involved that could be subcontracted, and the availability of DBEs to accomplish the work, as determined by NYSDOT’s methodology (see NYSDOT’s DBE Program Plan). Attainment data shall be reported by the prime consultant to the Sponsor each time a payment request is submitted using NYSDOT’s approved Civil Rights reporting software.

13.8.1.2 Construction Contracts

NYSDOT’s website has established DBE construction contract goals and instructions at https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-21/dmwbe-goals. The minimum thresholds for DBE goal inclusion is either $500,000 or $1,000,000 based on the Engineer’s Estimate (EE) and the contract’s scope and location. Contracts less than $500,000 will have a zero DBE goal unless otherwise specified by the Local Programs Bureau. Contractors shall encourage DBE participation on these zero goal projects as described in NYSDOT’s Standard Specifications Section 102-12.

13.8.2 **DBE Goal Modification Process**

Sponsors may request a modification to DBE goals. A modification can be an increase, reduction, or exemption. Increases might be appropriate for those projects with additional opportunities for DBE participation due to the variety of operations or magnitude of the project. Conversely, a reduction or exemption could be sought for projects with no significant opportunities for DBE participation, perhaps due to being specialized in nature with few pay items. The Sponsor must make a written request to the RLPL prior to contract advertisement, but preferably before contract document review and approval. The Sponsor must include a detailed analysis with calculations and supporting documentation justifying the request on Form C-258 Disadvantaged/Minority/Women’s Business Enterprise Goals: Exemption or Reduction in Goal(s) Request. Refer to HDM Chapter 21, *Contract Plans, Specifications, and Estimates*.

The DBE goal modification must be reviewed and approved by both NYSDOT and FHWA. The review and approval process is extensive; therefore, an appropriate amount of time needs to be allocated for review and approval. The revised DBE goal must be included in the project’s
advertisement, proposal, and contract (see Chapter 14 for guidance).

13.8.3 **DBE Goal and Good Faith Efforts (GFE)**

The DBE goal is expressed as a percentage of the total award amount. The goal is stated in the bid proposal and remains in effect throughout the life of the contract. Failure to commit to meeting the established contract goal or to demonstrate Good Faith Efforts (GFE) may be grounds for rejection of the bid. In executing the contract or bid documents, the bidder is declaring acceptance of the goal and shall meet the goal or demonstrate GFE to do so during the Post-Award phase. Further details concerning GFE’s can be found in Chapter 14 and the CAM.

13.9 **PROMPT PAYMENT**

The Sponsor is responsible for ensuring all consultants and contractors comply with the prompt payment contract requirements in **49 CFR 26.29**. These requirements must be included in the Sponsor’s contract specifications. The Sponsor is responsible for quality control monitoring of prompt payments using EBO and other means with the RLPL’s providing quality assurance monitoring and enforcement.

While **49 CFR 26.29** requires payment to subcontractors within 30 days, New York State and General Municipal Laws are more stringent. Specifically, NYS Finance Law Article 9, Section139-f, and NYS General Municipal Law, Section 106-b, require prime consultants and contractors to pay their subconsultants/contractors and their various vendors within seven (7) calendar days of receipt of payment from the public owner, e.g., the project Sponsor and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed (see Chapters 6 and 12).

13.10 **FEDERAL REPORTING REQUIREMENTS**

Consultants and contractors are required to submit data to Sponsors primarily by using NYSDOT’s Civil Rights reporting software, i.e., EBO. Sponsors are required to ensure that consultants and contractors submit timely, accurate, and complete data. This will enable NYSDOT to submit timely, accurate, and complete federal reports that include all federally aided contracts in New York State as required by federal regulations. Tables 13-1 and 13-2 in the Appendices summarize the Civil Rights data that consultants and contractors must report to Sponsors. A Sponsor’s failure to ensure timely, accurate and complete reporting of Civil Rights data will result in a loss of federal aid. All data must be entered prior to project final acceptance by the Sponsor.

13.11 **CONTRACT COMPLIANCE REVIEWS**

The Sponsor must conduct Civil Rights monitoring on all federal aid construction contracts. The Sponsor may be directed to perform a comprehensive construction contract compliance review in accordance with **23 CFR 230 Subpart D**. The procedure and forms for the construction contract compliance review process are found in the Contract Administration Manual (CAM), Section 98 and can be accessed at,

13.12 FINAL REPORTS – CONTRACT CLOSE-OUT

Sponsors must ensure that all required Civil Rights data is in NYSDOT approved Civil Rights reporting software EBO prior to contract closeout. Failure to ensure timely, accurate, and complete data may jeopardize federal reimbursement and future federal aid.

13.13 NON-COMPLIANCE WITH FEDERAL CIVIL RIGHTS REQUIREMENTS

By signing the State-Local Agreement (SLA), the Sponsor becomes contractually obliged to ensure all Civil Rights laws, rules, regulations, and federal executive orders are adhered to in contracts with its consultants and contractors. Failure by the Sponsor to carry out its responsibilities under, and to comply with, federal civil rights requirements will result in a loss of federal aid by one of the following options: non-reimbursement, administrative disallowance, or, Federal-Aid Ineligibility Notice (FAIN).
13.14 REFERENCES

Federal Laws and Regulations and Guidance
23 USC.140(a) (Nondiscrimination)
23 CFR 200.9(b) (State highway agency responsibilities)
23 CFR 230 (External Federal Highway Programs)
23 CFR 230.111 (Implementation of special requirements for the provision of on-the-job training)
23 CFR 450 (Planning Assistance and Standards)
28 CFR 35.105 (Self-evaluation)
28 CFR 35.150(d)(1)(3)(i-iv) (Existing facilities)
28 CFR 35.151(b)(i) (New Construction and Alterations)
49 CFR 26 (Disadvantaged Business Enterprises, (DBE))
49 CFR 26.45 (How do recipients set overall goals?)
49 CFR 26.29 (What prompt payment mechanisms must recipients have?)
49 CFR 27.7 (Discrimination prohibited)
49 CFR 27.11 (Remedial and voluntary action and compliance planning)
Title VI of the Civil Right Act of 1964
Section 504 of the 1973 Rehabilitation Act
Americans with Disabilities Act of 1990 (ADA)
Presidential Executive Order (EO) 12898 (Environmental Justice)
Presidential Executive Order (EO) 13166 (Limited English Proficiency (LEP))

State Laws, Regulations, and Guidance
NYSDOT Highway Design Manual, Chapter 21
NYSDOT Contract Administration Manual (CAM), Section 98
NYS General Municipal Law, Section106-b
NYS Finance Law, Article 9, Section139-f
NYSDOT DBE Plan
NYSDOT LEP Maps