South Dakota Department of Transportation

Title VI Program Implementation Plan

South Dakota Department of Transportation
Division of Secretariat
Office of Legal Counsel
Civil Rights Program
700 East Broadway Avenue
Pierre, South Dakota 57501-2486

September 2020

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ACRONYMS

ADA	American with Disabilities Act
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FAPG	Federal Aid Policy Guide
FHWA	Federal Highway Administration
HUD	Housing and Urban Development
LEP	Limited English Proficiency
LPA	Local Planning Organization
MPO	Metropolitan Planning Organization
PIP	Public Involvement Plan
P.L.	Public Law
ROW	Right-of-Way
SDCL	South Dakota Codified Law
SDDOT	South Dakota Department of Transportation
SECOG	South Eastern Council of Governments
SEE	Social, Environmental and Economic
SIMPCO	Siouxland Interstate Metropolitan Planning Council
STIP	Statewide Transportation Improvement Program
TIP	Transportation Improvement Plan
U.S.C.	United States Code

Nondiscrimination Authorities

Age Discrimination Act of 1975: 42 U.S.C. 6101 prohibits discrimination on the basis of age.

American Disabilities Act of 1990: P.L. 101-336 and 42 U.S.C. Sections 12101 and 49 CFR parts 23, 37 and 38 prohibit discrimination against individuals with disabilities in the provision of transportation service and employment opportunities.

Civil Rights Act of 1991: clarified Section 1981 of 42 U.S.C. by adding the term “make and enforce contracts” and provided that rights under this section are protected against impairment by non-governmental discrimination and impairment under color of State law.

Civil Rights Restoration Act of 1987: P.L. 100-209 prohibits discrimination in agencies that receive any federal funds.

Disadvantaged Business Enterprise: 49 CFR Part 26 prohibits discrimination in contracting and assists socially and economically disadvantaged business concerns ensure an opportunity to bid on federal contracts.

Environmental Justice: Executive Order 128998 requires federal recipients to administer and implement programs, policies, and activities that affect human health or environment so as to identify and avoid “disproportionately high and adverse” effects on underrepresented and underserved.

Equal Employment Opportunity: 49 U.S.C. 5332 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity.

Equal Employment Requirements: 23 CFR Part 230 regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts.

Federal-aid Highway Act: 49 U.S.C. 306 outlines the responsibilities of the US DOT and the Secretary’s authority to decide whether a recipient has not complied with applicable Civil Rights statutes or regulations, requires the Secretary to provide notice of the violation, and requires necessary action to ensure compliance.

Federal-aid Highway Act of 1973: 23 U.S.C. 324 prohibits discrimination on the basis of gender.

Limited English Proficiency: Executive Order 13166 establishes that programs and services normally provided in English must be accessible to persons with LEP in order to avoid national origin discrimination prohibited by Title VI.

National Environmental Policy Act of 1969: 42 U.S.C. 4321 requires consideration of alternatives, including the “no-build” alternative, consideration of social, environmental and economic impacts, public involvement, and use of a systematic interdisciplinary approach at teach decision-making stage of Federal-aid project development.

Section 504 of Rehabilitation Act of 1973: 29 U.S.C. 794 and 49 CFR part 27 prohibits discrimination against individuals with disabilities. .

Title VI of the Civil Rights Act of 1964: 42 U.S.C. 2000 (d-1) and 49 CFR part 21; prohibits discrimination on the basis of race, color, and national origin in services provided with federal funding.

Title VIII of the 1968 Civil Rights Act: 42 U.S.C. 3601 prohibits discrimination in the sale or rental of housing (HUD is the primary interest agency, but FHWA and States under Title VI are responsible for preventing discrimination in the function of Right-of-way).

Uniform Relocation Act Amendments of 1987: P.L. 101-246 updated the 1970 Act and clarified the intent of Congress in programs and projects which cause displacement

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970: 42 U.S.C. 4601 provides for fair treatment of persons displaced by federal and federal-aid programs and projects.

Part I. Title VI & Nondiscrimination Policy Statement

Title VI of the Civil Rights Act of 1964 protects individuals, groups and organizations from discrimination on the basis of race, color or national origin in all programs and activities. In addition, laws prohibit discrimination on other grounds, such as religion, sex, age, and disability. Based on the above criteria, the SDDOT program is referred to as the Title VI and Nondiscrimination Program.

The policy of the SDDOT is to ensure that no person or group of persons shall, on the grounds of race, color, national origin, religion, sex, age, disability or other statutorily prescribed basis, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity administered by the Department.

To ensure compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as Secretary of the Department, I have designated June Hansen as the department's ADA Coordinator. Contact information is as follows:

June Hansen, Civil Rights Compliance Officer/ADA Coordinator
SDDOT – Office of Legal Counsel/Civil Rights Program
700 E. Broadway Ave.
Pierre, SD 57501
Phone: 605-773-3540 Fax: 605-773-4442
Email: june.hansen@state.sd.us

As Secretary of the Department, I delegate the responsibility to assure the implementation of the Title VI and Nondiscrimination Program to the Division Directors, the Civil Rights Compliance Officer (Title VI Coordinator/Specialist) and to all other personnel involved with activities impacted by Title VI and related statutes and regulations.

12/8/2011

_____

Date

_____

Darin P. Bergquist, Secretary
South Dakota Department of Transportation

Part II. Standard DOT Assurances

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

The **South Dakota Department of Transportation** (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through **Federal Highway Administration**, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

> *"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 DOT, including the Federal Highway Administration.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Federal-aid Highway Programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal-aid Highway Programs and, in adapted form, in all proposals for negotiated

agreements regardless of funding source:

> "The South Dakota Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

    a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

    a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
    b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the South Dakota Department of Transportation also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the Federal Highway Administration access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the Federal Highway Administration. You must keep records, reports, and submit the material for review upon request to Federal Highway Administration, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The South Dakota Department of Transportation gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Federal Highway Administration Programs. This ASSURANCE is binding on South Dakota, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Federal Highway Administration Programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

South Dakota Department of Transportation

by _____

Darin P. Bergquist
Secretary of Transportation

DATED 9/23/2

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations**: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination**: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the South Dakota Department of Transportation will accept title to the lands and maintain the project constructed thereon in accordance with (***Name of Appropriate Legislative Authority***), the Regulations for the Administration of (***Name of Appropriate Program***), and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the South Dakota Department of Transportation all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the South Dakota Department of Transportation and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the South Dakota Department of Transportation, its successors and assigns.

The South Dakota Department of Transportation, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will 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 with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the South Dakota Department of Transportation will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the South Dakota Department of Transportation pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

   1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the South Dakota Department of Transportation will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the South Dakota Department of Transportation will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the South Dakota Department of Transportation and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the South Dakota Department of Transportation pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the South Dakota Department of Transportation will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the South Dakota Department of Transportation will there upon revert to and vest in and become the absolute property of the South Dakota Department of Transportation and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Part III. Organization & Staffing of the Civil Rights Program

A. Secretary, SD Department of Transportation
   1. The Secretary has the overall responsibility for assuring full compliance with the Title VI requirements as they apply to projects of the United States Department of Transportation under the jurisdiction of the South Dakota Department of Transportation.

B. Civil Rights Program
   1. The Civil Rights Program is an element of the Division of Secretariat, Office of Legal Counsel. The Secretary has assigned responsibility for the Title VI Program Implementation Plan development and monitoring to the Civil Rights Program. Organizational Charts found on page 16.
   2. The Civil Rights Program does not have its own budget. It is part of the Office of Legal Counsel budget which is included in the Division of the Secretariat and can be found on the Bureau of Finance website at: https://bfm.sd.gov/budget/fy2021/ A more detailed breakdown of the Office of Legal Counsel's budget is available upon request.
   3. The Civil Rights Program is staffed by the Title VI Coordinator/Specialist. The Title VI Coordinator/ Specialist has direct access to the Secretary on Civil Rights matters of substance. The Title VI Coordinator/Specialist hires one-two summer interns each year to assist with sub-recipient monitoring and a variety of other Title VI compliance responsibilities. The Title VI Coordinator/ Specialist has been trained in complaint investigations and Title VI compliance by attending the following training: FHWA Civil Rights Training, FHWA Title VI Training, and FHWA Complaint Investigation Training. The Title VI Coordinator/Specialist is responsible for:
      a. Ensuring no person is discriminated on the basis of race, color, national origin, religion, sex, age, or disability.
      b. Prepare an annual Title VI Program Implementation Plan for the Secretary and appropriate federal agencies which includes accomplishments for the year and goals and activities for the coming year.
      c. Update and have Secretary sign assurances whenever new Secretary of Transportation is appointed.
      d. Prepare and submit a revised and updated Title VI Program Implementation Plan yearly.
      e. Conduct reviews of the department's public involvement plan by attending public hearings, open houses and other effects to ensure the department's compliance with Title VI requirements and to ensure implementation of the department's public involvement plan.
      f. Promptly process and dispose of Title VI complaints received directly by the Department. There will be an attempt to achieve voluntary compliance before any further action is taken.
      g. Develop Title VI educational information for dissemination to the

general public and requirement information for dissemination to the Title VI fund recipients. Where appropriate, information will be provided in languages other than English per LEP guidelines.

h. Develop and implement a system by which LEP persons can meaningfully access those services the Department provides consistent with, and without unduly burdening, the fundamental mission of the Department. LEP applies to individuals for whom English is not their primary language and have a limited ability to read, speak, write or understand English.
    i. The Department will analyze the four factors to determine the language needs of the public:
        1. The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee.
        2. The frequency with which LEP individuals come in contact with the program.
        3. The nature and importance of the program, activity, or service provided by the recipient to people's lives.
        4. The resources available to the recipient and costs.
        5. Once these factors are analyzed, the Department will determine what services to provide for the LEP population and provide those persons notice of services available.
    ii. The Department will provide either telephonic, video-conferencing, or oral interpretation to accommodate where each eligible LEP language group constitutes 5% or 1,000 (whichever is less) of the population served or is likely affected.
    iii. In addition, pictographs and written translation of all printed materials will be available and interpreters and translators will be provided where needed. The Department will strive to ensure meaningful access to the benefits, services, information, programs, and activities for those who are Limited English Proficient.

