



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Transportation

Office of Civil Rights

955 Center St NE, Room 471

Salem, OR 97301

Phone: (503) 986-4350

Fax: (503) 986-6382

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Norman C. Snead  
Technical Services Team Leader  
Right-of-Way/Civil Rights/Utilities Program Manager  
Federal Highway Administration  
530 Center Street, N.E., Ste 100  
Salem, OR 97301

Dear Norm,

Please find attached ODOT's response to the National Review Team's report findings based on the assessment that was conducted the week of December 13, 2010. I must add that we found the whole process to be a valuable experience, and are pleased that the overall rating was "Green".

In addition to our responses to the findings, we have outlined timelines for logical steps necessary to assure that our solutions are developed in concert with other ODOT sections as appropriate, and will conform to federal regulations. These timelines, of course, will be adjusted or accelerated to the extent possible as we identify courses of action to complete these tasks.

If you have any questions, please don't hesitate to contact Jill Miller on 503-986-4355 or me on 503-986-5753.

Sincerely,

Michael A. Cobb, Manager  
Office of Civil Rights

Cc: Matt Garrett  
Joan Plank  
Phil Ditzler  
Jill Miller

## DRAFT RESPONSES TO NRT FINDINGS

### Priority 1: Return of Retainage

The ODOT Office of Civil Rights (OCR) will work with the Agency's Contract Administration and Risk Management divisions, as well as the FHWA Division Office, to determine whether requiring retainage is the best option, and if so, how the Agency can assure prompt return in compliance with the federal regulations. It is anticipated that meetings will commence in March 2011, to begin discussing the issue, and identify options. Once a course of action has been determined, additional meetings with ODOT's Contract Administration Division, Technical Services Branch, Department of Justice, and other concerned groups will be brought into meetings by June 30, 2011, to develop an implementation plan. Meetings will continue during the second half of calendar year 2011 to review progress and plan a communications strategy, and any changes in policy and procedure will be in place by December 31, 2011. Quarterly reports will be provided to the FHWA Division Office by the end of the month following the close of the previous quarter.

- March 2011 – Begin meetings to discuss finding and identify options.
- June 2011 – Continue meetings with additional staff as identified
- September 2011 – Develop a draft plan of action to address the finding
- December 31, 2011 – Any policy or procedure changes necessary will be implemented

### Priority 2: Prompt Payment

Currently payment information is documented and tracked by the OCR through the Civil Rights Compliance Tracking (CRCT) database system. Contractors are required to submit a monthly summary report of payments to subcontractors at all levels, and that information is entered into the system and compared to payments made to the Prime Contractor. There is up to a 60-day lag between the payment being made and the report submittal, and there can be additional time delays if the information is not promptly entered into the system. Additionally, subcontractor payment information for non-construction contracting is not required by state statute, and is not consistently provided. The OCR will meet with the Contract Administration Unit and the fiscal management staff to begin discussions to investigate more efficient and timely reporting and tracking methods by March 31, 2011. When options for improving the prompt payment tracking process and monitoring any deviations from the requirements have been identified, a plan of action will be developed by June 30, 2011, and a summary will be sent to the FHWA Division Office. Training sessions and communications outreach events have already been scheduled for Winter-Spring of 2011, to raise awareness of the prompt payment requirements, and make sure that ODOT employees and Consultant staff know their responsibilities. The Agency will also reopen dialog with the Oregon Department of Administrative Services (DAS) to discuss potential changes to current statute to include

prompt payment provisions for all contracts. A plan of action will be submitted to the Division Office by December 31, 2011.

- March 2011 – Begin meetings to discuss finding and identify options.
- June 2011 – Continue meetings with additional staff as identified
- September 2011 – Develop a draft plan of action to address the finding
- December 31, 2011 – Any policy or procedure changes necessary will be implemented

#### Priority 3: Direct and Unrestricted Access

The ODOT DBE Liaison Officer is also the Office of Civil Rights Manager, and currently has unrestricted access to the Agency Director. In the past the OCR was part of the Central Services Division, and reported to the Deputy Director for that section. In 2005, when Matt Garrett took over as the Director of ODOT, he changed the reporting structure so the Office of Civil Rights reports to the Director's Office. Both the DBE Program Manager and the Manager of the Office of Civil Rights (DBE Liaison Officer) have direct, independent access to the ODOT Director.

