

Local Project Administration Manual & Resource Guide

Civil Rights & Equal Opportunity



MaineDOT

Integrity - Competence - Service

Chapter 10 - Updated March 2024

Civil Rights & Equal Opportunity

Municipalities and other organizations managing federally funded transportation projects (referred to collectively as “local public agencies”) must comply with a variety of federal laws, rules, regulations and presidential executive orders designed to prevent and eliminate discrimination.

Chapter 10 provides an overview of Title VI of the Civil Rights Act of 1964 and several other non-discrimination and equal-opportunity requirements that local public agencies are likely to encounter as they develop federal-aid projects.

The topics listed below will be covered:

- Title VI of the Civil Rights Act of 1964 (page 10-1);
- Limited English Proficiency (page 10-3);
- Disadvantaged Business Enterprises (page 10-4);
- Equal Employment Opportunity (page 10-4); and
- Appendix 10A: Title VI Compliance Assessment Tool (page 10-5).



*Note: Americans with Disabilities Act guidance has been moved to **Chapter 3 (Project Design)**, for this March 2024 edition of the Manual.*

➔ MaineDOT offers civil rights guidance online: www.maine.gov/mdot/civilrights/

10.1 Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 initially prohibited discrimination based on race, color or national origin in any program or activity receiving federal funding. Subsequent amendments broadened Title VI to include federal legal protections based on gender, age and disability.

Local public agencies receiving funding from the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA) must have policies and procedures in place that address Title VI requirements.

Organizations comply with Title VI in transportation programs primarily by:

- Avoiding, minimizing or mitigating disproportionately high health and environmental impacts to minority and low-income populations; and
- Ensuring the full and fair participation in the transportation decision-making process by all potentially affected groups, including those with limited English proficiency.

Local public agencies undertaking transportation projects with federal funds must have in place a designated Title VI coordinator responsible for compliance. Additionally, the highest ranking administrative officer must sign a set of standard Title VI Assurances.

The signed assurances state that a local public agency will:

- Include in all solicitations for bids the statement that bidders will receive fair opportunity;
- Add clauses related to non-discrimination in every contract; and
- Provide evidence that it is complying with the requirements.

➡ Model Title VI Assurances are online: www.maine.gov/mdot/lpa/lpadocuments/

❑ 10.1.1 Title VI Reviews

Each year, MaineDOT selects three to five local public agencies for on-site Title VI reviews based on its assessment of the risk of non-compliance. The reviews may be held in-person or by teleconference, using the Title VI Compliance Assessment Tool found in **Appendix 10A**.

MaineDOT selects local public agencies for such reviews based one or more of the following:

- MaineDOT knows of or has received complaints about an agency;
- MaineDOT has identified agencies with Title VI issues or concerns;
- An agency has submitted either problematic responses to a Title VI questionnaire or incomplete Title VI documentation;
- An agency receives a large amount of federal funding, relative to other such agencies;
- An agency is new to the federal-aid process, receives a large amount of funding from MaineDOT, and requires Title VI training.

MaineDOT typically will notify a local public agency of a Title VI review by letter informing the selected agency of the information and documentation needed for the review.

MaineDOT follows a standard checklist to ensure that all documents are submitted and that a local public agency's responses are given proper consideration. As part of a review, MaineDOT will look at an agency's public participation activities, including its notification and outreach procedures. MaineDOT will examine if and how any diverse populations were identified and how these populations were notified.

Based on the information gathered, MaineDOT will prepare a Report of Findings documenting any deficiencies. If there are none, the report may still provide recommendations for strengthening an agency's Title VI program.

➡ Title VI guidance is available from the MaineDOT Civil Rights Office:
<https://www.maine.gov/mdot/civilrights/title-vi/>

10.2 Limited English Proficiency

Organizations administering federally funded projects must take reasonable steps to ensure that people with limited English proficiency (LEP) have meaningful access to the programs, services and information those organizations provide.

People with a primary language other than English and with limited ability to read, speak, write or understand English can be considered LEP. Local public agencies may need to provide materials in other languages or arrange for translation services at meetings to assist LEP individuals.