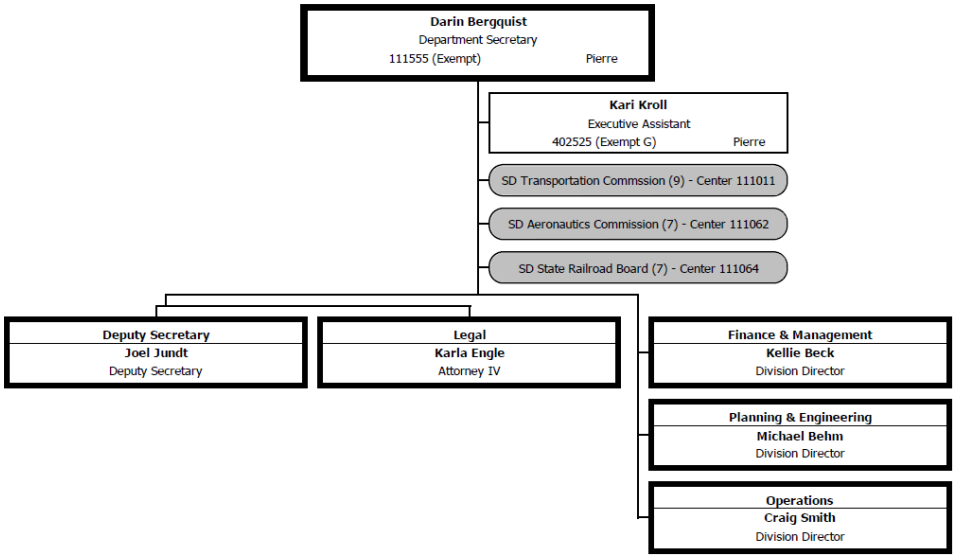
i. Arrange for and conduct necessary training programs in coordination with program officials on the implementation of and compliance with Title VI and related statues to recipients, sub-recipients, stakeholders, and others interested. Log will be kept of the trainings, who attended, and their need/relation to Title VI

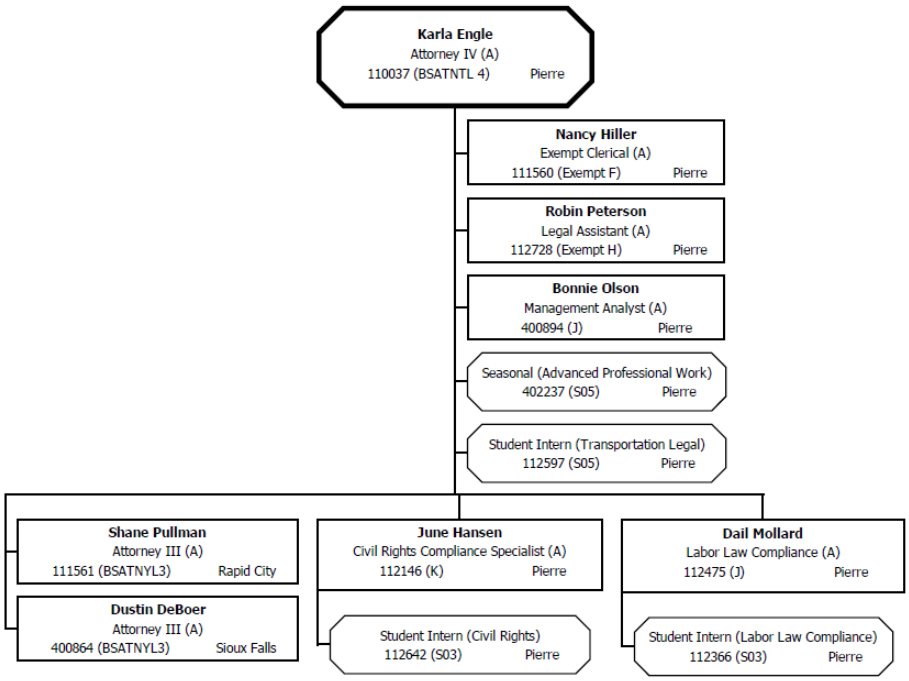
C. Title VI Program implementation and administration is assigned to the following Department Divisions and Offices:
    1. Division of Planning & Engineering, Office of Project Development
        - Title VI matters relating to Planning
    2. Division of Secretariat , Office of Research
        - Title VI matters relating to Research
    3. Division of Planning & Engineering, Office of Planning Administration

- Title VI matters relating to Project Development (Environmental)

4. Division of Planning and Engineering, Office of Project Development
    - Title VI matters relating to Project Development (Scoping) & Bid Letting
5. Division of Planning & Engineering, Offices of Right-of-Way
    - Title VI matters relating to acquisition of Right-of-Way
6. Division of Operations, Office of Operations Support
    - Title VI matters relating to Construction

The Secretary will advise Division Directors of their responsibility to ensure that the Title VI Program Implementation Plan is implemented and that prescribed implementation procedures and monitoring activities are as followed. Copies of the Secretary's directive and of the approved Title VI Program Implementation Plan will be distributed by the Civil Rights Program to all appropriate Department personnel. (Organizational Chart included on Page 17.)




Karla Engle
Attorney IV (A)
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Part IV. Program Review Procedures

A. The Department will perform the following Title VI review activities:

1. Annually inspect Title VI compliance of program areas and include report in annual Title VI update.
2. Participate and coordinate with FHWA Division personnel to conduct Title VI compliance reviews of major program areas at least once in a three-year period. The purpose of these compliance reviews is to determine the effectiveness of program area activities in meeting Title VI objectives.
3. Participate and coordinate with FHWA Division personnel to conduct Title VI compliance reviews of the MPOs within South Dakota. These reviews are to be conducted at least once in a three-year period. The purpose of these compliance reviews is to determine the effectiveness of the MPO activities in meeting Title VI objectives.
4. Develop and implement a program to provide Title VI information and technical assistance to sub-recipients to assist them in Title VI self-assessment as requested, to investigate Title VI complaints, and to conduct Title VI compliance reviews. If no changes have been made, the Department will submit a statement that no major changes have occurred.

   Sub-recipients include MPOs, counties, cities, townships, colleges, universities and consultants, including contractors and subcontractors
5. Review existing and proposed program directives, policies, publications, handouts, etc. in coordination with appropriate program officials to ensure inclusion of necessary Title VI and related information. Included disclosures can be found in Part XIII.
6. Establish procedures to identify discrimination, and when found, to eliminate it.
7. Conduct sub-recipient pre-award and post-award compliance reviews.
8. Give the general public proper notification of their rights under Title VI and allow the public to request additional Title VI information. Title VI information will be disseminated through publications, the Department website, public meetings, and in-house information available through the Civil Rights Office. Viewpoints of underrepresented and underserved populations will be solicited to ensure Title VI compliance in those areas.
9. Establish procedures for promptly resolving any identified deficiency, reducing to writing the remedial action determined to be necessary, and implementing the remedial action within a period of 90 days.
10. Develop procedures for the collection of appropriate statistical data (race, color, national origin, religion, sex, age, disability and any other underserved sector of the population) deemed necessary to verify Title VI compliance in terms of relocated and directly impacted citizens.
11. Investigate any complaints as outlined in Part IV.

B. The procedures to be followed by the Department in monitoring the various program areas are outlined below. It will be the responsibility of the Title VI

Coordinator/ Specialist and the appropriate program personnel to devise the specific tools and techniques, which will provide for the collection and analysis of information regarding Title VI Compliance.

1. PLANNING
    a. Division of Planning & Engineering, Office of Project Development
        i. Generally, highway-planning activities are performed within the Department. The Department does have funding and planning agreements with three MPOs for technical planning within their respective areas. The Department is represented on the policy and technical groups of these agencies. They are: SECOG for Sioux Falls metropolitan area; the SIMPCO for Sioux City, IA metropolitan area; and the city of Rapid City (and through a memorandum agreement, also the town of Box Elder, Pennington County and Meade County) for the Rapid City metropolitan area.
        ii. When there is a need for highway planning which would involve consultant firms, the approved consultant selection procedures will be followed to ensure nondiscrimination in the selection process. The Department will ensure that minority and female consultant firms (DBEs) will be provided notice of all appropriate planning projects. The Title VI requirements will be included in any contract.
    b. Highway Development Public Participation
        i. Title VI assurances regarding nondiscrimination are reflected in the policies and procedures set out in the Department's PIP (https://dot.sd.gov/media/documents/PublicInvolvementPlanFinalSignatureCopy031810.pdf). The PIP explains the general policy to assure public involvement in the planning process. Particular attention in the planning process is directed toward assuring minority groups' participation in the public involvement process. Also, the planning process seeks out and considers "the needs of those who are traditionally ignored or underserved by existing transportation systems," according to the FHWA. Special emphasis has been placed in recent years on involving the Bureau of Indian Affairs and Tribal road planners in the Department planning process. The process also addresses issues and concerns arising from the MPOs and LPAs.
        ii. Once the tentative STIP has been developed, public meetings are scheduled at four locations across the State to solicit public comment from interested citizens and local officials regarding the proposed program. The department also holds a webinar to provide equal access to all to participate in the process. Comments presented at these

meetings are made available to the Transportation Commission prior to formal approval of the STIP in August. Meeting sites meet ADA access requirements and are generally scheduled for the evening hours to facilitate attendance.

c. Title VI Coordinator
    i. The Project Development Program Manager is designated as the Title VI Coordinator and is responsible for the office monitoring of Title VI activities and procedures to assure compliance.
    ii. These monitoring activities shall include review of planning activities to ensure compliance with Title VI. It also includes selected follow-up contacts with various persons affected by Planning activities to verify Title VI compliance. The coordinator will also maintain appropriate records to document Title VI compliance and supply this information to the department's Title VI Coordinator/Specialist as requested.

2. RESEARCH
    i. Research projects are typically limited to those requests that originate within the Department. Through the approval process, the Research Review Board identifies research needs, reviews proposals, determines availability of funds, reviews research in progress, and disseminates the results of research. Where necessary, the Review Board will invite the universities or consultants to submit research proposals which meet the study purposes for solving the identified research problem. Consideration is given to all proposals which address the research problem.
    ii. Research projects involve contracting with consultants or universities whenever the projects selected exceed the Department capabilities. In such cases, a "Request for Proposals" will be submitted to qualified universities or consultants with an equal opportunity extended to all to submit proposals. Consideration will be given to those institutions or consultants with minority representation on their staffs. Also, a special effort has been made to solicit proposals from the Tribal Colleges in the state.
    iii. Research contracts contain provisions for Title VI compliance and will be monitored by the Office of Research and the Civil Rights Program.
    iv. Title VI Coordinator
        a. The Research Program Manager is designated as the Title VI Coordinator and is responsible for the office monitoring of Title VI activities and procedures

to assure compliance.

b. These monitoring activities shall include review of Research activities. It also includes selected follow-up contacts with various persons affected by Research activities to verify Title VI compliance. The coordinator will also maintain appropriate records to document Title VI compliance and supply this information to the department's Title VI Coordinator/Specialist as requested.

