TEXAS DEPARTMENT OF TRANSPORTATION

MAKING THE CASE FOR BUILDING AN EFFECTIVE TECHNICAL ASSISTANCE PROGRAM

2014 AASHTO Civil Rights Symposium

April 29, 2014

Overview

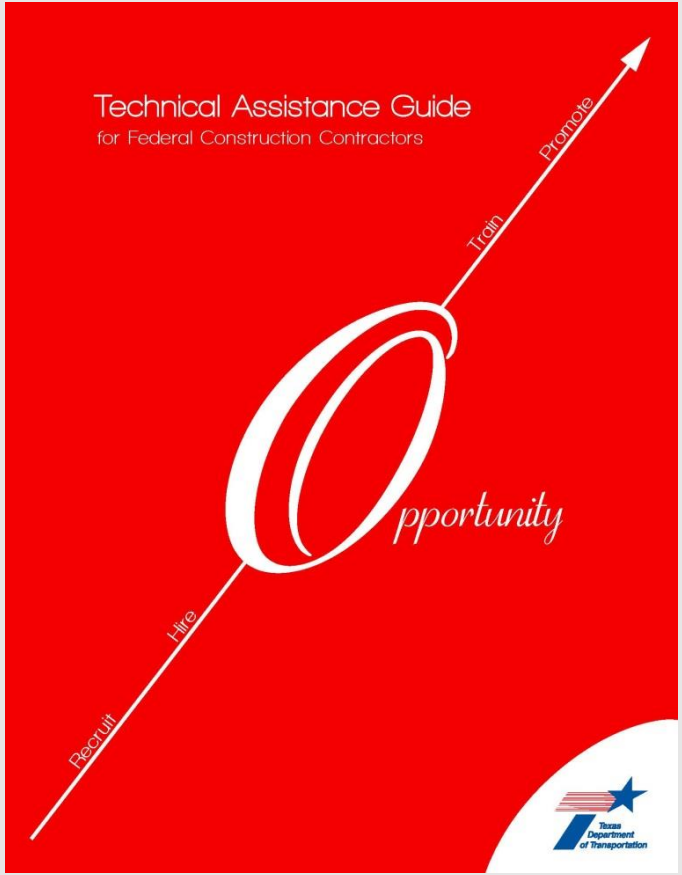
- Authorities and role
- Business case
- Purpose of Technical Assistance Programs
- Overview of Technical Assistance Guides
- Video
- Benefits of Technical Assistance Programs
- Questions
- Conclusion

Authority and Role

- To ensure compliance with Form FHWA-1273, the Texas Department of Transportation's Office of Civil Rights:
  - Conducts contract compliance reviews of contractors in accordance with 23 CFR 230 Subpart D.
  - Works to prevent discrimination before it occurs through education and technical assistance programs.

- Led to the development and implementation of the *Technical Assistance Guide for Federal Construction Contractors.*

Technical Assistance Guide for Federal Construction Contractors



Business Case for Developing a Technical Assistance Guide

- The Texas Department of Transportation developed the Technical Assistance Guide (TAG):
  - As a resource to assist contractors in complying with certain provisions of Form FHWA-1273.
  - To help prepare for an Equal Opportunity (EO) contract compliance review.

- The guide is a framework upon which contractors may build its Equal Opportunity compliance program.

Purpose of the Technical Assistance Guide For Federal Contractors

- The purpose of the guide is to:
  - Familiarize Federal contractors with the compliance review process.
  - Highlight some recommendations that TxDOT strongly encourages contractors incorporate into their EO compliance program.
  - Improve a contractor's ability to comply with certain aspects of Form FHWA-1273.
  - Facilitate the compliance review.

Form FHWA-1273 Requirements

- Form FHWA-1273 requirements and the recommendations are included in the TAG.
- The relevant requirements include:
  - EEO Policy
  - Discrimination Complaints
  - Dissemination of EEO Policy to Applicants and Employees
  - Dissemination of EEO Policy to Supervisors and Personnel Office Employees
  - Recruitment / Advertising
  - Wage Evaluation
  - Personnel Actions Review
  - Training
  - Records and Reports

EEO POLICY

Requirement:

"The contractor will accept as its operating policy the following statement:

> 'It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.'" (Form FHWA-1273, Section II.1.b.)

Recommendations:

- The following items are recommended to be included in the EEO policy:

  1) Name and contact information for the company's EEO officer
  2) Encourage employees to refer minority and female applicants
  3) Encourage employees to request information on training opportunities
  4) Discrimination complaint procedure
  5) Alternative avenues of appeal
  6) Company president, CEO, or owner signature

- On the following pages are examples of an EEO Policy in English and Spanish.

