Civil Rights Updates and Active Monitoring of Prompt Payment

Aaron Matzke; Lorraine Legg
March 8, 2022
Personnel Updates

• New Civil Rights Engineer – Aaron Matzke
  • Troy Larsen and Chris Hassler no longer at NDOT

Overview

• Commercially Useful Function – Field Reviews
• On the Job Training
• Active Monitoring of Prompt Payment
# Commercially Useful Function Review – Field Form

<table>
<thead>
<tr>
<th>Date:</th>
<th>Project Control Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Contractor:</td>
<td>Subcontractor:</td>
</tr>
<tr>
<td>Second-Tier Subcontractor:</td>
<td>Reviewer:</td>
</tr>
<tr>
<td>DBE Representative:</td>
<td></td>
</tr>
</tbody>
</table>

This form must be completed for each DBE subcontractor on a project. If the DBE is a subcontractor and has subcontracted work to a second-tier subcontractor, this form must be filled out for the second-tier subcontractor as well.

Please forward this form to the NDOT Civil Rights Office upon completion:
NDOT HCRO, 1500 Hwy 2, PO Box 94759, Lincoln, NE 68509-4759
Fax: 402-479-3728 Email: ndot.hcro-dbe@nebraska.gov

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the DBE performing the work items that the firm is under contract to perform?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the DBE performing any additional work items?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Who is supervising the DBE’s work on the jobsite?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Has the DBE owner been present on the jobsite?</td>
<td>Yes</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Is the DBE performing work with its own workforce?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are employees of the prime contractor performing any of the DBE’s work?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the DBE on-site representative effectively manage the jobsite without any interference from the prime contractor?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>List the major self-propelled (engine) equipment used by the DBE:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the equipment used by the DBE owned by the DBE firm, or leased?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the equipment have the DBE’s markings or emblems?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the equipment under the direct supervision of the DBE?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is the operator of the leased equipment the DBE’s employee?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If the DBE is contracted to provide supplies, did the DBE actually deliver the supplies?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If the DBE is contracted for hauling, do the trucks used on the project belong to the DBE?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NDOT Form 136, February 22
Commercially Useful Function – Field Review (NDOT Form 136b)

WHY?

• To ensure proper counting of work attributed or committed to DBEs

WHO?

• Project Managers

WHEN?

• ONLY when a DBE firm is performing work on a project
• **During Construction**: Should be completed as near to the beginning of the DBE’s work as possible
Commercially Useful Function – Field Review (NDOT Form 136b)

HOW?

- One form per DBE on a project. Two DBE’s two forms, etc.
- Must be emailed to the NDOT Highway Civil Rights Office or uploaded to OnBase according to PM Best Practice Guide
- Available on NDOT Civil Rights webpage OR in the DOTForms folder
On the Job Training (OJT)

2021 in review:

- 21 contractors assigned a total of 97,500 annual OJT hours
- 167 total enrollees
- 41 graduates

Looking to 2022:

- OJT hours have been sent by the NDOT Highway Civil Rights Office
- Training Special Provisions posted on NDOT Civil Rights website
Prompt Payment and Active Monitoring

March 8, 2022
Prompt Payment

• Applies to both DBE and non-DBE subcontractors at every tier
• Applies to both state and federally funded projects
• Paragraph 7 of Section 108.01 of the Nebraska Standard Specifications for Highway Construction, 2017 Edition (SSHC) contains specific requirements for inclusion of the “Prompt Payment Clause” when subletting work to lower-tier subcontractors.
Prompt Payment

Guidance is on the NDOT website regarding prompt payment compliance under Doing Business>Contractor information>Contractor Payments>Prompt Payment Compliance
https://dot.nebraska.gov/media/114245/prompt-payment-compliance.pdf

- DBE Program Plan (link)
- Withholding process
- Reporting prompt payment violations
- Overpayments
- Sanctions for non-compliance
Active Monitoring of Prompt Payment

2021 FHWA DBE Process Review of Prompt Payment and Return of Retainage

• Finding issued on October 27, 2021
  • Required implementation of a proactive system to monitor prompt payment to subcontractors
    • Monitoring cannot be complaint-based

• Applies to DBE and Non-DBE
Active Monitoring of Prompt Payment

NDOT Implementation Plan
• AASHTOWare Project Civil Rights and Labor package (AWP CRL)
  • December 2021
    • Demonstrated functionality to AGC leadership for comments
    • Demonstrated functionality to NDOT subject matter experts
Active Monitoring of Prompt Payment

NDOT Implementation Plan

• AASHTOWare Project Civil Rights and Labor package (AWP CRL)
  • January – April 2022: develop policy and proposed specification changes
  • April 2022
    • Solicit industry input on draft prompt payment policy and implementation schedule
    • Submit draft policy and revised implementation schedule (if needed) to FHWA for approval
Active Monitoring of Prompt Payment

NDOT Implementation Plan

• AASHTOWare Project Civil Rights and Labor package (AWP CRL)

• June 2022 Goal - Complete the revised prompt payment specification for inclusion in August letting

• Fall 2022
  • Begin Training (internal and external)
Active Monitoring of Prompt Payment

NDOT Interim Active Monitoring Plan Until AWP CRL Implementation

• Quarterly monitoring of prompt payment in the form of a survey to subcontractors. Currently under development.

• We expect to start this quarterly survey in July this year and continue until full implementation of AWP CRL has been accomplished.
Aaron Matzke
NDOT Civil Rights Engineer

Application for DBE/ACDBE certification:
ndot.hcro-dbe@nebraska.gov

OJT reporting:
ndot.hcro-ojt@nebraska.gov

Self-Analysis Reports/Questions
ndot.hcro-eeo@nebraska.gov

NDOT Civil Rights Webpage
http://dot.nebraska.gov/business-center/civil-rights/