3. PROJECT DEVELOPMENT
    a. The Division of Planning & Engineering is charged with the design and development of plans for construction projects. Social, environmental and economic (SEE) effects are studied and appraised during the preliminary planning and location phases. Impacts on minority individuals, businesses and communities are determined and evaluated as part of this phase.
    b. The Environmental program is charged with the evaluation and documentation of the social, environmental and economic effects of all construction projects proposed by the Department, except for some county secondary projects.
    c. After a project has been approved by the Transportation Commission and included within the Statewide Transportation Improvement Program, the categories of funds are examined, and, in each case, specific projects are assigned to be developed utilizing the assigned fund.
    d. Location and designed coordination activities, such as notifications, contacts with other involved agencies, groups and individuals are usually initiated at this time. Initial legal and agency documentation requirements, such as the submission of the obligation documents (DOT form 292), are transmitted to Federal Highway Administration.
    e. Next, alternate locations for highway improvement or transportation facilities are investigated with the affected agencies, groups or individuals.
    f. Relocation plans and assignment of project categories and levels of action necessary to comply with Department directives and State and Federal requirements are initiated at this point. SEE impacts are evaluated and the necessary environmental assessment is prepared and distributed.
    g. Every reasonable effort is made to locate improvements so that relocation of affected groups is unnecessary. It is expected that any such relocation will rarely be necessary. The rural locations of most projects can generally be adjusted so that the least disturbance to people will result. This holds true for minority groups and individuals as well as all others. Relocation

procedures are in conformity with federal statutes and regulations is necessary in all cases.

h. The next step in the development of the project is for the Department to schedule and hold the public meetings and related actions. An environmental inspection, attended by an interdisciplinary team composed of appropriate program personnel, may be undertaken. A written report is then prepared and distributed to all identified interested agencies and individuals. The distribution list varies depending upon the area of the state wherein the proposed project is being considered. Affected minority groups and individuals, along with all known SEE effects, are identified during the field inspection trip. Prior to that inspection, all known interested parties are advised by mail of the scheduled inspection and of the upcoming hearing, which is held in a location that meets ADA accessibility requirements. The legal notice also advises people with disabilities to inform the Department if other assistance is needed for the meeting. The legal notice also indicates, when appropriate, that an Environmental Statement has been prepared and is available for public review and comment.

i. Meetings (hearings) are scheduled by the Project Development office and are normally scheduled at such times as will facilitate the largest possible attendance by interested citizens.

j. Oral and/or written statements are solicited from the public prior to or during the meeting. Everyone is encouraged to contribute their ideas and views, which are later transmitted to the Commission to assist them in their ultimate decisions regarding particular project.

k. Subsequent to the hearings, the Commission makes a final decision as to the location and design of a project based on all the pertinent environmental and engineering data along with the public comments from the hearing.

l. The Bureau of Indian Affairs has its own road building program on the reservations. Their projected plans are reviewed and discussed with Department planners during the STIP process so that project construction activities can be coordinated. State and federal highways which traverse Indian Country have little, if any, significant realignment and relocation. Normal resurfacing or reconstruction of these roads seldom adversely affects any minority group or individuals. The Department has not, in recent years, proposed any project that would affect a significant segment of the minority population through relocation. It is highly unusual for more than one or two families, minority or otherwise, to be relocated on a highway project in this State.

m. The FAPG and other appropriate federal procedural guidelines are followed throughout the location and design of construction projects. When design consultants are necessary they are

selected in accord with approved policies.

n. Title VI Coordinator
    i. The Project Development Program Manager and the Planning & Engineering Administration Program Manager (Environmental) are designated as the Title VI Coordinators and is responsible for the office monitoring of Title VI activities and procedures to assure compliance.
    ii. These monitoring activities shall include review of scoping, location and environmental activities within the Project Development Program to ensure compliance with Title VI. It also includes selected follow-up contacts with various persons affected by Project Development activities to verify Title VI compliance. The coordinator will also maintain appropriate records to document Title VI compliance and supply this information to the department's Title VI Coordinator/Specialist as requested.

4. RIGHT-OF-WAY
    a. The ROW program is involved, as appropriate, in the determination of project locations. The ROW Manager or designated representative accompanies Department and FHWA personnel on preliminary location, profile, preliminary survey and final design inspections, concurring in the recommended changes pertinent to right of way features. Written reports are prepared covering these inspections.
    b. The ROW program will take appropriate affirmative action in all its activities to assure that no person, on the grounds of race, color, national origin, religion, sex, age, disability, or other statutory basis will be (1) excluded from participation in, (2) denied the benefits of, or (3) subjected to discrimination under any of the ROW activities.
    c. The benefits, services and assistance programs will be explained and provided to all on a uniform basis. When required, the ROW program will utilize employees (regular or contractual) who can effectively communicate with persons with speech or hearing disabilities or LEP.
    d. Appraisals
        i. The Appraisal staff prepares the preliminary cost estimates for the ROW needed for each project.
        ii. Appraisals for all property will be made by applying approved appraisal standards and practices equally without regard to the owner's race, color, national origin, religion, sex, age, or disability. When necessary, appraisals will be updated for all involved property owners on a comparable basis to reflect changing market conditions.
    e. Acquisitions

i. Negotiations with all property owners will be conducted on a nondiscriminatory basis. All owners will be apprised equally of their benefits, rights and options regarding negotiations and possible legal processes, and of their owner retention rights during the negotiation phase. Equal consideration will be given to all property owners with respect to advance acquisitions.

f. Relocation
   i. All relocatees will be apprised of and given equal opportunities in selecting replacement housing. They will be equally assisted in obtaining dwellings within their economic means. The decent, safe and sanitary standards will be uniformly applied to the housing of all relocatees. Any replacement housing utilized by the Department will be available without regard to race, color, national origin, religion, sex, age, or disability. When, and if, last resort housing is used, it will be fair housing as defined in Title VIII of the Civil Rights Act of 1968.
   ii. All relocatees will be equally apprised of other Federal programs, which can be of assistance to relocatees in obtaining replacement housing, both at public hearings and during negotiations. To the extent possible, selected replacement housing sites will be uniformly responsive to the needs and desires of all relocatees.
   iii. All 90-day notices and final notices will be given in accordance with Public Law 91-646 uniformly to all individuals. All extensions of time in which to complete moves will be given uniformly to all individuals.

g. Property Management
   i. Property management is handled by the Operations Support Program in the Division of Operations. Rental rates for Department property will be uniformly applied and delinquent tenants will be treated in a comparable manner. Property maintenance and rodent control practices will be administered uniformly for all areas.
   ii. The methods of property demolition or removal in all areas will not differ as to contract practices, timelines or removal after vacancy, safety measures afforded adjacent properties or sites, and street/road clean-up.

h. Title VI Coordinator
   i. The ROW Manager is designated as the Title VI Coordinator and is responsible for the office monitoring of Title VI activities and procedures to assure compliance.
   ii. These monitoring activities shall include review of office appraisals, negotiation logs, property acquisitions, relocations, etc. It also includes selected follow-up contacts

with various persons affected by ROW activities to verify Title VI compliance. The coordinator will also maintain appropriate records to document Title VI compliance and supply this information to the department's Title VI Coordinator/Specialist as requested.

5. CONSTRUCTION
    a. Prequalification
        i. The Transportation Commission has established rules for the prequalification of contractors desiring to bid on highway construction projects posted on the Department website under "Forms".
        ii. The rules state that no firm shall be permitted to receive a bid proposal or submit a bid to the Transportation Commission for any highway construction project until such firm has received a classification and maximum capacity rating. The classification and maximum capacity rating are obtained by submitting a confidential financial statement and experience questionnaire under oath upon a form prescribed and furnished by the Department. The financial information must be supported by a certification as to the fairness of the financial position reflected by a certified public accountant or South Dakota licensed accountant. The Department posts the forms under "Forms" on the Department website.
        iii. Classification will be given for one or more of the following types of work – grading; Portland cement concrete pavement; asphalt concrete pavement; asphalt surface treatment; gavel or crushed rock surfacing or base course; crushing and stockpiling; structures miscellaneous concrete construction; signing and delineation; rest area buildings; erosion control; and incidental construction such as fencing and guardrail. The firm desiring to receive a particular classification must indicate in the questionnaire the classification(s) desired but such indication is not binding upon the committee.
        iv. Classification and rating is accomplished by a committee of Department officials selected by the Transportation Commission. The committee has the authority to act for the Commission in all matters specified in the rules subject to the right of any firm to appeal a decision of the committee to the Commission.
        v. The requirement for prequalification is waived on all construction projects estimated at $100,000 or less. The Department imposes no general licensing requirements on contractors doing work in the state but there is a Department of Revenue requirement that contractors must have a

contractor's excise tax license and a fuel tax/highway contractor's license. There are no prequalification requirements for subcontractors.

vi. The DBE Compliance Officer provides DBE firms and other interested parties with information regarding prequalification, bidding and contracting requirements of the Department. Financial and technical assistance programs are available through other state and federal agencies and DBEs are encouraged to contact these agencies for information and assistance.

vii. Utility work necessary to accomplish the construction projects is normally done by force account agreements with the owning utility.

b. Bidding and Contract Award

i. It is the general policy of the Department to break down projects into items of grading, surfacing, and structures to reduce the size of the project and to allow more contractors to bid on smaller projects.

ii. When advertising construction projects for a bid letting, the notice appears three weeks prior to the scheduled bid opening. The Department posts the "Advertisement of Highway Bid Letting" on the department's website. This "Notice" provides basic information on all projects in the letting (type, location, estimated quantities, etc.) and the time and place of the bid opening.

iii. The Department has an approved DBE program, which meets the requirement of 49 CFR Part 23. Award of contracts is made to the bidder who is the lowest responsive bidder and has met the DBE requirements (met or exceeded goal or has documented good faith effort) for the project. The Operations Support office and the DBE Compliance Officer monitor subcontract awards to ensure that DBE commitments are followed.

iv. The bidder, when requesting permission to subcontract, certifies that all subcontractors have been advised of their obligations relative to nondiscrimination and that all subcontract agreements contain the provisions of form PR 1273 which, in part, implements Title VI. The Civil Rights program monitors compliance with these requirements during the course of the regular construction compliance reviews.

c. Title VI Coordinator

iii. The Program Development Program Manager and the Operation Support Program Managers are designated as the Title VI Coordinators and are responsible for the office monitoring of Title VI activities and procedures to assure

compliance.

iv. These monitoring activities shall include review of bid letting, scoping and DBE procedures to ensure compliance with Title VI. It also includes selected follow-up contacts with various persons affected by Construction activities to verify Title VI compliance. The both coordinators will also maintain appropriate records to document Title VI compliance and supply this information to the department's Title VI Coordinator/Specialist as requested.

Part V. Special Emphasis Program Areas

The Title VI Specialist provides on-going monitoring of all program areas within the department to identify potential patterns of discrimination in the services, programs and benefits provided.

If a trend or pattern is identified, it will become a special emphasis program area.

Currently, the department does not have any special emphasis program areas.

Part VI. Sub-Recipient Review Procedures

A. Pre-award reviews
    1. Each sub-recipient will complete a preaward checklist prior to receiving federal funding.
        i. The checklist will be mailed out prior to award.
        ii. Checklist will be returned to Title VI Specialist for review.
        iii. Any issues of non-compliance will be discussed with the sub-recipient and informal resolution will be used to achieve compliance.
        iv. If unable to resolve manner through informal resolution, the award of Federal funds will be held until compliance is achieved.
    2. The Department will conduct more in-depth preaward reviews prior to releasing funds to ensure that recipients have submitted assurances of Title VI compliance on an as needed basis or based on concerns about sub-recipients' compliance.
    3. The review can be a desk-audit review, where recipient submits assurance compliance forms, or an onsite review, where an extensive investigation of the recipient's program is conducted in the field at program offices.
    4. If a Title VI violation is found, the Department will attempt to secure voluntary compliance. If that fails, the Department can either withholding or deny Federal funds.
    5. Sub-recipients that receive federal funds on an on-going (yearly) basis will complete a pre-award checklist every three years.