- Completed

#### Priority 4: Joint Checks

The DBE Program Plan will be revised to comply with the FHWA directive and a new program document will be submitted to the FHWA Division Office for review by December 31, 2011. Joint check procedures and policy as reflected in the FHWA directive will be communicated during the second quarter 2011 to ODOT Project Management and Contract Administrative staff to assure that if joint checks are used it is done within the guidelines of the DBE Program. Notices will be sent to Agency-wide staff as appropriate by May 31, 2011, and the directive will be published on the Office of Civil Rights DBE web page prior to that date.

- March 2011 – Begin meetings to discuss finding and identify options.
- June 2011 – Provide training for ODOT staff and publish notice on OCR website
- December 31, 2011 – Any necessary changes to the ODOT DBE Program Plan will be made and submitted to FHWA Division Office

#### Priority 5: CUF Reviews

The OCR has recognized that missing or incomplete CUF Reviews are a potential problem and has been working to improve the system for several months. The steps taken so far include revising the CUF Report form to focus the review so that it captures

all relevant information to support the performance of a commercially useful function, increased training for all staff, including consultants and local agencies, involved in performing or reviewing CUF compliance, and emphasis on timely reporting and entry into the CRCT tracking system. Training and communications outreach with Field Inspectors, Project Managers, Local Agencies, and OCR Field Coordinators will begin January 19, 2011, and continuing through the spring. The current trainings are due to be completed by April 30, 2011, but additional sessions will be added if necessary. OCR has been working with Project Management staff, Contract Administration Unit and the Local Government Section to inform and educate them on the importance of the CUF review process. Steps have been taken to assure that only DBE firms for which ODOT can support the performance of a commercially useful function will be reported for credit, but the current focus is on proactive measures which will eliminate the need for corrective actions after the project is underway. The OCR will continue to monitor CUF reviews on a monthly basis to ensure that emphasis on the process is maintained in the field.

- January 2011 – Revised CUF review form completed and implemented.
- June 2011 – Continue training for ODOT staff, field inspectors, Project Managers and Local Agencies to improve awareness of the CUF requirement and proper procedures
- September 2011 – Continue training and oversight of CUF reviews
- December 31, 2011 – Any necessary changes to the ODOT DBE Program Plan will be made and submitted to the FHWA Division Office

#### Priority 6: Legal Sufficiency Review

No action required.

#### Priority 7: CRCT

Thank you. No action required, but we will continue to improve the system as appropriate.

#### Priority 8: RADS Payments

Corrective action taken.

#### Risk Area: CUF for West Side Iron

Agency policies and procedures in place at the time this contract was awarded have contributed to the challenges in monitoring and compliance tracking on this project. In 2005, when this project was started, the crediting policy allowed DBE firms to be committed for work in which they were not certified, as long as they performed a commercially useful function. Due to miscommunication between ODOT and the Contractor, no CUF reviews have been performed at this time. The Project Manager and

the OCR Field Coordinator will work together to assure that all DBE firms on the project are reviewed, with special attention to verify that this firm is only credited for work they perform under the DBE Program regulations. The DBE Program Manager will review the results of the CUF Review performed on West Side Iron, and, if necessary, interview the owner to determine the correct level of crediting, and will work with the Project Manager and Field Coordinator to verify that the Prime Contractor and DBE firm meet their contractual obligations. Meetings will be scheduled during February 2011 to determine appropriate courses of action and desired outcomes. Findings and any corrective actions required will be communicated to project management and FHWA by May 2011.

- January 2011-Ongoing -- The ODOT DBE Program Manager, Field Coordinator and Project Manager will work together to perform a CUF review of this firm and verify the extent of their legitimate involvement in the project
- Only work performed in accordance with CFR and DBE regulations will be counted for the firm

Risk Area: RADS data entry

ODOT OCR will work with the Division Office to identify ways to make the payment reporting system more efficient and timely. One of the projects reviewed was a local agency managed project, and there has been some time lag in moving payment data through the various levels of oversight. Training sessions have been scheduled to work with the local governments and the Local Agency Guidelines Manual will be updated in the Spring of 2011 to clarify responsibilities. Additional training is also scheduled to reinforce the need for timely data collection at all levels of ODOT. Significant improvement is expected by April 30, 2011, and the OCR will continue to monitor the reporting systems to assure accurate information and reporting.

NOTE: Priorities 1, 2 and 5, were recently a topic of discussion at the Annual ODOT Project Managers' meeting held January 19, 2011. Attendees were advised that there would be follow up meetings convened.