Technical Assistance Guide for Federal Construction Contractors

<COMPANY NAME>
Equal Employment Opportunity Policy

<Company Name> is an equal opportunity employer and maintains a work environment free from unlawful discrimination.

It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

All employees are encouraged to refer minority and female recruits for employment whenever hiring opportunities are available.

All employees are encouraged to request information on available training programs and the entrance requirements for each.

Any complaint of alleged discrimination by this company, its supervisors or employees, or any person or organization acting on behalf of this company should be reported immediately by following the company's complaint guidelines. The company will promptly investigate all complaints of alleged discrimination and will attempt to resolve such complaints. If investigation shows the complaint to be well founded, prompt and effective remedial action will be taken. The company assures that the complainant shall be protected from any form of retaliatory action.

Complaints may also be filed with the following agencies:

Equal Employment Opportunity Commission (EEOC)
(800) 669-4000

Texas Workforce Commission-Civil Rights Division (TWC-CRD)
(888) 452-4778

EEO Officer Signature _____ President / CEO Signature _____

Address: _____

Telephone: _____

<NOMBRE DE LA EMPRESA>
Política para La Igualdad de Oportunidades en el Empleo

<Nombre de la Empresa> es una empresa que da igualdad de oportunidades en el empleo y mantiene un ambiente laboral libre de discriminación ilegal.

Es la política de esta empresa que los solicitantes de empleo y los empleados, durante su periodo de empleo, serán tratados sin considerar su raza, religión, color, origen nacional, edad, sexo, o discapacidad. Tal acción incluirá: empleo, ascenso, descenso, o traslado; reclutamiento, o anuncios de reclutamiento; despido o terminación; nivel de sueldo u otras formas de compensación; y selección para entrenamiento como aprendiz, pre-aprendiz, y/o capacitación en el puesto de trabajo.

Todos los empleados actuales están motivados a reclutar a minorías o mujeres cuando hay oportunidad de llenar un puesto.

Todos los empleados están motivados a pedir información sobre programas adicionales de capacitación laboral y los requisitos para tales programas.

Cualquier queja de discriminación alegada por parte de esta empresa, sus supervisores o empleados, o cualquier persona u organización actuando por parte de esta empresa debe estar reportada por inmediato siguiendo las pautas para reportar quejas de la empresa. La empresa investigará por inmediato todas las quejas alegadas de discriminación y hará un esfuerzo para resolver tales quejas. Si una investigación muestra que la queja es valida, acciónes inmediatas, correctivas y efectivas estarán tomadas. La empresa asegura que el que reporta la queja será protegido de cualquier forma de acción de represalia.

También se pueden presentar quejas con las agencias siguientes:

La Comisión para la Igualdad de Oportunidades en el Empleo
Equal Employment Opportunity Commission (EEOC)
(800) 669-4000

La Comisión de la Fuerza Laboral de Texas – División de Derechos Civiles
Texas Workforce Commission – Civil Rights Division (TWC-CRD)
(888) 452-4778

Firma del Encargado de EEO _____ Firma del Presidente / Director General _____

Dirección: _____

Teléfono: _____

Dissemination of EEO Policy to Applicants and Employees

Requirements:

"Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees." (Form FHWA-1273 Section II.3.d.)

"The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means." (Form FHWA-1273 Section II.3.e.)

Recommendations:

- Examples of areas readily accessible to employees, applicants for employments, and potential employees include:

  1) Project bulletin board
  2) Project trailer
  3) Lobby area

- Appropriate documentation that the contractor's EEO policy and the procedures to implement such policy have been brought to the attention of employees should be maintained. Examples include:

  1) Agendas and sign-in sheets for meetings conducted with employees when the EEO policy and its implementation are explained.
  2) Include the EEO policy in the company handbook and require employees to sign an acknowledgement form indicating that they have read and understood the EEO policy and the implementation procedures.
  3) Include the EEO policy in employee paychecks once or twice a year.

- On the following pages are examples of an employee meeting form and an EEO policy acknowledgement receipt. The EEO Meeting for Employees form 2497 is also available online at http://www.txdot.gov/inside-txdot/forms-publications/forms/civil-rights.html.

Technical Assistance Guide for Federal Construction Contractors

Texas Department of Transportation

EEO MEETING FOR EMPLOYEES
<Company Name>

Form 2497
(05/13)
Page 1 of 1

Project _____ CSJ _____

Meeting Conducted By _____ Date _____

- ☐ Read and explain EEO policy.
- ☐ Provide name and contact information for EEO Officer.
- ☐ Discuss discrimination complaint procedure.
- ☐ Discuss location of EEO Posters and EEO Policy posting. (Meeting can be held in front of where these are posted.)
- ☐ Encourage employees to refer minorities and females for employment, including any specific hiring opportunities currently available.
- ☐ Advise employees of available training programs and entrance requirements for each and encourage them to apply.