B. Post-award reviews
    1. Once a recipient has received Federal funds, the Department will review them periodically to ensure the recipient remains in compliance with Title VI.
    2. Sub-recipients that receive federal funds on an on-going (yearly) basis will be reviewed every three years either by desk review or on-site review.
    3. The review can be desk-audit review or extensive onsite compliance reviews.
    4. Steps to conducting inspections:
        i. Compliance Plan which should include:
            1. A program and schedule for compliance reviews
            2. Uniform standards for conducting and reporting compliance reviews
            3. Policies and procedures for uniform evaluations of compliance reviews
        ii. Preliminary Preparation includes:
            1. Review of Department files to determine the nature of recipient services, type of Federal assistance and Title VI Assessment

2. Review of pertinent assurance, policy statement and statements of compliance
3. Review of any compliance reports to determine recipient's self-evaluation
4. Review of any complaints, lawsuits, or previous investigations of recipient

iii. Scope of Compliance Review, which should be done at the outset to determine whether review should be extensive or limited to particular program areas. This involves an analysis of:
1. Nature and extent of recipient's operation
2. Applicable laws, regulations and authorities
3. Complaints and/or lawsuits

iv. Notifying Recipient requires advance notice through a letter. This is done to:
1. give recipient opportunity to have various data, records, witnesses and staff available
2. as a matter of courtesy and to maintain partnering relationship

v. Onsite Compliance Review should start with an entrance meeting with leadership and pertinent personnel. The review should:
1. Provide sufficient information to determine recipient's compliance
2. Include final report of findings, conclusions, and recommendations
3. Report that recipient is obligated to cooperate by keeping and providing records/other data, and permitting access to records

vi. Closing Conference is done to:
1. Provide leadership of recipient with preliminary findings
2. Inform recipient when final report is submitted

C. Complaint investigations
1. The Civil Rights Compliance Officer will make him/her known to all office and program managers with the Department and, with the assistance of these managers, will attempt to resolve all Civil Rights complaints arising from Department activities.
2. In addition, the Civil Rights Compliance Officer will make periodic visits to any locations and/or areas determined to be problematic in an attempt to alleviate any problems in advance of a complaint.
3. The following complaint procedures are applicable to all Department program areas:
   i. Any person or group claiming to be aggrieved by an unlawful discriminatory practice based on race, color, national origin, sex, age or disability may by himself/herself or through his/her legally authorized representative, make and sign a complaint and should file such complaint with the Department within 300 calendar days

(180 days if a company has less than 15 employees or if this involves age discrimination) following the date of the alleged discriminatory action. All complaints will be filed with the Department Civil Rights Compliance Officer who will evaluate the complaint and gather additional information from the complainant if necessary. The appropriate program area manager and division director will be notified of the complaint.

ii. The Civil Rights Compliance Officer or designee has 60 calendar days to conduct an investigation of the allegations and prepare preliminary findings. The Civil Rights Compliance Officer or designee may refer the matter to the appropriate program area to make every reasonable effort to resolve the complaint as quickly as possible or attempt informal resolution through other methods

iii. All complaints that cannot be quickly (within 30 calendar days from the preliminary findings being issued) resolved will be reviewed by a committee consisting of the Secretary of the Department or his or her designee, the Civil Rights Compliance Officer and the program manager involved. The committee will hold an informal hearing with the complainant seeking resolution and will render a decision regarding the complaint within 15 working days of the hearing.

iv. When the Department arrives upon a final decision regarding the complaint filed with the Department, it will notify the complainant in writing of the decision and of the complainant's rights, if dissatisfied with the decision, to bring the matter to the attention of the appropriate federal agency, typically the Federal Highway Administration (FHWA) or Federal Transit Administration (FTA). The Department will advise the complainant of the name and address of the agency and/or individual to contact.

v. The Department will provide the federal agency with a copy of the complaint along with any investigatory report within 60 calendar days of the filing of the complaint. The Department will also furnish the federal agency a report indicating final disposition of the complaint within 5 working days of advising the complainant of the disposition.

vi. The Department, acting through the Civil Rights Compliance Officer, will expedite all discrimination complaints filed by individuals, business, group or institution. Information regarding the complaint process will be provided through Department publications, Department program activities, and individual personal contact with persons affected by Department activities.

4. A log of all complaints and investigations will be kept. The log will identify the race, color, sex, national origin, age or disability of the individual making the complaint; recipient of the complaint; date filed; investigation completion date; disposition and other pertinent information.

D. Identification of deficiencies, remedies, and sanctions: Following are the steps

the FHWA and Department will take if the Title VI Review Report contains deficiencies and recommendations:

1. The Division Administrator will forward report with a cover letter to the Department for corrective action.
2. The Division Office will schedule a meeting with recipient, to be held no later than 30 days from receipt of deficiency report.
3. Recipients placed in deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of deficiency letter, to voluntarily correct deficiencies.
4. Division Administrator shall seek cooperation from recipient to correct deficiencies found during review. FHWA will provide technical assistance and guidance needed to aid the recipient comply voluntarily.
5. When the recipient fails or refuses to voluntarily comply with requirements within allotted timeframe, a case file and recommendation that the State be found in noncompliance is submitted to FHWA Headquarters Office of Civil Rights.
6. The FHWA Headquarters Office of Civil Rights will review case file for determination of concurrence or non-concurrence. FHWA will then forward recommendation to the Office of Chief Counsel at FHWA for legal sufficiency review. After such review, FHWA will send recommendations to Federal Highway Administrator. Should the Federal Highway Administrator concur with recommendation, the file is referred to the Office of the Secretary, US DOT for appropriate action in accordance with 49 CFR.

If compliance cannot be achieved voluntarily: While voluntary compliance is the first objective, it sometimes is not able to be achieved. If not, Federal agencies can use other means to bring about compliance including, but not limited to:

1. Referral to Department of Justice for litigation in Federal court.
2. Seek consultation with, or assistance from, another Federal agency with authority to enforce nondiscrimination requirements.
3. Consult with, or seeking assistance from, State or local agencies with nondiscrimination enforcement authority.
4. Federal agency may refuse to grant or may terminate funds after notice and opportunity for a hearing.

   If found that funds should be terminated, denied, or discontinued, the FHWA must submit a complete written report on its decision to the House and Senate committee having legislative jurisdiction over the program or activity before the decision can be implemented.

E. Outreach and education:

1. The purpose of the outreach and education is to allow the Department to:
   i. Inform funding recipients of their Title VI obligations.
   ii. Inform actual and potential participants and beneficiaries of the rights afforded them by Title VI.
   iii. Inform potential recipients of assistance programs and

nondiscrimination policies and requirements of Title VI.

iv. Provide for public involvement of all persons, affected public agencies, Federal employees, applicants for Federal assistance, recipients, beneficiaries, and other interested persons.

2. Funding recipients must:
    i. Display posters that state the recipient's nondiscrimination policy and compliance with Title VI.
    ii. Provide outreach and education to persons with LEP.
    iii. Take reasonable measures to disseminate written material in the appropriate languages when a significant number of beneficiaries, potential beneficiaries, or the affected community requires information in a language other than English.
    iv. Take reasonable steps to provide, in languages other than English, information on federally assisted programs subject to Title VI.
    v. Summarize the requirements of Title VI.
    vi. Note the availability of Title VI information from the recipient and the Federal funding agency.
    vii. Explain briefly the procedures for filing a complaint.
    viii. Use pamphlets, handbooks, manuals, and other print or broadcast media to disseminate Title VI and civil rights information.

F. Technical assistance: The Department will provide technical assistance and training in civil rights to recipients in the form of, but not limited to:
    1. Providing sample grant applications.
    2. Explaining procedures for data collection.
    3. Helping recipients establish an advisory board.
    4. Conducting workshops and conferences for both recipients and beneficiaries.

Part VII. Data Collection/Reporting/Analysis

A. Data collection is the primary means by which the Department can monitor whether its program funds are reaching the communities that need the assistance. The Department collects and maintains statistical data on potential and actual sub-recipients and sub-grantees, beneficiaries, and affected communities. The department collects following data and information in addition to demographic information when necessary or appropriate:
    1. Manner in which services are provided
    2. Race, color, and national origin of the population eligible to be served
    3. Data regarding covered employment, including use of bilingual employees to work with beneficiaries having LEP
    4. Location of existing or proposed facilities
        - Whether the location will have the effect of denying access to any person on the basis of prohibited discrimination
    5. Race, color, and national origin of the members of any planning or advisory body that is an integral part of the program
    6. Requirements and procedures designed to guard against unnecessary impact on persons based on race, color, or national origin when relocation is involved

B. Department requires that applicants and sub-recipients also:
    1. Notify the Department upon request of any lawsuits filed against the applicant or recipient alleging discrimination
        - Must include statement as to whether the applicant has been found in noncompliance with any relevant civil rights requirement
    2. Provide brief description of any applications pending at other Federal agencies
        - Must include statement describing any compliance reviews conducted in the prior two years
        - Must include written assurance that they will compile and maintain records pursuant to the data collection guidelines

Part VIII. Title VI Training

The department provides Title VI Training to supervisory personnel on an on-going basis. The training has been recorded and is available to any new supervisors. The training is updated every five years and presented to all supervisory personnel and again recorded for future use by new supervisors. The last training was conducted in 2012 and the next training will be conducted in 2020. A new online Title VI supervisory module is being developed by the SDDOT Training staff. It will be online tool that supervisors can access at any time. It will be updated periodically. The plan is to have it ready in early 2020.

The department provides training to executive management on Title VI every three years. The last training was conducted in 2018. The next training will be in 2021. If new executive management would be appointed due to a change in leadership, the training will be done as soon as possible upon appointment of new Secretary (CEO).

Training is provided on a yearly basis to all rural transit providers at one of their quarterly meetings.

Training is provided to MPO staff during the annual monitoring of the MPO and at the reviews conducted every three years.

Any new sub-recipients are provided training on Title VI requirements in conjunction with the preaward checklist.

Part IX. Complaint Procedures

Nondiscrimination Complaint Procedure

Department policies and procedures have been designed and implemented in accordance with applicable federal and state nondiscrimination statutes and regulations. The following process has been established to provide for the orderly and timely resolution of any complaints alleging discrimination.

Any formal Title VI complaints against the SDDOT are immediately forwarded to the FHWA or appropriate federal agency. The following procedure is for informal resolution of Title VI complaints or other areas of nondiscrimination not covered by Title VI.

The Civil Rights Compliance Officer will make him/her known to all office and program managers with the Department and, with the assistance of these managers, will attempt to resolve all Civil Rights complaints arising from Department activities.

In addition, the Civil Rights Compliance Officer will make periodic visits to any locations and/or areas determined to be problematic in an attempt to alleviate any problems in advance of a complaint.

The following complaint procedures are applicable to all Department program areas:

1. Any person or group claiming to be aggrieved by an unlawful discriminatory practice based on race, color, national origin, sex, age or disability may by himself/herself or through his/her legally authorized representative, make and sign a complaint and should file such complaint with the Department within 300 calendar days (180 days if a company has less than 15 employees or if this involves age discrimination) following the date of the alleged discriminatory action. All complaints will be filed with the Department Civil Rights Compliance Officer who will evaluate the complaint and gather additional information from the complainant if necessary. The appropriate program area manager and division director will be notified of the complaint.