LEP requirements originate from Presidential Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” which contained two major initiatives:

- The first initiative is designed to improve enforcement and implementation of Title VI, which prohibits discrimination based on national origin by, among other things, failing to provide meaningful access to LEP individuals.
- The second initiative requires the Federal Government and agencies receiving federal funds – including MaineDOT and local projects sponsors – to provide materials in other languages or to translate at meetings when LEP individuals are present.

Local public agencies must provide meeting announcements and outreach materials in languages understood by affected LEP populations, if necessary. If so requested, an agency must provide spoken and sign-language interpreters, as well as alternately formatted materials, at no cost.

An analysis performed by MaineDOT in 2020 identified five primary populations in Maine of LEP persons, as follows:

- **French.** There are approximately 7,100 French-speaking LEP persons in Maine, with the highest numbers in Portland, Lewiston/Auburn and the St. John Valley region of northern Maine.
- **Spanish or Spanish Creole.** There are an estimated 2,500 Spanish or Spanish Creole LEP persons in Maine, primarily in Cumberland, York and Washington counties – and with a substantial number in Portland.
- **Chinese.** There are approximately 1,500 Chinese-speaking LEP persons in Maine, with the largest numbers in Cumberland, Penobscot and Kennebec counties.
- **Arabic.** There are an estimated 1,200 Arabic LEP persons in Maine, primarily in Cumberland and York counties.
- **African Languages.** There are approximately 1,200 LEP persons in Maine under the classification “Amharic, Somali or other Afro-Asiatic languages.” The re-settlement communities of Lewiston/Auburn and greater Portland have substantial numbers of Somali people who speak African languages, with other African language speakers dispersed throughout Maine.

10.3 Disadvantaged Business Enterprises (DBE)

Disadvantaged Business Enterprises (DBE) is a federal program to assist women and minority small-business owners promote their services in the contracting field. MaineDOT sets an overall goal for DBE participation to be achieved through race/gender neutral means. as follows:

- The annual goal for FHWA funded projects – through Sept. 30, 2024 – is **1.97 percent**.
- The annual goal for FTA funded projects – through Sept. 30, 2025 – is **1.02 percent**.

MaineDOT encourages local public agencies, consultants and contractors on federally funded projects to give certified DBE companies equal opportunity. Although Maine typically doesn't mandate DBE participation on individual projects, MaineDOT has the option to implement project-specific goals if it becomes apparent that Maine's overall DBE target won't be met.

□ 10.3.1: DBE Use on Federal-aid Contracts

If a federal-aid project requires consultant services, the request for proposals (RFP) must state that DBE companies are encouraged to submit proposals. The RFP also must require non-DBE consultants to ensure that DBEs will have an opportunity to participate in any contract.

On federal-aid construction projects, the contract books must list Maine's DBE goal, based on funding source, and include a statement that non-DBE contractors are encouraged to seek certified DBE companies as subcontractors.

The prime consultant and contractor on a federal-aid project must fill out a DBE Utilization Form. Completed forms must be kept in the project files, along with subcontracts with DBE firms, for review during site visits by state and federal personnel. Utilization forms are found on MaineDOT's website: <https://www.maine.gov/mdot/civilrights/dbe/>

➔ Additional DBE guidance is available online: <https://www.maine.gov/mdot/civilrights/dbe/>

10.4 Equal Employment Opportunity (EEO)

Equal Employment Opportunity (EEO) works to ensure that sub-recipients of federal funds, contractors and sub-contractors comply with federal laws and regulations that prohibit government contractors from discriminating in employment. EEO also requires that the recipients of federal funds and their contracted agents understand their contractual obligations and undertake affirmative action to ensure equal employment opportunity in their workforces.

Local public agencies are required to include EEO provisions in their federal-aid construction and consultant contracts. These provisions are contained in Form FHWA-1273, "Required Contract Provisions for Federal-aid Construction Contracts," which must be incorporated into the contract book for a federal-aid project. For more information, see Chapter 7, "Final PS&E Package."