My signature below certifies that I attended the EEO Meeting held on the above referenced date and project and that the items checked above were explained in that meeting.

Name (Printed)	Title	Signature

EEO Policy Employee Acknowledgment

I acknowledge that I have received, read, and understand the <Contractor's Name> EEO policy and implementation procedures provided to me. If I have questions concerning the policy and procedure, I am to contact <EEO Officer's Name>, EEO Officer, at <EEO Officer's Contact Number>.

Employee Signature _____ Date _____

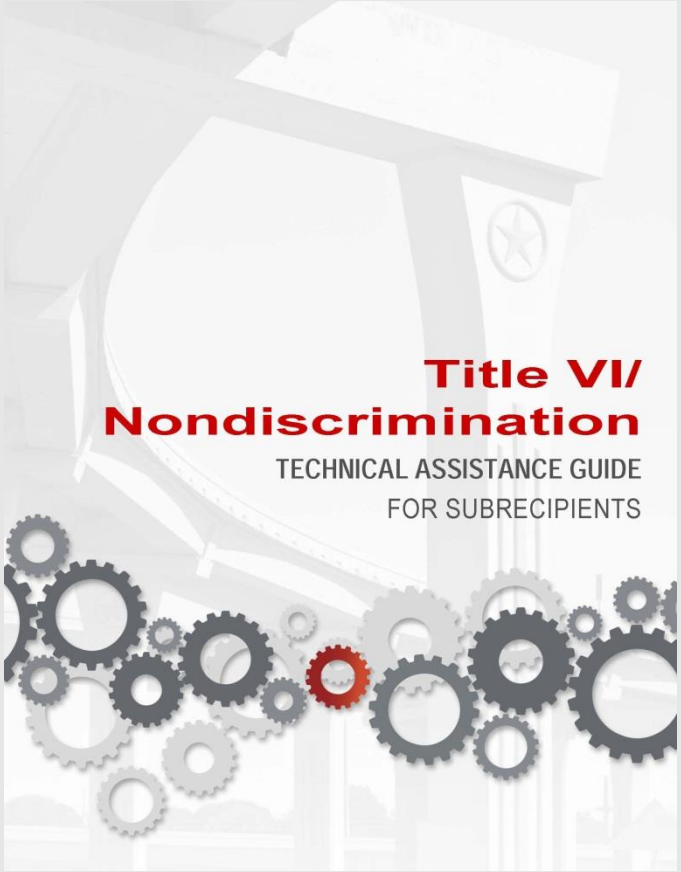
Authority and Role

- In accordance with 23 CFR 200.9(b)(7), TxDOT is required to conduct Title VI reviews of its sub-recipients to effectively monitor compliance with Title VI/Nondiscrimination requirements.

- TxDOT's Office of Civil Rights works to prevent discrimination before it occurs through education and technical assistance programs.

- Led to the development and implementation of the *Title VI/Nondiscrimination Technical Assistance Guide for Sub-Recipients*.

Title VI/Nondiscrimination Technical Assistance Guide for Subrecipients



Business Case for Developing the Title VI Technical Assistance Guide

- The Texas Department of Transportation's Office of Civil Rights developed the Title VI TAG:
  - As a resource to assist subrecipients understand and comply with the requirements of Title VI and related nondiscrimination laws and regulations and;
  - To help prepare for a Title VI review.

- This guide is a framework upon which subrecipients may build its Title VI program.

Purpose of the Title VI Technical Assistance Guide

- The purpose of the guide is to:
  - Familiarize subrecipients with the Title VI review process.
  - Improve a sub-recipient's ability to comply with certain aspects of the Title VI/Nondiscrimination requirements.
  - Highlight some recommendations that TxDOT strongly encourages subrecipients incorporate into their Title VI program.
  - Facilitate TxDOT's Title VI review of the sub-recipient.

Title VI Requirements

1. Developing a Title VI/Nondiscrimination Policy /Nondiscrimination Policy Statement
2. Developing Title VI/Nondiscrimination Assurances
3. Appointing a Title VI/Nondiscrimination Coordinator
4. Developing a Title VI/Nondiscrimination Plan
5. Developing procedures for processing external discrimination complaints
6. Maintaining a list of external discrimination complaints and lawsuits
7. Providing accommodations for Limited English Proficient Persons
8. Addressing Environmental Justice in minority populations and low-income populations

Title VI Requirements

9. Ensuring nondiscrimination in the public participation process
10. Collecting and analyzing data to ensure nondiscrimination in programs and activities
11. Ensuring that solicitations for bid/requests for proposals contain the Title VI/Nondiscrimination Assurance paragraph
12. Ensuring subcontracts contain the appropriate contract provisions and language from the Title VI Assurances
13. Ensuring nondiscrimination in the award of contracts
14. Developing a Title VI/Nondiscrimination Annual Work Plan & Accomplishment Report

Title VI/Nondiscrimination Technical Assistance Guide for Subrecipients

TITLE VI REQUIREMENT #2

Title VI/Nondiscrimination Assurances

Have a signed assurance to establish full and affirmative compliance with Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities.