2. The Civil Rights Compliance Officer or designee has 60 calendar days to conduct an investigation of the allegations and prepare preliminary findings. The Civil Rights Compliance Officer or designee may refer the matter to the appropriate program area to make every reasonable effort to resolve the complaint as quickly as possible or attempt informal resolution through other methods

3. All complaints that cannot be quickly (within 30 calendar days from the preliminary findings being issued) resolved will be reviewed by a committee consisting of the Secretary of the Department or his or her designee, the Civil Rights Compliance Officer and the program manager involved. The committee will hold an informal hearing with the complainant seeking

resolution and will render a decision regarding the complaint within 15 working days of the hearing.

4. When the Department arrives upon a final decision regarding the complaint filed with the Department, it will notify the complainant in writing of the decision and of the complainant's rights, if dissatisfied with the decision, to bring the matter to the attention of the appropriate federal agency, typically the Federal Highway Administration (FHWA) or Federal Transit Administration (FTA). The Department will advise the complainant of the name and address of the agency and/or individual to contact.

5. The Department will provide the federal agency with a copy of the complaint along with any investigatory report within 60 calendar days of the filing of the complaint. The Department will also furnish the federal agency a report indicating final disposition of the complaint within 5 working days of advising the complainant of the disposition.

The Department, acting through the Civil Rights Compliance Officer, will expedite all discrimination complaints filed by individuals, business, group or institution. Information regarding the complaint process will be provided through Department publications, Department program activities, and individual personal contact with persons affected by Department activities.

Department of Transportation
Office of Legal Counsel
Civil Rights Program
700 E Broadway Avenue
Pierre, South Dakota 57501-2586 605-773-3540
FAX: 605-773-4442

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
COMPLAINANT RIGHTS INFORMATION
FOR COMPLAINTS AGAINST THE SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

The South Dakota Department of Transportation provides services without regard to race, color, gender, religion, national origin, age or disability, according to the provisions contained in SDCL 20-13, Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act of 1990 and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994.

Any person or group claiming to be aggrieved by an unlawful discriminatory practice based on race, color, national origin, sex, age or disability may by himself/herself or through his/her legally authorized representative, make, sign and date a written complaint and file such complaint with the Department within 300 calendar days following the date of the alleged discriminatory action or last occurrence of discrimination with the exception of age discrimination which must be filed within 180 days. The Department Civil Rights Compliance Officer will review the complaint, gather additional information from the complainant if necessary, and refer the complaint to the appropriate federal agency, which in most cases will be the Federal Highway Administration.

The written complaint or complaint form may be submitted to:

Department of Transportation
Office of Legal Counsel – Civil Rights Program
ATTN: June Hansen
700 E. Broadway Ave.
Pierre, SD 57501

It is also within your rights to file directly with the appropriate Federal agency that oversees the transportation activities, services or facilities.

For any highway-related matters, complaints may be sent directly to the local division office of the Federal Highway Administration by submitting them to:

Federal Highway Administration
ATTN: Mark Hoines
116 E. Dakota Ave., Suite A
Pierre, SD 57501

Phone: 605-776-1010

TITLE VI/NONDISCRIMINATION COMPLAINT FORM
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

Check what you believe to be the basis for the discrimination against you, such as race, sex or national origin. If you think that was more than one basis, more than one basis may be checked. You may also check more than one race/ethnic category.

I believe I was (or continue to be) discriminated against because of the following basis:

____ Race

____ Color

____ Religion

____ Sex
_____ Male ____ Female

____ National Origin

____ Disability

_____ Hispanic or Latino

_____ American Indian or Alaska Native

_____ Black or African American

_____ Native Hawaiian or Other Pacific Islander

_____ Asian

_____ White

____ Other: Please Explain:

Was a complaint filed with any other agency? _____

If yes, please list the name of the agency or agencies below:

Name(s) of department employees or programs/offices involved in discrimination and/or harassment:

Name(s) of any witnesses:

Explain specific complaint:
(explain in your own words what happened, the date(s) incidents occurred, who was involved, etc. Use backside of page for additional space or attach a separate sheet if needed. Please state the date(s) the incidents occurred or when the last incident occurred. All complaints need to be filed within 180 days of the last occurrence of discrimination and/or harassment.)

What are you hoping will result from this complaint?

NAME _____ HOME PHONE _____

ADDRESS _____

E-MAIL ADDRESS _____ WORK/CELL PHONE_____

_____ _____
SIGNATURE DATE

==========

DOT USE ONLY

DOT OFFICE _____DATE COMPLAINT RECEIVED _____

DATE COMPLAINT REFERRED TO FEDERAL AGENCY _____

AGENCY THE COMPLAINT REFERRED TO _____

DATE INVESTIGATED _____ DATE COMPLETED _____

RESULTS:

_____ _____
June D. Hansen, Civil Rights Compliance Officer DATE
South Dakota Department of Transportation

Part X. Dissemination of Title VI Information

A. The Department will:
   1. Distribute the guidelines to recipients, beneficiaries, compliance officers and the general public to ensure they are informed of their responsibilities and rights under Title VI.
   2. Develop Title VI educational information for dissemination to the general public and requirement information for dissemination to the Title VI fund recipients. Where appropriate, information will be provided in languages other than English per LEP guidelines.
   3. Review existing and proposed program directives, policies, publications, handouts, etc. in coordination with appropriate program officials to ensure inclusion of necessary Title VI and related information.
   4. Give the general public proper notification of their rights under Title VI and allow the public to request additional Title VI information. Title VI information will be disseminated through publications, the Department website, public meetings, and in-house information available through the Civil Rights Office. Viewpoints of underrepresented and underserved populations will be solicited to ensure Title VI compliance in those areas.

B. All departmental publications that are distributed to the public or other governmental agencies should have the following Title VI statement included and visible on the publication:

> "The South Dakota Department of Transportation provides services without regard to race, color, gender, religion, national origin, age or disability, according to the provisions contained in SDCL 20-13, Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act of 1990 and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994.
>
> To request additional information on the DOT's Title VI/Nondiscrimination policy or to file a discrimination complaint, please contact the Department's Civil Rights Office at 605-773-3540."

C. When posting public notices for public meetings, the following must also be included to allow for special accommodations if needed:

> "Notice is further given to individuals with disabilities that this [*open house/public hearing/public meeting/board meeting/commission meeting*] is being held in a physically accessible place. Any individuals with disabilities who will require a reasonable accommodation in order to participate in the [*open house/public hearing/public meeting/board meeting/commission meeting*] should submit a request to the department's ADA Coordinator at 605-773-3540 or 1-800-877-1113 (Telecommunication Relay Services for the Deaf). Please request the accommodations no later than 2 business days prior to the meeting in order to ensure accommodations are available."

D. The department includes the following special provision in all bidding documents:

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES
APPENDIX A & E

MARCH 1, 2016

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

7. **Compliance with Regulations**: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

8. **Non-discrimination**: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

9. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

10. **Information and Reports**: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

11. **Sanctions for Noncompliance**: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

    c. withholding payments to the contractor under the contract until the contractor complies; and/or
    d. cancelling, terminating, or suspending a contract, in whole or in part.

12. **Incorporation of Provisions**: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the

Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

****

Part XI. Limited English Proficiency Plan

The department has no formal plan for providing language assistance for persons with limited English proficiency. South Dakota has a low minority population with limited English proficiency. The department handles outreach to people with limited English proficiency on a case-by-case basis. The department has access to interpreter services and provides information in alternative languages upon request.

The department is constantly reviewing the needs of those we serve with limited English proficiency and acts where appropriate. For example, when there was an increase of highway construction workers working on the department's highway construction projects who had limited English proficiency and whose primary language was Spanish, the department began providing wage and hour, EEO, OSHA and other related bulletin posters in Spanish.

The department has worked with local transit providers to review their needs to serve people with limited English proficiency. Based on changes in population in two communities, the local transit providers in those communities have opted to publish transit information in alternative languages. In both cases, the increased population with limited English proficiency was based on new employment opportunities to those communities that hired several employees with limited English proficiency from outside the state.

The department has conducted the four-factor analysis and it is as follows:

South Dakota Department of Transportation

Limited English Proficiency

Analysis and Strategies

June D. Hansen, Civil Rights Compliance Officer
South Dakota Department of Transportation
Office of Legal Counsel, Civil Rights Program
700 East Broadway Avenue
Pierre, SD 57501-2586
Phone: (605) 773-3540
Fax: (605) 773-4442

INTRODUCTION

This document concerning *Limited English Proficiency has* been prepared to address the **South Dakota Department of Transportation's (SDDOT)** responsibilities as a recipient of federal financial assistance as they relate to the needs of individuals with limited English proficiency language skills. The assessment and strategies have been prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and its implementing regulations, which state that "no person shall be subjected to discrimination on the basis of race, color or national origin".

Executive Order 13166, titled ***Improving Access to Services for Persons with Limited English Proficiency***, indicates that differing treatment based upon a person's inability to speak, read, write, or understand English is a type of national origin discrimination. It directs each pass-through agency to provide guidance for its respective recipients clarifying their obligation to ensure that such discrimination does not take place. The SDDOT offers guidance to its sub-recipients in a handbook on their website at: www.sddot.com/services/civil/titlevi.aspx. Also, SDDOT provides technical assistance and training on Title VI related issues, including LEP.

Strategies for Providing Meaningful Access

The **SDDOT** has developed these strategies to help identify reasonable steps for providing language assistance to persons with limited English proficiency (LEP) who wish to access services provided by the department. As defined Executive Order 13166, LEP persons are those who do not speak English as their primary language and have limited ability to read, speak, write or understand English. This document outlines how to identify a person who may need language assistance, the ways in which assistance may be provided, staff training that may be required, and how to notify LEP persons that assistance is available.

In order to identify the demand for language assistance, the **SDDOT** used the four-factor LEP analysis which considers the following factors:

1. The number or proportion of LEP persons in the service area who may be served by the **SDDOT.**
2. The frequency with which LEP persons come in contact with **SDDOT** programs and services.
3. The nature and importance of services provided by SDDOT to the LEP population.
4. The interpretation services available to the **SDDOT** and overall cost to provide LEP assistance. A summary of the results of the four-factor analysis is in the following Section.

MEANINGFUL ACCESS: FOUR-FACTOR ANALYSIS

The number or proportion of LEP persons in the service area who may be served or are likely to require SDDOT services.

The **SDDOT** Civil Rights Office staff reviewed the 2006-2009 American Community Survey 5-Year Estimates for South Dakota and determined that **35,635** individuals in the **State** [**4.3%** of the population**]** speak a language other than English. Of those, individuals**, 8,932** have limited English proficiency; that is; they speak English less than "very well" or "not at all." This is only about **1 %** of the overall population in the State. In **South Dakota**, of those persons with limited English proficiency, **0.7%** speaks **Spanish**, **0.01%** speaks **Indo-European languages**, **0%** speaks **Asian and Pacific Island languages**, and **0.001%** speaks all **other languages.**

The frequency with which LEP persons come in contact with SDDOT programs and services.

The **SDDOT** Civil Rights Office reviewed the occasions with which the Department may have contact with LEP persons. These instances may include, but are not limited to:

- public involvement meetings
- sub-recipient monitoring
- right-of-way disputes
- discrimination complaints
- Construction projects/workers
- Land owners/land owner meetings
- DOT Staff
- Local Governments
- Tribal Relations

To date, our staff has had little interaction with LEP individuals. The **SDDOT** has had few requests for interpreters and minimal requests for translated documents. If the Department saw a significant increase in interaction with LEP persons it would adjust accordingly.

