

Transporter

Civil Rights Office Newsletter

January-February-March 2006, Volume VI, Issue 1

New Challenge To The DBE Program – Part 2

What Alaska Must Do Next

The July-August-September 2005 edition of the Transporter, detailed the latest decision from the US Ninth Circuit Court of Appeals regarding the DBE Program. The case in question was Western States Paving versus the State of Washington, Clark County and the City of Vancouver. The essential findings of the Court were the following:

- The federal DBE Program was constitutional; and
- The Washington State DBE Program was unconstitutional.

Washington State had to implement a Race Neutral DBE Program (0% Project Goals) until they conducted further study of discrimination in state transportation contracting. The end result will be the implementation of race and gender specific project DBE goals based on their recently completed Availability Study.

Many State Department of Transportations (DOTs) have expressed serious concern about this action forced upon Washington State and requested official guidance

from USDOT on what is required of USDOT recipients to implement the federally mandated DBE Program. In part, the following guidance was given on December 28, 2005 to State DOTs:

- *This applies only to recipients of Federal financial assistance from the FHWA, FTA, and FAA located in the states comprising the 9th Federal Judicial Circuit and governed by 49 CFR Part 26, the disadvantaged business enterprise programs (DBE).*

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It is the policy of the Alaska Department of Transportation to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR, Part 26; Related statutes and regulations to the end that no person shall be excluded from participation in or be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Transportation on the grounds of race, color, sex, age, disability or national origin.



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Civil Rights Office

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These states are California, Oregon, Washington, Alaska, Arizona, Idaho, Montana, Nevada, and Hawaii.

- Recipients should examine the evidence they have on hand of discrimination and its effects.

**DBE PROGRAM FOR
ALASKA TO Become
RACE NEUTRAL
PROGRAM**

If the recipient currently has sufficient evidence of discrimination or its effects, the recipient should go ahead and submit race- and gender-conscious goals where appropriate.

If the evidence of discrimination and its effects pertains to some, but not all, of the groups that Part 26 presumes to be socially and economically disadvantaged, then these race- and gender-conscious goals should apply only to the group or groups for which the evidence is adequate.

If the recipient does not currently have sufficient evidence of discrimination or

its effects, then the recipient would submit an all-race neutral overall goal for FY 2006. The recipient's submission would include a statement concerning the absence of adequate evidence of discrimination and its effects.

A race-neutral submission of this kind should include a description of plans to conduct a study or other appropriate evidence-gathering process to determine the existence of discrimination or its effects in the recipient's market. An action plan describing the study and time lines for its completion should also be included.

- FY 2005 or earlier contracts that used race-conscious DBE contract goals, USDOT does not believe it is appropriate to attempt to revise or reform those contracts.
- Recipients operating an all-race neutral DBE program in FY 2006, or subsequent years, are not required to establish contract goals to meet any portion of their overall goal.
- Recipients should take affirmative steps to use as many of the race-neutral means of achieving DBE participation to meet the overall goal and to demonstrate its DBE program is administered in good faith. USDOT expects recipients to

- unbundle contracts,
- provide technical assistance,
- facilitate capital and bonding assistance,
- use business development programs,
- other means that would provide DBE equal participation opportunities.

Rather than waiting passively for DBEs to participate.

- The good faith efforts requirements apply when DBE contract goals that are set have no required application to recipients implementing a race-neutral program. However, recipients must continue to collect the data required to be reported and to monitor compliance with the commercially useful function requirements.
- A recipient who lacks sufficient evidence of discrimination or its effects should immediately begin to conduct a rigorous and valid study to determine whether there is evidence of discrimination or its effects.

USDOT expects recipients who submit an all-race neutral goal for FY 2006 to ensure that this evidence-gathering effort is completed expeditiously. Studies to determine the presence of discrimination or its effects are

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ROSA PARKS 1913—2005

Born in Tuskegee Alabama, Rosa McCauley was taught the value of education and gave of herself pursuing it in Pine Level, Alabama, until the age of 11. She then enrolled in the Montgomery Industrial School for Girls, also known as Miss White's School for Girls in Montgomery, where she met Ms. Mahala Ashley Dickerson, a life long friend who is a practicing attorney in Wasilla, Alaska. Ms. McCauley then went on to attend high school at the Alabama State Teachers College.



*Mrs. Parks, an icon of civil rights
for all people*

In December 1932, Rosa McCauley married Raymond Parks. A seamstress by profession, Mrs. Parks became an active part of the civil rights movement. She worked for many years along with her husband in the

Montgomery Branch of the National Association for the Advancement of Colored People (NAACP) where she served as the branch secretary and youth advisor. In 1943 Mrs. Parks was one of the first women to join the Montgomery NAACP Branch.

