Chapter 10.0

Civil Rights

10.1 Introduction

This chapter provides guidance to LPAs in complying with the Civil Rights requirements: Title VI, Americans with Disabilities (ADA/504), Equal Employment Opportunity (EEO), Contractor Compliance, and Disadvantaged Business Enterprise (DBE) requirements for federal-aid transportation projects. This chapter provides more detail in each subject area. The information contained in this section is not intended to replace or substitute for existing laws, rules, regulations, agreements, circulars, or other guidance material.

For additional information on program compliance, please visit the ALDOT website at Compliance and Business Opportunities Bureau.

10.2 Nondiscrimination: Title VI of the Civil Rights Act of 1964

10.2.1 Title VI Policy

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; Nondiscrimination 49 CFR Part 21, Title VI 23 CFR 200; and related statutes and regulations in connection with transportation projects receiving financial assistance from the FHWA. Title VI of the Civil Rights Act of 1964 (42 USC 2000d), and related authorities protect individuals and groups from discrimination on the basis of their race, color, religion, sex, age, disability, income level and national origin in programs and activities that receive Federal financial assistance. Nondiscrimination provisions apply to all programs and activities of Federal-aid recipients, sub-recipients, consultants, contractors, and subcontractors. The LPA will create a Title VI Implementation Plan outlining the implementation of Federal requirements, including identification of an individual to serve as the LPA’s civil rights specialist. The FHWA and the ALDOT will ensure compliance with Title VI in all of its programs and activities whether or not those programs and activities are FHWA funded. More Civil Rights information is located on the Internet at FHWA - Civil Rights.

10.2.2 Implementation

It is important that an LPA does not discriminate during any phase of work, either directly, through contractual or other means by:

- Denying program services, financial aids, or other benefits
- Providing different program services, financial aids 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 person(s) the opportunity to participate as a member of a planning, advisory or similar body
- Denying person(s) the opportunity to participate in any program and/or activity that receives Federal financial assistance or affording the opportunity to do so differently from those afforded others

**Assurances**

LPAs must maintain a Title VI assurance document signed by their current governing body, a Chief Executive, or person in Responsible Charge (RC). The completion of the assurance is partial fulfillment of the requirements set out in the State/LPA Project Program Agreement and the LPA Project Guide. ALDOT requires that all LPA consultant/contractor work contracts include specific assurance language.

**Note:** See the LPA Project Guide, Chapter 4.0 on the ALDOT LPA website, for required language in all construction and professional services contracts.

**Environmental Justice**

Environmental Justice (EJ) is the fair treatment and meaningful treatment of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws. EJ implementations consideration is during the preliminary environmental investigation process and throughout the completion of the project. There are three fundamental EJ principles:

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

**Public Hearings and Public Involvement Meetings**

The attendance and concerns of Limited English Proficiency (LEP) persons, persons with disabilities, minority populations, and low-income populations at public involvement meetings and hearings are carefully documented to comply with Title VI of the Civil Rights Act of 1964, including statistics of participants by race and gender. Each public hearing announcement will be available in languages understood by the affected population based on the Four Factors Analysis (see below). Public hearing locations are both geographically and structurally accessible. Public announcements should indicate that to the extent possible accommodation provisions for individuals with disabilities, in general and that interpreters, signers, and alternate formatted materials are available, if requested.

- [Four Factors Analysis](#)
- [LEP Policy](#)
- [Executive Order 13166](#)
Right-of-Way

On Federal-aid projects, all ROW activities must be in accordance with Chapter 7 of this manual. The public will be provided with Title VI information and Title VI complaint procedures within each of the following ROW functions: appraisals, acquisition, relocation assistance and property management.

Construction

Federal-aid construction contracts must include provisions to require compliance with Title VI. The specific contract provision language in FHWA 1273 must be physically incorporated into all Federal-aid construction contracts (See Chapters 11 and 12).

10.2.3 Monitoring

To assure that nondiscrimination and Environmental Justice issues are addressed during the early stages of a project the LPA should:

- Schedule public meetings and request FHWA and ALDOT attendance
- Keep meeting minutes and distribute them to FHWA, ALDOT, and to persons or groups as requested
- Create focus groups to apply a systematic interdisciplinary approach to assist in the early recognition of potential adverse impacts that might be discriminatory. It also stresses the need for interdisciplinary staff to be involved in the development and implementation of Title VI plans that LPAs are required to meet for their non-discrimination obligations.