The nature and importance of services provided by the SDDOT to the LEP population.

There is no large geographic concentration of any type of LEP individuals in the State of South Dakota. The overwhelming majority of the population, **95%**, speaks only English. As a result, the **SDDOT** does not require a large number of services directed towards the LEP population. The department's goal is to see that LEP persons are provided meaningful access and treated fairly in all the areas mentioned above. The SDDOT's Civil Rights Office strives to educate staff on their duties toward LEP individuals through Title VI training.

The resources available to the SDDOT and overall cost to provide LEP assistance.

The State of South Dakota has a very small LEP population. Accordingly, the SDDOT does not have an extensive collection of resources available for LEP. However, SDDOT does maintain the tools necessary to provide meaningful access to LEP individuals given the need arise. Currently, the SDDOT uses the Interpretalk system from Language Services Associates. They provide over the phone translators for over 200 languages. This system provides SDDOT with a cost-effective way to communicate with LEP individuals when needed. The Interpretalk system can be found online at:

http://lsaweb.com/services/interpretalk-interpreting-by-telephone/ .

On rare occasions the SDDOT has had ads translated for public meetings. This is done when a suspected group of LEP may be affected by a project. The Department has a written Public Involvement Plan which asserts their commitment to providing meaningful access to LEP individuals. This Plan can be found on the SDDOT website at:

https://dot.sd.gov/media/documents/PublicInvolvementPlanFinalSignatureCopy031810.pdf

The SDDOT will supplement new language assistance resources in the future if they prove necessary. Until then, the Department will continue to utilize the tools at its disposal to make certain no one is excluded or discriminated against due to their national origin.

LANGUAGE ASSISTANCE

A person who does not speak English as their primary language and who has a limited ability to
read, write, speak or understand English may be a Limited English Proficient person and may be entitled to language assistance with respect to **SDDOT** services. Language assistance can include interpretation, which means oral or spoken transfer of a message from one language into another language and/or translation, which means the written transfer of a message from one language into another language.

How the **SDDOT** staff could identify an LEP person who needs language assistance:

- Can occasionally post ads and distribute flyers to inform LEP individuals about translation and interpretation services available in languages they understand.
- SDDOT staff can be provided with language identification cards to assist in identifying the language interpretation needed if the occasion arises.
    - Cards can be located at: http://www.lep.gov/ISpeakCards2004.pdf
- When the **SDDOT** sponsors an informational meeting or event, a staff person may greet participants as they arrive. By informally engaging participants in conversation it is possible to gauge each attendee's ability to speak and

understand English. Although translation may not be provided at the event it will help identify the need for future events.

Language Assistance Measures

Although there is a very low percentage of LEP individuals in the **SDDOT** service area, that is, persons who speak English less than “very well” or “not at all”, it will strive to offer the following measures:

1. The **SDDOT** staff will take reasonable steps to provide the opportunity for meaningful access to LEP individuals who have difficulty communicating English.
2. The following resources may be obtained by all staff to accommodate LEP persons:

- Language interpretation and translation services will be available through Interpretalk at 1-800-305-9673
- I-Speak Cards are readily available at the http://www.lep.gov

STAFF TRAINING

The following training will be provided to all staff:

- Information on the Title VI Policy and LEP responsibilities.
- Description of language assistance services offered to the public.
- Use of interpreter service provider’s language identification cards.
- Documentation of language assistance requests.
- How to handle a potential Title VI/LEP complaint.

All contractors or subcontractors performing work for the SDDOT will be required to follow the Title VI/LEP guidelines.

TRANSLATION OF DOCUMENTS

The **SDDOT** does provide some translated documents for their recipients and sub-recipients. Many of the documents disseminating Federal laws and policies required to be posted on federally funded construction sites have been translated into Spanish and are provided to contractors free of charge.

Moreover, the **SDDOT** weighed the cost and benefits of translating additional documents for potential LEP groups. Considering the expense of translating the documents, the likelihood of frequent changes in documents and other relevant factors, at this time it is an unnecessary burden to have any documents translated.

Due to the very small local LEP population, the **SDDOT** does not have a formal outreach procedure in place, as of 2012. Translation resources have been identified

and are limited in this region. However, when and if the need arises for LEP outreach, the **SDDOT** will consider the following options:

- When staff prepares a document, or schedules a meeting, for which the target audience is expected to include LEP individuals, then documents, meeting notices, flyers, and agendas will be printed in an alternative language based on the known LEP population.

MONITORING

The **SDDOT** will reassess its strategies for providing meaningful access for LEP individuals if any immediate or apparent demographic shift occurs, which requires further resources to be made available. This reassessment will review:

- The number of documented LEP person contacts encountered annually.
- How the needs of LEP persons have been addressed.
- Determination of the current LEP population in the State.
- Determination as to whether the need for translation services has changed.
- Determine whether the **SDDOT** financial resources are sufficient to fund language assistance resources needed.
- Determine whether complaints have been received concerning the Department's failure to meet the needs of LEP individuals

Part XII. Environmental Justice

Presidential Executive Order 12898, issued in 1994, directed every federal agency or one using federal funds to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations.

Based on the USDOT Order on Environmental Justice there are three fundamental principles of environmental justice, as cited in An Overview of Transportation and Environmental Justice, USDOT:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects on minority populations and low-income populations;
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process;
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations;

Title VI of the Civil Rights Act prohibits discrimination on the basis of color, race or national origin. The Environmental Justice Executive Order continues to protect these groups but expands its umbrella to include low-income populations.

Minority and Low-Income Populations

To assess the impacts of South Dakota Department of Transportation (SDDOT) policies on the minority and the low-income populations, the existence of a population needs to be identified. The United States Department of Transportation order on Environmental Justice defines a population as:

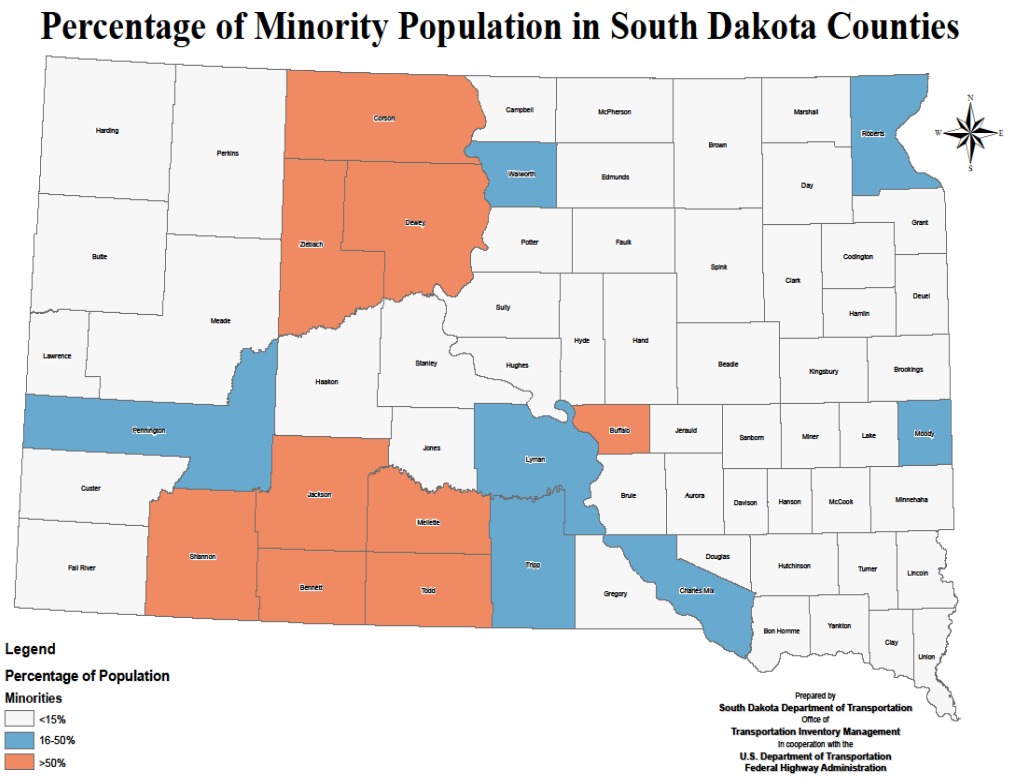
> "… any readily identifiable group of minority persons or low-income persons who live in geographic proximity; or geographically dispersed persons, such as migrant workers or Native Americans who will be similarly affected by a proposed DOT program, policy or activity."

The 2010 Census County population data and the Federal Highway Administration (FHWA) defined Economically Distressed Area Map were used to identify the two environmental justice maps. The method of mapping used to understand the location and concentration of the population was the percent of minority population in a county compared to the total population in the county and the FHWA defined Economically Distressed Area Map. Using both maps together gives a better understanding of the concentration and location of the environmental populations in South Dakota. There are many counties in South Dakota that have a high percent of environmental justice populations. For statewide analysis, the percent of environmental justice population per county is the most appropriate measure to use because it allows us to compare the

relative impacts on the environmental justice population.

Figure 1 shows the percent of minorities per county. Figure 2 shows the Economically Distressed Counties according to FHWA in December 2011.

Figure 1

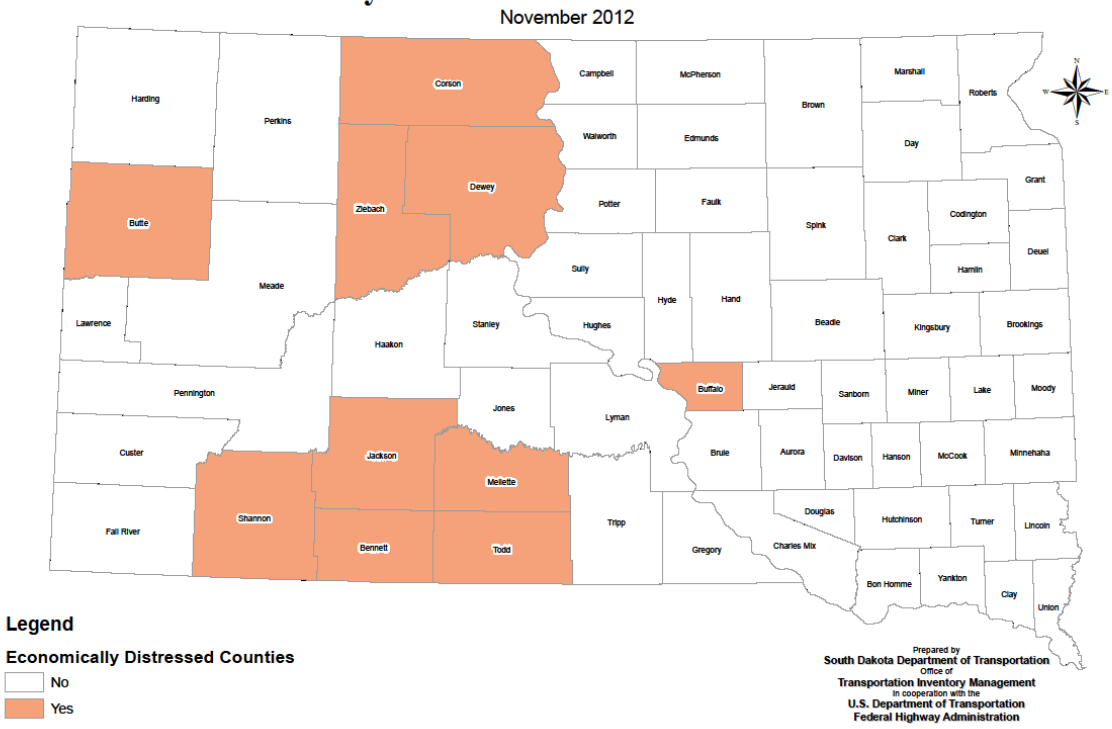


Source: US Census 2010

Figure 2

Economically Distressed Counties in South Dakota

November 2012



Source: FHWA

Minority Populations

The 2010 census data shows that:

