



American Recovery & Reinvestment Act

(Recovery Act)

NATIONAL REVIEW TEAM CLOSE-OUT REPORT

STATE	REVIEW ID	DATE OF REVIEW	RISK AREA(S)
41 - Oregon	OR20101213	12/13/2010	DBE, DQI
FEDERAL PROJECTS REVIEWED		REVIEW TEAM	
S033021, S001339, 6490073, C047043, S092029		David S. Nelson, Anne Luedders	

PROGRAM-LEVEL OBSERVATIONS

Priority: 1

Risk Area: DBE

Observation: Interviews with DBE subcontractors indicated that retainage was being held by the prime contractors after completion of the subcontractors work and through to the State's final acceptance of the project. Even when subcontractors requested that retainage be released for their completed work, as allowed under ODOT specifications, some ODOT project managers would consider the request while others would not. The regulations in 49 CFR 26.29(b) state "you must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed." These regulations also require that the DOT must use one of three methods to comply with the prompt return of retainage requirement. The Oregon DOT has chosen to hold retainage which means it must then follow option 3 which in 49 CFR 26.26(b)(3) states "You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor." 49 CFR 26.29(c) defines 'satisfactory completion' as "when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient." 49 CFR 26.29(d) also requires "Your DBE program must provide appropriate means to enforce the requirements of this section.... "

Recommendation: The Oregon Division should work with ODOT to develop proactive guidelines and methods that ensure compliance with the prompt release of retention requirements pursuant to 49 CFR 26.29(b). The compliance mechanism should also be clearly spelled out in the DBE Special Provisions.

Compliance Issue: Y

Priority: 2
Risk Area: DBE
Observation: The ODOT statutes and specifications require contractors to pay subcontractors within ten calendar days after the contractor receives payment for the subcontractor's work. There are no assurances this specification requirement is met. Interviews with DBEs conducted during the course of this review indicated that some contractors pay promptly, as required, while others do not. Some DBEs acknowledged that ODOT's sole reliance on a complaint mechanism to monitor and ensure prompt payment can be problematic. They stated that subcontractors can be hesitant to complain to the ODOT about their failure to receive prompt payments from contractors upon whom they rely on for future work. Thus, reliance on a compliant mechanism is inconsistent with the requirements of 49 CFR 26.37 (a), which requires the ODOT to "implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program."
Recommendation: The Division should work with ODOT to develop a mechanism to monitor and enforce compliance of prompt payment provisions in accordance with 49 CFR 26.29 and 49 CFR 26.37.
Compliance Issue: Y

Priority: 3
Risk Area: DBE
Observation: One key aspect of a compliant DBE Program is that the DBE liaison Officer must have direct and independent access to the Chief Executive Officer concerning DBE program matters (see 49 CFR 26.25). The 2007 ODOT DBE Program Plan indicates that the DBE Liaison reports directly to the ODOT Director. Since the current ODOT organization chart does not reflect this reporting relationship, there is nothing in public, written policy to indicate that the DBE Liaison Officer has direct, independent access to the Director of the ODOT concerning all DBE program matters.
Recommendation: The Division should work with ODOT to ensure that the DBE Program Plan and Policy Statement clearly reflect that the DBE Liaison has direct and independent access to the Director of the ODOT concerning DBE program matters.
Compliance Issue: Y

Priority: 4
Risk Area: DBE
Observation: In interviews with ODOT staff, the use of joint checks was discussed. During project reviews and DBE interviews, it was noted that joint checks are used in some situations as an industry practice. The currently approved ODOT DBE program document does not include procedures for the use of joint checks. The FHWA issued a policy memorandum dated August 30, 2006, that identifies the general conditions for allowing joint checks with DBEs.
Recommendation: Since the use of joint checks is currently occurring in Oregon, it is recommended that the Division work with ODOT to develop a policy on joint check usage in accordance with FHWA policy memorandum and include the policy in the DBE Program Plan.
Compliance Issue: Y