To ensure continued compliance with Title VI and other federal and state regulations by the LPAs, ALDOT will:

- Attend public meetings
- Review the project PS&E package
- ALDOT will conduct periodic reviews of compliance with Federal Title VI regulations. The compliance review will focus on how effectively the LPA has implemented its approved Title VI plan. Documentation is gathered and individuals with Title VI responsibility are interviewed as part of the process. The LPA will be notified in writing when information is available and the documents that will be required for the on-site review.
10.2.4 Complaints

FHWA has the overall responsibility for the investigation of all formal Title VI Discrimination complaints filed against ALDOT, LPAs, contractors, subcontractors, or other third parties participating in any federally fund transportation projects. The LPA shall notify ALDOT immediately of any complaints filed. Likewise, ALDOT shall immediately notify FHWA of receipt of all Title VI complaints so FHWA may determine complaint investigation responsibility.

FHWA may delegate this investigation responsibility to ALDOT, if ALDOT is not the subject of the complaint. If appropriate, ALDOT may further delegate the complaint to an LPA for investigation, if the LPA is not the subject of the complaint.

If a complaint is filed against ALDOT, FHWA will investigate. If the complaint is against an LPA, ALDOT or FHWA may investigate the allegation. Any individual or group that believes they have been subjected to discrimination or retaliation based on their race, color, national origin, and sex, age, disability/handicap, or income level may file a complaint. A written complaint submission, signed by the complainant, is given to ALDOT or FHWA within 180 days of the date of the alleged discrimination. Any complaint filed from the affected party or their representative, must include the following:

- Complainant’s name, address and telephone number
- Name and address of the agency, institution or department and the individual(s) alleged to have committed the offense
- A description of how, why, and when the alleged discriminatory act took place, including as much background information as possible
- The names of any persons, if known, that the investigating agency should contact for additional information to support or clarify the allegations

Complaints Against the LPA or Other Parties

All formal Title VI Discrimination complaints received by the LPA or Region personnel are immediately reported to the Bureau Chief, Bureau of Compliance and Business Opportunities at ALDOT Central Office, Montgomery, who has the overall responsibility for the investigation of the complaint. Formal complaints are submitted on the approved Complaint Form and by contacting the Bureau of Compliance and Business Opportunities at 334-242-6340 (Voice) or 334-263-7586 (Fax).

Formal complaints must contain as much information as possible about the alleged discrimination. The complaint must include the basis of the complaint, pertinent details of the complaint, witnesses, and the remedy requested by the complainant. Investigation of complaints will be coordinated, as needed, with the appropriate ALDOT program officials in their respective Regions and Districts. ALDOT Region and District personnel will stay informed of the progress and outcome of the investigation as appropriate.

The LPA may settle complaints received by the LPA informally. If the issue persists, or if at any time the person(s) request(s) to file a formal (written) complaint, the LPA should refer the Complainant to the ALDOT Bureau of Compliance and Business Opportunities.
If negotiations to correct violations are unsuccessful, enforcement proceedings will be initiated to bring the recipient into compliance. The complaint investigator will conduct whatever investigation is necessary to establish the facts surrounding the complaint, including witness interviews, and reviews of internal policies, procedures or regulations that may have a bearing on the complaint. Corrective action could include disciplinary action against the offender as appropriate. ALDOT will provide a copy of the complaint findings, conclusions, and proposed and final resolution to both the complainant and FHWA.

**Complaints Against ALDOT**

Anyone wishing to file a Title VI complaint against ALDOT must submit the complaint in writing to the Compliance and Business Opportunities office at:

Bureau of Compliance and Business Opportunities  
Clarence Hampton, Bureau Chief  
1409 Coliseum Boulevard  
Montgomery, AL 36110  
Phone: (334) 242-6340  
Fax: (334) 263-7586  
[Compliance and Business Opportunities](#)

Formal complaints submitted to ALDOT will be forwarded to FHWA. The complaint must include the basis of the complaint, pertinent details of the complaint, any witnesses, and the remedy requested by the Complainant. FHWA will review all formal complaints it receives and conduct the necessary investigation to resolve the complaint. ALDOT will cooperate fully with FHWA on the investigation of all complaints. If the discrimination complaint is found to be valid, FHWA will coordinate with the appropriate ALDOT officials to ensure corrective action.

**10.3 Equal Employment Opportunity (EEO)**

**10.3.1 EEO Policy**

The Federal-aid Highway Act of 1968, 23 USC 140a, Nondiscrimination, and implementing equal employment regulations in the workplace 23 CFR 230, require that LPAs receiving federal financial assistance shall assure that employment in connection with federal construction projects is provided without regard to race, color, religion, age, disability, national origin, or sexual orientation.