- Minority population was 14.1 percent of the total population in South Dakota;
- There are nine tribal governments in South Dakota. The greatest percentage of minority population in South Dakota is in the counties where the Indian Reservations, tribal trust lands and tribal headquarters are located. The Native American population in South Dakota was 71,648 people or 8.8 percent of the total population of the state which accounts for 62 percent of the total minority population;
- Of the total Native American population in South Dakota approximately 50 percent live in Indian Reservation counties;
- In Minnehaha County, which is in the Sioux Falls Metropolitan Planning Area, the percent of minority population was 12 percent, which accounts for 17.49 percent

of the total South Dakota minority population;

- In Pennington County, which is in the Rapid City Metropolitan Planning Area, the percent of minority population was 17 percent, which accounts for 14.76 percent of the total South Dakota minority population;
- Out of the total minority population in South Dakota approximately one third live in the Sioux Falls and Rapid City Metropolitan Planning Areas;
- Approximately 95 percent of the minority population in South Dakota either lives in an Indian Reservation, tribal trust land, or tribal headquarters county; or in the Rapid City or Sioux Falls Metropolitan Planning Area.

Low-Income Populations

The SDDOT uses the 'Economically Distressed Area Map' to identify low income areas:

- The majority of the Economically Distressed areas identified in Figure 2 are the counties where the Indian reservations are located;
- The Minority Population Map and Economically Distressed Area Map are very similar with the exception of a few counties;
- In the Metropolitan Planning Organization (MPO) areas, the SDDOT will use the MPOs Long Range Transportation Plan to identify the low income areas;

Analytical Process

The SDDOT is in preservation mode and is not currently planning on constructing any new roadways that have not already gone through the National Environmental Policy Act (NEPA) process. Preservation represents a proactive approach in maintaining our existing highways to reduce costly rehabilitation and reconstruction projects. The SDDOT selects preservation projects by using a pavement management and bridge management system. This process eliminates any bias during project selection because decisions are made based on the analytical analysis using data collected, funding available and the condition of the pavement and bridges. After the analytical analysis and preliminary project selection, the SDDOT follows its public participation and consultation process, described later in this document, to finalize the project selection for the Statewide Transportation Improvement Program (STIP). After final selection of the projects, the SDDOT proceeds with the NEPA process which also considers Environmental Justice.

The major growth areas in South Dakota are in the Sioux Falls and Rapid City Metropolitan Planning Areas. Through agreements, the SDDOT has transferred most of the roadways in the Sioux Falls urbanized area to the City of Sioux Falls. This reduces the SDDOT Environmental Justice impacts in Sioux Falls because the amount of state owned roadways in the urbanized area is low. The SDDOT has no plans of

constructing new roadways in the Rapid City or Sioux Falls MPO area which haven't already gone through the NEPA process. If new alignments or capacity expansion projects are planned, the SDDOT will follow the NEPA and planning process to ensure environmental justice is evaluated.

SDDOT-Transit extends application opportunities for operating grants (program funds) each year; however, the development of two or more projects within the same rural community is not allowed to encourage coordination and reduce duplication at the local level. Program funds may be granted to State agencies, local public bodies and agencies thereof, nonprofit organizations, Indian Tribes and groups, and operators of public transportation service agreements with any nonprofit public body. Program funds are granted to meet a statewide objective of improving mobility of people in non-urbanized (population less than 50,000) areas for purposes of nutrition, health care, shopping, education, recreation, public services and employment without regard to income or minority status. All applicants must be able to justify local fund sources required to match federal operating funds and meet administrative requirements to receive the program funds.

A major policy of SDDOT-Transit is to make ongoing transportation services open to the general public for both private and special service providers with Section 5311 funds. This policy allows SDDOT to make a statewide distribution of limited Section 5311 funds since SDDOT-Transit is typically not able to fully fund applicants due to funding shortfalls. Funding shortfalls are handled by across-the-board cuts after individual requests are made, and after reviewing previous years' expenses and current request. In the event contracts are reduced with sub-grantees due to funding shortages, sub-grantees are advised to make reductions in service in a non-discriminatory manner; such as a reduction in hours a system operates instead of reducing service to a certain classification of people (such as the general public without disabilities) or trip characteristics (such as a social outing). Sub-grantees are advised that the needs of all populations are weighed equally to meet the requirements of Section 5311 funding.

SDDOT-Transit contracts directly with two tribes (Rosebud Sioux Tribe, Standing Rock Sioux Tribe), and funds non-profit organizations that serve three others (Sisseton Wahpeton Oyate, Flandreau Santee Sioux Tribe, Yankton Sioux Tribe). Three tribes are direct recipients to the FTA (Oglala Sioux Tribe, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe and Yankton Sioux Tribe) and two of these Tribes contract with a non-profit sub-grantee to SDDOT-Transit for their service.

Public Involvement and Environmental Justice Populations

SDDOT is committed to involving members of the public throughout the state in the development and implementation of its plans and programs. According to SDDOT's public involvement plan, the SDDOT seeks to productively work with the people of South Dakota to:

- Identify approaches and activities to encourage public input;

- Disseminate Information received;
- Obtain Public Input;
- Involve stakeholders, especially underserved;
- Consult with stakeholders, resource agencies and Tribes;
- Evaluate Public Participation;

South Dakota works closely with nine Tribes in South Dakota on the planning and environmental process. Each year, SDDOT representatives travel to consult with tribal representatives on the statewide transportation improvement program and the Statewide Transportation Plan updates (as needed). The SDDOT presents the projected five-year project specific plan to get their input and concerns as it relates to historic preservation, environmental issues and coordination. The consultation is an exchange of information and is vital to keeping the projects on schedule. In addition, the tribes are invited for consultation at a tribal STIP meeting to give project specific comments on projects programmed for the next five years. When the SDDOT does a Statewide Transportation Plan update, the SDDOT consults with the Tribes to receive comments on the policies identified in the plan.

When conducting a transportation study, the SDDOT evaluates the demographics and socioeconomic impacts in the study area to determine if there are environmental justice concerns that need to be addressed. In situations where a high density of minorities has been identified, the SDDOT has hired translators and made brochures available for the identified minority. The SDDOT also does additional public outreach which solicits input from the minority group(s) and develops a solution that provides the least impacts and still provide the services needed.

In the Metropolitan Planning Areas of Rapid City and Sioux Falls, the SDDOT reviews the Metropolitan Planning Organization's Long-Range Transportation Plan's environmental justice section to get additional information for analysis. This also guides the decision making and public participation process.

The SDDOT has identified levels for communication and participation, which consists of:

- **Inform the public** – to provide objective, balanced information to assist the public in understanding issues, planning, and program efforts;
- **Consideration of public input** – to take into account opinions, actions, or information from others;
- **Consultation with stakeholders, resource agencies and Tribes** – to confer periodically and consider each other's views prior to acting and report actions afterward;
- **Cooperation** – work together to achieve a common goal or purpose;
- **Coordination** – compare plans, programs, and schedules, and adjust them for general consistency.

Part XIII. Review of State Directives

A. The Department, with the assistance of the Civil Rights Program, will incorporate all relevant Title VI requirements in all directives (including but not limited to policies, rules, handbooks, guides, procedures) affecting any participants in, and beneficiaries of, Department programs.

B. The procedures for incorporating these requirements into Department directors are as follows:
   1. Current directives have been reviewed to ensure that appropriate Title VI requirements are included.
   2. Any new directives originating within program areas will be reviewed by the Civil Rights Program and applicable Title VI requirements will be incorporated as necessary.

C. Applicable Title VI requirements will be included in all contracts and agreements with contractors, vendors and others supplying the Department with goods and services.

D. The following appendices are the state procedures, manuals, and directives the Department uses to ensure Title VI Compliance:

   1. PIP: Can be found at: https://dot.sd.gov/media/documents/PublicInvolvementPlanFinalSignatureCopy031810.pdfand is available upon request.

   2. STIP: Can be found at: https://dot.sd.gov/projects-studies/planning/stipand is available upon request.

   3. Highway Contractor Laws: Can be found in South Dakota Codified Laws 31-5 and on the Legislative Research Council's website at: http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute

   4. Contractor Prequalification Statement: Can be found at: https://www.state.sd.us/eforms/secure/eforms/E0945V2-ContractorsPrequalificationStatement2.pdf

   5. Line of Credit Application: Can be found at: https://www.state.sd.us/eforms/secure/eforms/E0944V1-ContractorsLineOfCredit.pdf

   6. Sub-recipient Preaward Checklist……...…….58

   7. Annual or Post Award Sub-recipient Review Report……..…..60

South Dakota Department of Transportation
Title VI Program -- Pre-Award Assurance Checklist

This assurance checklist must be completed, signed, and returned to the SDDOT Civil Rights Program as part of your funding process. Below are the requirements to assure non-discrimination in local public agencies (LPA) transportation projects. This checklist also serves as a preview of the processes, procedures, policies, and documentation that will be expected at a formal Title VI Review.

In order to be awarded federal financial assistance, the LPA must certify that it will provide the following information when required, and where applicable in conjunction with reporting requirements and/or a Title VI Review. This checklist also serves to document that the LPA currently has in place, or will be able to implement, where applicable, the following processes and procedures. Please note in the "Comments" column any implementation plans.

Data Collection – A process to collect the following:	**YES**	**NO**	**N/A**	**COMMENTS**
Breakdown of LPA employees by race, gender and position held.				
Number of (SDDOT) federally funded projects awarded or ongoing during the past two years.				
Log showing Title VI complaints received during past two years (number, how resolved, issues involved) if any.				
Attendance at public hearings tracked, broken down by race and gender.				
Statistical data collected on race, gender, disability for communities impacted by construction projects.				
Statistical data collected on race, gender, and disability for all right-of-way relocatees. (Not Applicable for Transit Providers)				
Staffing:	**YES**	**NO**	**N/A**	**COMMENTS**
Staff designated to have Title VI coordination responsibilities (in conjunction with other duties).				
Policies, Procedures, Processes:	**YES**	**NO**	**N/A**	**COMMENTS**
Title VI Policy or Policy Statement in place for your organization, signed by the Sponsor.				
Proof of public dissemination of Title VI Policy or Policy Statement.				
Process for handling Title VI complaints from the public.				
Proof of public dissemination of complaint procedure.				
Planning, public involvement guidelines, and public involvement policies reviewed for compliance with Title VI.				
Procedures in place to ensure that equal opportunity is being considered in the hiring of employees and the award of contracts/agreements.				
Training:	**YES**	**NO**	**N/A**	**COMMENTS**
Has staff received any Title VI training (formal or informal).*				
Contracts & Agreements:	**YES**	**NO**	**N/A**	**COMMENTS**
LPA-issued contracts/agreements contain Title VI non-discrimination assurances.				