<p>Priority: 5</p> <p>Risk Area: DBE</p> <p>Observation: The Oregon DOT uses an excellent process for reviewing commercially useful function on construction projects. Typically, project inspectors fill out a two page form with a series of questions and information fields. The form is then forwarded to the Regional Field Coordinators for further review and documentation in the CRCT (Civil Rights Compliance Tracking) data system. Nonetheless, the team found a few instances of the CUF form not completed for some DBEs on construction projects. Discussions with the ODOT concerning the absence of these review forms indicated that ODOT was aware of this shortcoming and are working diligently to rectify the situation.</p> <p>Recommendation: ODOT should continue to ensure the commercially useful function form is completed for all DBE subcontractors on construction projects.</p> <p>Compliance Issue: Y</p>
<p>Priority: 6</p> <p>Risk Area: DBE</p> <p>Observation: Approval of the FHWA DBE decision document containing the legal sufficiency analysis of the Oregon DOT's FY 2008, 2009, and 2010 annual DBE goal was delayed due to myriad reasons. The Division Office is aware of this shortcoming and is working diligently to gain approval of the FY 2011 legal sufficiency document for ODOT's FY 2011 Annual DBE Goal.</p> <p>Recommendation: The Oregon Division should continue to make completing the DBE decision document/ legal sufficiency analysis a priority.</p> <p>Compliance Issue: N</p>
<p>Priority: 7</p> <p>Risk Area: DBE</p> <p>Observation: The ODOT has developed and implemented the CRCT (Civil Rights Compliance Tracking) system, an excellent civil rights data collection system. Through its interface with Transport, ODOT has current, usable DBE information, which allows up-to-the moment reports on the status and success of the ODOT DBE program. The Tracking System also allows for custom reports of DBE performance measures as may be requested by management.</p> <p>Recommendation:</p> <p>Compliance Issue: N</p>
<p>Priority: 8</p> <p>Risk Area: DQI</p> <p>Observation: During discussions concerning the data quality review, the Review Team learned that the DBE cumulative payments ODOT has entered into RADS have only included payments made to committed, race-conscious DBEs rather than all race-conscious and race neutral DBEs.</p> <p>Recommendation: ODOT has already taken steps to remedy the inclusion of race neutral DBEs into RADS. Henceforth ODOT's RADS data should reflect payments made to all DBE contractors. The Division and ODOT should monitor this to ensure that the remedy is effective.</p> <p>Compliance Issue: N</p>

PROJECT-LEVEL OBSERVATIONS

Risk Area: DBE
Federal Project Number: S033021
State Project Number: 13225
State Contract Number: C13158_YQNR

Observation: The Review Team has concerns whether a DBE firm, West Side Iron, is performing a commercially useful function on this project. Contractually, West Side Iron is a second tier subcontractor to Hamilton Construction, a non-DBE subcontractor. Hamilton Construction is responsible for the construction of the bridges on this project. West Side Iron is providing for delivery and installation of the bridge pre-cast girders at a cost of \$4,520,190.00, which is also the amount claimed towards the DBE contract goal commitment. During an interview with a representative of West Side Iron, the team was told that the pre-cast girders were manufactured and transported by a non-DBE company, Knife River Corporation. Once the pre-cast girders were delivered by the Knife River Corporation to the installation site, they must be set in place using special cranes operated by certified crane operators. West Side Iron does not own or lease the special cranes required for girder placement; rather, they simply use the equipment provided by the bridge subcontractor, Hamilton Construction. Moreover, the certified crane operator was not employed by West Side Iron but rather by Hamilton Construction. This subcontract with West Side Iron raises serious doubts as to West Side Iron performing a commercially useful function. It would appear that West Side Iron is acting more as a pass-through company to gain a large DBE credit on this project for work that their firm simply did not perform.

Recommendation: The Oregon DOT should investigate this DBE firm to determine if there are violations of the commercially useful function requirements. The Oregon DOT should also be attentive to other projects in the future where precast concrete girders are acquired and installed by a DBE, paying attention to possible violations of the commercially useful function requirements.

Compliance Issue: Y

Risk Area: DQI
Federal Project Number: S001339
State Project Number: 13702
State Contract Number: C13977_BNGC

Observation: During discussions concerning the data quality reviews, it was learned that DBE payments had not been reported on this project because the monthly Summary Report of Subcontractors Paid data for April, May, June, July and August 2010 had not been entered into the CRCT (Civil Rights Compliance Tracking) system until early in December. Since the CRCT system is the source for RADS data in this field, the RADS data was not being reported correctly.

Recommendation: The Division and ODOT should review the data entry process for the monthly ODOT form "Summary Report of Subcontractors Paid" to determine how best to ensure that the DBE payment data being reported in RADS is as current and accurate as possible.

Compliance Issue: N

REVIEW SUMMARY

From December 13, 2010 through December 17, 2010, this FHWA National Review team conducted DBE reviews of five American Recovery and Reinvestment Act (ARRA) projects in Oregon. The team also conducted a data quality review of RADS data for those same five projects. Based on the data comparisons conducted for our review, the RADS data entered on these projects appears, overall, to be accurate. ODOT has good staff and systems in place to collect and enter the RADS data. The DBE review involved DBE program and project areas such as CUF determinations, DBE program plan implementation, DBE monitoring and reporting, DBE availability and use, contract compliance, etc. The team conducted on-site project level reviews as well as interviewing ODOT DBE Program and Construction Staff to assess implementation of the DBE program. The Team also conducted interviews with twelve (12) DBE subcontractors. The team notes that the Oregon DBE program has many positive attributes including skilled and dedicated DBE Program staff who work hard to make this program succeed. The observations and recommendations made on this DBE Program Review indicate a Satisfactory assessment.

OVERALL RISK ASSESSMENT

	DBE	DQI
Satisfactory:	X	X
Needs Improvement:		
Unsatisfactory:		