The LPA is required to include notification of a Federal-aid contractor’s EEO responsibilities in the advertised contract specifications. In addition, the LPA must maintain and make available apprenticeship, skill improvement or other upgrading programs, which provide equal opportunity for training and employment without regard to race, color, age, disability, religion, national origin or sex.

**10.3.2 Implementation**

**Assurances**  
LPAs must maintain an EEO assurance signed by their current governing body.

ALDOT or the LPA shall physically insert the FHWA 1273 in the contract document Contract Provisions. Additionally, all subcontractors are required to include a hardcopy of 1273 into their contracts. LPAs need to be aware that contractor noncompliance with the EEO specifications found in form FHWA 1273 is considered a breach of contract and that contract payment may be withheld, or the contract terminated (See Chapter 11, Section 4).

Construction

Federal-aid prime contractors and subcontractors personnel transactions and employment practices in the areas of recruitment and selection decisions (hiring, promotions, terminations, training, etc.) is conducted without regard to race, color, religion, sex, national origin, age, or disability.

The LPA RC should be aware of all contractual requirements and monitor the contractor for compliance. The LPA Construction Engineer shall adhere to the guidance found in Appendix A of 23 CFR 230 Subpart A, assuring EEO in all personnel transactions.

10.3.3 Monitoring

The LPA is required to monitor the engineering consulting firm, contractor and subcontractors for the project to ensure they are meeting the required contract provisions found in EEO Contract Compliance (41 CFR 60) or Executive Order 11246 Compliance Assistance.

The hours of minority and female employment and training must be substantial and uniform throughout the length of the contract, and in each trade, and the consultant or contractor shall make a good faith effort to employ minorities and women evenly on each of its projects.

**ALDOT reserves the right to perform reviews and audits of the LPA, consultant, and contractor** to assure EEO compliance. ALDOT will inform FHWA when such reviews and audits are underway and afford them the opportunity to participate.

It is noted that neither ALDOT nor the FHWA have the independent authority to enforce Executive Order 11246 or the provisions of 41 CFR 60. In the event that FHWA, ALDOT or any sub-recipient believes that a violation of 41 CFR or Executive Order 11246 - Equal Employment Opportunity has occurred, this information is to be forwarded to the Office of Federal Contract Compliance Programs (OFCCP).

10.3.4 Complaints

Compliance with the EEO goals is measured against the total hours performed. For reporting EEO inequity, follow the same process and procedures for Title VI complaints detailed above in Section 10.2.4.
10.4 Alabama Immigration Law Compliance

It is the responsibility of the ALDOT Region Engineer to determine if the LPA making application for a project under the Federal LPA program has fully complied with all requirements for doing business in Alabama and has provided the necessary documentation for conformity with Act No. 2011-535 and in particular, Sections 9(a) and (b), Affecting Payments on Contracts, Grants, and Incentives Awarded January 1, 2012, and Thereafter.

The following site list includes a version of the Law that has the enjoined sections as of January 1, 2012 highlighted. There are sections not yet in effect.

Alabama Immigration Law
Beason-Hammon Taxpayer and Citizen Protection Act (Immigration) October 2013
State Comptroller Action Letter

10.5 Labor Compliance

10.5.1 Applicability of the Davis-Bacon Act

The Davis-Bacon Act, 40 USC 276(a), and prescribed by 23 USC 113 Wage Rate Requirements, dictates that mechanics and laborers working on the site of Federal-aid construction projects must be paid according to the wage decision that is part of the contract Special Provisions for the project. The US defines mechanics and laborers as those employees who perform manual labor on the site of work.

Davis-Bacon applies to any FHWA funded construction contract regardless of the level of federal participation. The Davis-Bacon Act requirements are allowable for exclusion from Federal-aid, LPA matched transportation projects only if they meet one of the following project categories:

1. Any projects fully located on or within the existing ROW of a roadway has a functional classification as a local road or rural minor collector. This determination of functional classification is from ALDOT

2. Force account work performed solely by the LPA

3. Exploratory drilling services which include subsurface utility engineering or utility location services (these contracts provide the location of utilities for engineering or planning purposes)

4. Railroad and Utility Adjustments performed by a public utility or railroad force or the relocation performed by a contractor engaged by the utility or railroad. However, Davis-Bacon applies when utility relocation work is part of a construction project to be performed by the construction contractor or subcontractor

For projects requiring Davis-Bacon wages, as soon as the LPA establishes the project bid opening date and is ready to advertise the project for bidding, the LPA must check with the ALDOT LPD Project Coordinator or the ALDOT statewide Civil Rights Coordinator to assure that the latest modification of the wage decision is in the contract Special Provisions.
The US DOL requires that a current wage decision be included in Federal-aid construction contracts, if appropriate. Wage decisions modifications are monitored frequently; wage decisions published in the Federal Register ten (10) or more days prior to the bid opening must be incorporated into the contract by addendum to the advertisement with notification to all plan holders.

