

# Civil Rights Updates and Active Monitoring of Prompt Payment

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March 8, 2022

**NEBRASKA**

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**DEPARTMENT OF TRANSPORTATION**



# 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

Date: <input style="width: 100%;" type="text"/>	Project Control Number: <input style="width: 100%;" type="text"/>
Prime Contractor: <input style="width: 100%;" type="text"/>	Subcontractor: <input style="width: 100%;" type="text"/>
Second-Tier Subcontractor: <input style="width: 100%;" type="text"/>	Reviewer: <input style="width: 100%;" type="text"/>
DBE Representative: <input style="width: 100%;" type="text"/>	

**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.hcr-dbe@nebraska.gov](mailto:ndot.hcr-dbe@nebraska.gov)**

	Yes	No	N/A
Is the DBE performing the work items that the firm is under contract to perform?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the DBE performing any additional work items?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Who is supervising the DBE's work on the jobsite?

	Yes	No	N/A
Has the DBE owner been present on the jobsite?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the DBE performing work with its own workforce?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are employees of the prime contractor performing any of the DBE's work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the DBE on-site representative effectively manage the jobsite without any interference from the prime contractor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

List the major self-propelled (engine) equipment used by the DBE:

Is the equipment used by the DBE owned by the DBE firm, or leased?

Does the equipment have the DBE's markings or emblems?

	Yes	No	N/A
Is the equipment under the direct supervision of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the operator of the leased equipment the DBE's employee?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If the DBE is contracted to provide supplies, did the DBE actually deliver the supplies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	N/A
If the DBE is contracted for hauling, do the trucks used on the project belong to the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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](mailto:ndot.hcro-dbe@nebraska.gov)

OJT reporting:

[ndot.hcro-ojt@nebraska.gov](mailto:ndot.hcro-ojt@nebraska.gov)

Self-Analysis Reports/Questions

[ndot.hcro-eeo@nebraska.gov](mailto:ndot.hcro-eeo@nebraska.gov)

NDOT Civil Rights Webpage

<http://dot.nebraska.gov/business-center/civil-rights/>