Form FHWA-1273 can be found at the link below under the label "Bid Package Documents": www.maine.gov/mdot/lpa/lpadocuments/

Appendix 10A: Title VI Compliance Assessment Tool

Title VI

“ 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. ”

- ➔ The MaineDOT Civil Rights Office offers Title VI guidance and training:
<https://www.maine.gov/mdot/civilrights/title-vi/>

TITLE VI COMPLIANCE ASSESSMENT TOOL

Title 23 in the Code of Federal Regulations (CFR) Part 200.9 (b)(7) requires the Maine Department of Transportation (MaineDOT) to conduct periodic reviews of municipalities, planning agencies and other sub-recipients of federal-aid funds to ensure that they are complying with Title VI of the Civil Rights Act of 1964. Title VI 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."

MaineDOT has developed this assessment as a means of determining sub-recipient compliance, helping sub-recipients understand their Title VI responsibilities, and assisting MaineDOT in planning future training and technical assistance opportunities.

This assessment is part of MaineDOT's Title VI review process and is designed to take only a few minutes. Please fax (207-624-3021) or mail (16 State House Station, Augusta, ME 04333-0016) the completed questionnaire with attachments to the Director of the MaineDOT Civil Rights Office.

Questions or concerns may be emailed to <https://www.mainedot.gov/civilrights/contact/>, or you may reach the Civil Rights Office by phone at (207) 624-3066.

Baseline Questionnaire

1. Name of your Agency: _____
2. Number of full-time and part-time employees: F/T _____ P/T _____
3. Has your agency provided written Title VI Assurances to MaineDOT? If not, please attach a copy. _____
4. Does your agency physically include the Civil Right Special Provisions (FHWA-Form 1273) in all contracts and ensure that they are included in all sub-contracts, including third-tier contracts? _____

5. Who is the Title VI contract person for your agency? _____.
Does this person accept complaints from the public? _____ If not, who does? _____
Please include title, email and telephone number for each person listed. _____

6. In the past three years, has your agency been named in a discrimination complaint or lawsuit? _____ . If so, when and what was the nature of the complaint or lawsuit and the outcome. _____

7. Does your agency have a written discrimination complaint process? If so, please attach a copy. _____

8. Has your agency made the public aware of the right to file a complaint? _____
If so, by what mechanism _____

_____. Attach a copy.

9. Does your agency provide free translation services for persons with Limited English Proficiency (LEP)? _____. Please explain _____

10. In the past twelve (12) months, what has your agency done to receive and consider input from all citizen groups, especially minority, low income, disabled and transit-dependent? Please describe, if applicable. _____

11. Does your agency have a method to collect racial and ethnic data on citizens impacted by your projects? _____. If so, please describe. _____

12. Does your agency include the required Disadvantaged Business Enterprise (DBE) assurance language at 49 CFR 26.13(a)-(b) verbatim in all financial agreements, contracts and sub-contracts? (Please see DBE assurance language below.) _____

§26.13 What assurances must recipients and contractors make?

- (a) Each financial assistance agreement you sign with DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE program, as required, by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S. C. 3801 et seq.).

- (b) Each contract you sign with a contractor (and each sub-contract the prime contractor signs with a sub-contract) must include the following assurance:

The contractor, sub-recipient or sub-contractor 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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

13. Does your agency monitor DBEs on construction projects to ensure they are performing a commercially useful function (CUF)? _____. If so, where is this documented? _____
If a DBE is not performing a CUF, what actions for steps have you taken? _____

Who do you notify? _____

14. Do you have any questions regarding this assessment or Title VI? _____
Please include them here along with your email address and/or phone number and
a MaineDOT representative will respond. _____

15. Would your agency like Title VI training or other Civil Rights technical assistance
from MaineDOT? _____. If yes, please explain. _____

Does your agency have teleconferencing ability? _____

16. Please provide the name, title and contact information of the person who
completed this baseline assessment. _____

17. Provide an annual report on Title VI accomplishments for the previous year and
goals for the next year. _____

END OF CHAPTER 10