Enforcement of the provisions in Section IV of Form FHWA-1273 is ALDOT responsibility. In addition to withholdings and liquidated damages assessed for violations, the following are considered for continued violations:

- Termination of the contract
- For more serious violations, legal prosecution and debarment

### 10.5.2 Labor Interviews

For projects that required Davis-Bacon wages, LPA personnel are to conduct at least one (1) wage rate interview on each project. Labor interviews are not required on railroad and other utility adjustments. The interviewer shall note the employee's name, the classification of the employee, the actual wage paid, and the posted wage. Interviews shall be documented in a suitable format and made available for audit review.

The LPA must submit two (2) copies of a semi-annual report to the ALDOT Region LPA Project Coordinator containing the following information:

1. Number of contractors or subcontractors against whom complaints were received
2. Number of investigations completed (if complaints were received)
3. Number of contractors or subcontractors found in violation
4. Amount of restitution due under
   a. Davis-Bacon Act
   b. Work Hours Act of 1962
5. Number of employees due wage restitution under Davis-Bacon Acts and/or Work Hours Act of 1962
6. Amount of liquidated damages assessed under Work Hours Act of 1962

The above report is due prior to April 4 for the period from October 1 to March 31 and not later than October 5 for the period from April 1 to September 30. This report shall include all information gathered on all projects.
10.6 Americans with Disabilities Act (ADA)/Section 504 of the Rehab Act of 1973

10.6.1 ADA Policy

Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC Subsection 791) requires that any entity receiving Federal-aid must ensure that persons with disabilities are not being discriminated against in any aspects of employment, or denied access to the goods or services that these Federal-aid fund recipients provide.

The intent of the ADA (Public Law 101-336, codified as 42 USC 12101 et seq.) ADA 1990 as amended is to “assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.” This law extends protections for persons with disabilities. 28 CFR, Part 35 (state or local level), requires that facilities constructed by, on behalf of, or for the use of a public entity shall be designed and constructed, so that the facility is accessible to and usable by persons with disabilities. 49 CFR Part 27 (federally funded programs) requires nondiscrimination on basis of disability in programs and activities receiving or benefiting from federal financial assistance.

10.6.2 Implementation

Assurances

LPAs must maintain an ADA assurance signed by their current governing body. A section in the LPA/ALDOT Project Program Agreement details LPA reaffirmation of the Nondiscrimination Assurances of the ADA.

Design

State and local governments, regardless of whether they receive Federal-aid, are required to comply with the Federal ADA Accessibility Guidelines, Title 24, or local code, whichever provides the greatest access. Local-funded improvements are required to comply with the ADAAG and with Title II; whichever code offers the greatest access or protections to individuals with disabilities.

10.6.3 Monitoring

ALDOT’s role is to help ensure that all new and existing altered pedestrian facilities such as, but not limited to, highway rest area facilities, sidewalks, crosswalks, pedestrian overpasses, underpasses and ramps, which are accessible to persons with disabilities, are in accordance with Federal and State accessibility standards on all LPA Federal-aid projects. This monitoring will be analyzed throughout Plan-in-Hand (PIH) project review, PS&E plan review, and final walkthrough/inspection. Refer to Accessibility Guidelines under 10.5.2.

10.6.4 Complaints

For reporting ADA discrimination, visit the ALDOT LPA website, navigate to the Compliance or the ADA document section in the right-hand panel, and view the ALDOT ADA Policy and Complaint Procedures.
10.7 Disadvantaged Business Enterprises (DBE)

10.7.1 DBE Policy

It is the policy of the USDOT that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to participate in the performance of federally funded contracts or subcontracts. To accomplish this goal, all LPAs and their contractors must take steps to ensure that DBEs are encouraged to compete for construction contracts, procurement contracts, grants, services, financial aid or other benefits, and that DBEs have full access to these opportunities. For further reference and additional information, please refer to ALDOT DBE Program or FHWA Office of Civil Rights.