Planning Activities – Documentation to show (if not performed by SDDOT):	YES	NO	N/A	COMMENTS
Minority members of the community are actively sought out to participate in public hearings				
Accessible locations, adequate notice, and language translation services are considered or provided during the coordination of public hearings.				
The project for which funding is sought complies in all aspects with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.				

Design/Environmental Activities – Documentation to show (if not performed by SDDOT):	YES	NO	N/A	COMMENTS
Minority members of the community are actively sought out to participate in public hearings.				
Accessible locations, adequate notice, and language translations services are considered or provided during the coordination of public hearings				
Location and design manuals, directives, operational procedures, guidelines and policies reviewed for Title VI compliance.				

Right of Way Activities – Documentation to show (if not performed by SDDOT):	YES	NO	N/A	COMMENTS
Title VI language incorporated in all acquisition, negotiation, property management communications and contracts.				
Title VI language and assurance statements included in all surveys for property owners and tenants after conclusion of all business.				
Values and communications associated with appraisals conducted in an equitable and nondiscriminatory manner.				
Deeds, permits, and leases contain Title VI compliance clauses.				

Construction & Maintenance Activities – Documentation to show (if not performed by SDDOT):	YES	NO	N/A	COMMENTS
Contractor selection procedures have been reviewed to ensure uniformity in their application to minority and non-minority contractors.				
Minority contractors and subcontractors are informed about contracting opportunities with the LPA.				
Title VI assurances included in all LPA-issued contracts, subcontracts, and material supply agreements.				

Must return a copy of this completed form with grant application or by due date directly to:

June D. Hansen, Civil Rights Compliance Officer
South Dakota Department of Transportation
Office of Legal Counsel
700 East Broadway
Pierre, SD 57501-2586

Or email:
june.hansen@state.sd.us

Or fax:
(605) 773-4442

_____
Local Public Agency Name/Phone Number

_____
Signature of duly authorized representative for LPA

_____
Title

_____
Date

*Title VI training can be provided by the SDDOT upon request. To discuss training or Title VI requirements, reviews or reports, contact June Hansen, Civil Rights Compliance Officer, (605) 773-3540, or email june.hansen@state.sd.us SDDOT acknowledges the Idaho DOT in formation of this document.

South Dakota Department of Transportation

Title VI Compliance Annual or Post-Award Report

Local Agency: _____

This review/report covers the period of _____ through_____ and was completed from _____ to _____. Reviewing actual documentation of your activities is necessary in determining compliance. In addition to your narrative responses to the questions below, you may provide electronic documents or a link to your website for documents and materials as an alternative to providing a paper copy.

1. Staff
   - In the table below, list current personnel employed by position. Include all members of boards, commissions, and committees.

Name	Position	Gender		Race/Ethnicity						
		F	M	Black/ African American	Hispanic/ Latino	American Indian/ Alaska Native	Asian	Native Hawaiian/ other Pacific Islander	Two or More Races	White
	Totals									

- How are boards, councils, or committees appointed?

- How does your agency ensure that equal opportunity is provided when appointments are made?

2. Language Services
   - List the people designated to provide alternative and non-English language assistance, including volunteers and staff that provide interpreting and translation services.

   - What is the number of requests for services by customers with Limited English Proficiency (LEP)? What percentage does this make of total requests?

3. Provide copies of or electronic link to online version of:
   - Limited English Proficiency (LEP) plan or Four-Factor Analysis
   - Equal Employment Opportunity (EEO) Plan (if applicable and not previously submitted)
   - Americans with Disabilities Act (ADA) Transition Plan (if applicable)

4. Complaint Procedure
   - Provide a copy of the procedure/form used to handle Title VI complaints

   - How is the Title VI Policy Statement and complaint procedure disseminated to employees and the public?

5. Demographics
   - Is your agency using the most current data to describe the population demographics within your jurisdiction?

   - Can SDDOT provide any demographic information for your agency?

6. Public Outreach/Involvement
   - List the recruiting opportunities during the report period including the number of vacancies and promotions:
     i. How was recruitment done?
     ii. Race and gender of applicants.
     iii. Race and gender of person hired/promoted.

   - Describe any public outreach activities undertaken during the reporting period such as public announcements and/or communications for meetings, hearings, and project notices.

   - List the special language needs assessments conducted. Attach examples of assessments.

- What efforts were made to ensure the involvement of minority, women, low-income, and LEP population groups were provided equal opportunity to participate in outreach activities.

- Attach demographics gathered from attendees at public meetings, hearings, etc.
- Describe the avenues of public outreach i.e. print, television, radio, etc. Is this information provided with advance public notice or in a timely manner?

- Which meetings were attended by the local EEO/Title VI officer and what was their role in the outcome of that meeting?

7. Consultant Contracts (Transit Providers Skip #7)
   - Describe the Request for Proposals process and advertisement.

   - Provide documentation to show that appropriate non-discrimination language was included in solicitations for proposals/bids for agreements/contracts that were issued as part of federal aid projects.

   - List and provide copies of all the federally funded transportation related contracts that were executed during the reporting period by the local agency. Include construction, consultant agreements for planning, design, engineering, environmental, research, maintenance, etc.

   - Describe how non-discrimination requirements are being monitored.
     - Include dollar value of each.
     - Identify the contracts/agreements that were DBE/MBE/WBE.
     - List sub-contracts/agreements issued.

8. List any Title VI training* taken by staff:

Attendee	Name of Training	Date

9. Name the individual who will be serving as the Title VI coordinator for the next year.

Sponsor must return a copy of this completed form to:

June D. Hansen, Civil Rights Compliance Officer
South Dakota Department of Transportation
Office of Legal Counsel
700 East Broadway
Pierre, SD 57501-2586

Or email:
june.hansen@state.sd.us

_____
LPA Name/Phone Number

_____
Signature of duly authorized representative

_____
Title

_____
Date

*Title VI training can be provided by the SDDOT upon request. To discuss training or Title VI requirements, reviews or reports, contact June Hansen, Civil Rights Compliance Officer, (605) 773-3540, or email: june.hansen@state.sd.us

SDDOT acknowledges the Idaho Transportation Department and the California Department of Transportation for the original formation of this document.

Part XIV. Compliance and Enforcement Procedures

A. Complaint investigations

1. The Civil Rights Compliance Officer will make him/her known to all office and program managers with the Department and, with the assistance of these managers, will attempt to resolve all Civil Rights complaints arising from Department activities.
2. In addition, the Civil Rights Compliance Officer will make periodic visits to any locations and/or areas determined to be problematic in an attempt to alleviate any problems in advance of a complaint.
3. The following complaint procedures are applicable to all Department program areas:
    i. Any person or group claiming to be aggrieved by an unlawful discriminatory practice based on race, color, national origin, sex, age or disability may by himself/herself or through his/her legally authorized representative, make and sign a complaint and should file such complaint with the Department within 300 calendar days (180 days if a company has less than 15 employees or if this involves age discrimination) following the date of the alleged discriminatory action. All complaints will be filed with the Department Civil Rights Compliance Officer who will evaluate the complaint and gather additional information from the complainant if necessary. The appropriate program area manager and division director will be notified of the complaint.
    ii. The Civil Rights Compliance Officer or designee has 60 calendar days to conduct an investigation of the allegations and prepare preliminary findings. The Civil Rights Compliance Officer or designee may refer the matter to the appropriate program area to make every reasonable effort to resolve the complaint as quickly as possible or attempt informal resolution through other methods
    iii. All complaints that cannot be quickly (within 30 calendar days from the preliminary findings being issued) resolved will be reviewed by a committee consisting of the Secretary of the Department or his or her designee, the Civil Rights Compliance Officer and the program manager involved. The committee will hold an informal hearing with the complainant seeking resolution and will render a decision regarding the complaint within 15 working days of the hearing.
    iv. When the Department arrives upon a final decision regarding the complaint filed with the Department, it will notify the complainant in writing of the decision and of the complainant's rights, if dissatisfied with the decision, to bring the matter to the attention of the appropriate federal agency, typically the Federal Highway Administration (FHWA) or Federal Transit Administration (FTA). The Department will advise the complainant of the name and address of the agency and/or individual to contact.
    v. The Department will provide the federal agency with a copy of the complaint along with any investigatory report within 60 calendar days of the filing of the complaint. The Department will also furnish the federal agency a report indicating final disposition of the complaint within 5 working days of advising the complainant of the disposition.
    vi. The Department, acting through the Civil Rights Compliance Officer, will

expedite all discrimination complaints filed by individuals, business, group or institution. Information regarding the complaint process will be provided through Department publications, Department program activities, and individual personal contact with persons affected by Department activities.

4. A log of all complaints and investigations will be kept. The log will identify the race, color, sex, national origin, age or disability of the individual making the complaint; recipient of the complaint; date filed; investigation completion date; disposition and other pertinent information.

B. Identification of deficiencies, remedies, and sanctions: Following are the steps the FHWA and Department will take if the Title VI Review Report contains deficiencies and recommendations:

1. The Division Administrator will forward report with a cover letter to the Department for corrective action.
2. The Division Office will schedule a meeting with recipient, to be held no later than 30 days from receipt of deficiency report.
3. Recipients placed in deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of deficiency letter, to voluntarily correct deficiencies.
4. Division Administrator shall seek cooperation from recipient to correct deficiencies found during review. FHWA will provide technical assistance and guidance needed to aid the recipient comply voluntarily.
5. When the recipient fails or refuses to voluntarily comply with requirements within allotted timeframe, a case file and recommendation that the State be found in noncompliance is submitted to FHWA Headquarters Office of Civil Rights.
6. The FHWA Headquarters Office of Civil Rights will review case file for determination of concurrence or non-concurrence. FHWA will then forward recommendation to the Office of Chief Counsel at FHWA for legal sufficiency review. After such review, FHWA will send recommendations to Federal Highway Administrator. Should the Federal Highway Administrator concur with recommendation, the file is referred to the Office of the Secretary, US DOT for appropriate action in accordance with 49 CFR.

If compliance cannot be achieved voluntarily: While voluntary compliance is the first objective, it sometimes is not able to be achieved. If not, Federal agencies can use other means to bring about compliance including, but not limited to:

5. Referral to Department of Justice for litigation in Federal court.
6. Seek consultation with, or assistance from, another Federal agency with authority to enforce nondiscrimination requirements.
7. Consult with, or seeking assistance from, State or local agencies with nondiscrimination enforcement authority.
8. Federal agency may refuse to grant or may terminate funds after notice and opportunity for a hearing.

If found that funds should be terminated, denied, or discontinued, the FHWA must submit a complete written report on its decision to the House and Senate committee having legislative jurisdiction over the program or activity before the decision can be implemented.