Recommendations:

- Ensure the U.S. DOT Standard Title VI Assurances is signed by the head of the agency
- The head of the agency should re-sign the U.S. DOT Standard Title VI Assurances every three years or within 30 days of the accession of a new head of the agency
- Ensure annual certification and assurances for the Federal Transit Administration
- Contractors, consultants, and suppliers are not required to sign the U.S. DOT Standard Title VI Assurances

Title VI/Nondiscrimination Technical Assistance Guide for Subrecipients

STANDARD DOT TITLE VI ASSURANCES
DOT 1050.2
Dated 8/24/71

The <Name of Agency> (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the Texas Department of Transportation, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to the programs administered by the Recipient.

1. That the Recipient agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all programs administered by the Recipient

Title VI/Nondiscrimination Technical Assistance Guide for Subrecipients

TITLE VI REQUIREMENT #4

Title VI/Nondiscrimination Plan

Develop a Title VI/Nondiscrimination Plan that communicates how the agency implements the Title VI/Nondiscrimination requirements (including Environmental Justice and Limited English Proficiency).

Recommendations:

- Adopt TxDOT's Title VI/Nondiscrimination Plan to use as a template
- The Title VI/Nondiscrimination Plan should contain procedures, strategies, and activities to facilitate and assure nondiscrimination in federally assisted programs and activities of the agency
- Include mechanisms to guarantee effective and efficient implementation, compliance, and enforcement of Title VI
- Include maps of Environmental Justice (EJ) and Limited English Proficient (LEP) populations (based upon the most recent Census data)
- Contractors, consultants, and suppliers are not required to submit a Title VI Program Plan

Title VI/Nondiscrimination Technical Assistance Guide for Subrecipients

TxDOT's Title VI/Nondiscrimination Plan Development Guide

This report is intended to communicate how the agency implements the Title VI/Nondiscrimination requirements (including Environmental Justice and Limited English Proficiency). At a minimum, the Title VI/Nondiscrimination Plan contains the following sections:

- Introduction, Policy Statement (Delegation of Authority and Responsibility), and FHWA Assurances For Title VI And Other Nondiscrimination Statutes And Regulations;
- Organization/Staff Responsibilities;
- Complaint Disposition Procedures;
- Process To Identify/Eliminate Discrimination;
- Process To Resolve Deficiencies Identified by FHWA;
- Internal Monitoring Program: Includes Data Collection/Data Analysis/Data Reporting and Federal Program Areas Process Reviews Procedures;
- External Monitoring Program: Monitoring of Subrecipients;
- Public Participation Plan (Includes How The Title VI/Nondiscrimination Plan relates to the Public Participation Plan);
- Title VI/Nondiscrimination-Related Training Component: Internal and External;
- Environmental Justice (EJ) Plan/Process;
- Language Access Plan (Limited English Proficiency);
- Implementation Plan (if appropriate, i.e., when a new Title VI/Nondiscrimination Plan has been developed);
- External Communication – Notification To Beneficiaries;
- Reporting to FHWA (Annual Work Plan & Accomplishment Report, includes Goals & Accomplishments); and
- Attachments: May include example of the Complaint Log, Title VI/Nondiscrimination Brochure, etc.

Change Your Words, Change Your World

The Power of Words

http://www.youtube.com/watch?feature=player_embedded&v=jOMMFx1NZt0

Benefits of the TxDOT's Technical Assistance Programs & Guides

- Helps Federal contractors and sub-recipients better understand, implement, and comply with FHWA's requirements.
- Assist employers, sub-recipients and stakeholder groups understand and prevent discrimination.
- Helps TxDOT's Office of Civil Rights staff more efficiently and effectively monitor the Federal contractor's and sub-recipient's compliance.

Questions, Conclusion, and Contact Information

- Questions?
- Thank you for your participation.
- Contact Information:

Dave R. Tovar

Contract Compliance Section Director

Office of Civil Rights

Texas Department of Transportation

512/416-4750

Dave.Tovar@txdot.gov

TxDOT's Civil Rights Publications

- *Technical Assistance Guide for Federal Construction Contractors*
- *Title VI/Nondiscrimination Technical Assistance Guide for Subrecipients*
- http://www.txdot.gov/inside-txdot/forms-publications/publications/civil-rights.html