Each contractor/consultant will ensure all contracts and sub-contracts have the following verbatim provisions:

Each construction contract shall include the following assurance:

*The contractor, sub-recipient, subcontractor, or sub-consultant, henceforth Contractor, shall not discriminate based upon 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 DOT 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.*

Each professional services contract shall include the following assurance:

*The contractor, sub-recipient, subcontractor, or sub-consultant, henceforth Contractor, shall not discriminate based upon 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 DOT 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.*

10.7.2 Establishment of the DBE Goal

During the PS&E review, ALDOT will review each project to determine if it involves work elements that are conducive for DBE participation and establish a DBE participation goal percentage. The Contractor must meet or exceed the DBE goal or demonstrate good faith efforts to meet the goal. In the establishment of a goal, ALDOT considers the following criteria:

- Dollar amount of the contract to ensure that it is large enough to permit efficient subcontracting
- The work content of the project that can be subcontracted
- The availability of DBE firms in the project area having the potential to do the required work

10.7.3 DBE Contract Requirements

The successful bidder must execute and return within ten (10) calendar days, form OE-110, the DBE Utilization Plan, according to the guidelines in Section 111.3, p.85 of the ALDOT 2012 Edition of the Standard Specifications for Highway Construction. This form is available under the DBE section on the LPA website in the right-hand panel or for download directly here at Form OE-110.
When less than one hundred percent (100%) of a contract item of work is performed or furnished by a DBE, a description of the exact portion of the work to be performed or furnished by the DBE should be included in the DBE information, including the planned location of the work. A bidder certified as a DBE should describe the work it has committed to perform with its own forces, as well as any work it has subcontracted to any DBE subcontractor, supplier, and/or trucking company.

10.7.4 Monitoring DBE Goal Achievement

ALDOT will ensure that DBEs have a level playing field and an equitable opportunity to compete for and participate in Federal-aid contracts and subcontracts. ALDOT will monitor the work performed on federally funded projects to verify that the work committed to DBEs at contract award, is received and implemented by the DBEs. ALDOT will maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) and will ensure that DBE participation is credit toward overall or project/contract goals only when payments are actually made to DBE firms. Even though a DBE participation goal may be set on a project in the current fiscal year, that goal may not receive credit toward the overall annual DBE participation goal until the project is in action by the DBE and the DBE has paid for the work.

The LPA is required to monitor DBE subcontractors to ensure they are performing a commercially useful function. A DBE is performing a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved with the DBE’s employees. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material itself. See 49 CFR 26.55 (c) Disadvantaged Business Enterprises (DBE) website for additional information.

Bulletin Board Requirements

The LPA should ensure the contractor has a bulletin board placed in a location easily accessible to both the employee and the public and should include, but not be limited to, the following:

- ‘Equal Opportunity is the Law’ poster.
- ‘Equal Opportunity is the Law’ Spanish language version
- FHWA Notice (1022)
- Wage Rate Information Davis-Bacon Poster
- Wage Rate Information (En Espanola)
- Contractually required wage rates
- Family and Medical Leave Act of 1993
- Minor Labor Laws
- Federal Minimum Wage
- US Department of Labor LABOR
- Contractor's EEO Policy
- Contractor's EEO Officer's name and telephone number
- Any applicable Alabama laws and regulations

Check the bulletin board for the physical condition and number of available required documents when performing wage rate interviews and/or commercially useful function reviews.

ALDOT is primarily responsible for administrative work in implementing the DBE Program. The responsibilities of ALDOT include:

- Acting as a liaison with minority groups, community agencies and minority or female-owned companies to solicit their participation in the DBE Program
- Identifying the need for and assisting in implementing training courses for DBEs
- Providing information and technical assistance to DBEs, potential DBEs, and others
- Processing DBE certification applications and making recommendations on eligibility status
- Participating in the on-site investigations of applicants for DBE certification
- Monitoring DBE performance on projects
- Administering the DBE portion of the contract close-out process
- Assisting with the publication of newsletters and/or other informational documents
- Investigating complaints concerning DBE eligibility status and preparing investigation reports
- Maintaining files and electronic databases on civil rights programs

To assist ALDOT with the DBE monitoring, at the end of every project the LPA is responsible for obtaining final contract amounts including the total DBE contracted amount. As such, the contractor and subcontractor are required to complete two DBE Goal Achievement Forms and submit them to the ALDOT Region LPA Project Coordinator. Each form is located in the appendix or obtained from the ALDOT LPA Project Coordinator.