Mrs. Parks is hailed as a Civil Rights Pioneer and as the Mother of the Modern Civil Rights Movement because of her heroic contribution on December 1, 1955. On that day, Rosa Parks was arrested for refusing to give up her seat in the "colored" section of the bus to a white man, on the orders of the bus driver, because the "white" section was full. The arrest of Rosa Parks led African Americans and others to boycott the Montgomery city bus line until the buses in Montgomery were desegregated. The 381-day Montgomery bus boycott encouraged other courageous people across the United States to organize in protest and demand equal rights for all. The life of this freedom fighter, Rosa Parks, made such an impact that in 1956, because of her brave act of defiance, the United States Supreme Court eventually ruled that segregated public bus service was unconstitu-

tional and the city of Montgomery announced it would comply with the ruling. This act not only raised citizen awareness nationwide but also raised an unknown clergyman named Martin Luther King Jr., to national prominence.



*Rosa Parks &
Dr. Martin Luther King, Jr.*

Photo extracted from: Academy of Achievement
<http://www.achievement.org/autodoc/photocredit/achievers/par0-003>

In 1957, Mr. And Mrs. Parks relocated to Detroit, Michigan where she continued to live a life pursuing equality for all. In 1965, US Representative John Conyers (D-Michigan) hired Rosa Parks as a member of his staff, where she served in various administrative capacities until retiring in 1988 at the age of 75. In 1987 she organized the Rosa and Raymond Parks Institute for Self Development. This non-profit organization motivates young people, through its

(Continued on page 6)

Keep Track of What Needs Tracking

In the aftermath of the 2004 Presidential election, electronic voting systems were scrutinized, and in some cases denigrated, for their inability to produce a paper ballot for the voter to review before leaving the voting booth. Critics claimed this lack of a paper trail didn't allow people to verify their vote was recorded accurately. As a result, if inaccuracies did occur, documentation didn't exist to correct the errors.



In the case of an election, inadequate records can have serious consequences. Such consequences are no less severe in more personal matters, such as taxes, bills, or personnel records. In business, a lack of records may lead to a lack of business, because if you don't know what you have, owe or spend, you can't know what you need to buy, collect, or earn.

Contractors in particular have a vested interest in maintain-

ing complete and accurate records, because their records, or lack thereof, may affect their ability to participate in federally assisted projects. Submitting an incomplete Good Faith Effort (GFE), for example, may impact whether or not a contractor receives a contract. Not submitting income tax records will delay and may even halt the DBE Certification process. Failing to submit subcontractor payment forms may lead to a withholding of progress payments. In short, record keeping and documenting actions should not be taken lightly.

Fortunately, good record keeping doesn't just prevent reprisal. The benefits of keeping records and documenting actions extend beyond the individual business owner. You benefit because you know what is going on with your business. Others benefit because their interactions with you are more productive. Processing delays are reduced, cooperation increases, and business deals run more smoothly when everyone keeps track of what needs tracking. Additional benefits of staying organized include:



1. Protection in legal matters
2. Clear understanding of who is responsible for what project or process
3. A more professional image
4. Easier knowledge transfer

In the end, time is money. To make more money, you have to save time. Keeping good records and documenting processes saves time because everything is organized. Therefore maintaining a paper trail makes money!

*Contributed by: Stacy Seibert
Contract Compliance Officer, CRO*



"Mind Your Own Business"

Wondering how to more effectively run or "grow" an established business or considering starting a new one?



A new website, called "Mind Your Own Business" at www.mindyourownbiz.org, created by the US Small Business Administration (SBA) and Junior Achievement (JA) was originally designed to help teens develop entrepreneurial skills, however, its applications apply to individuals of all ages.

This site walks you through five easy steps of business ownership and provides additional links to resources to help you build, grow and

manage a business. And for those who enjoy computer games the site also offers a highly entertaining and informative game designed to test your entrepreneurial skills. Think you have what it takes to run a highly successful business? Click on titan.ja.org, play the game, and test your skills running a business in this challenging business simulation.

*Contributed by: Sharon White-Wheeler
Certification Officer, CRO*

CIVIL RIGHTS TIDBIT:

1987: In *Johnson v. Transportation Agency, Santa Clara County*, the Court upheld an employer's affirmative action plan that allowed gender to be considered as a positive factor when choosing among qualified candidates for jobs in which women were severely underrepresented. The employer developed its plan after its review found that no women were employed in any of its 238 skilled craft jobs. Both Paul Johnson (the male plaintiff claiming reverse discrimination) and Diane Joyce (the woman who

ultimately received the promotion to road dispatcher) had the requisite four years' experience, although Ms. Joyce's

***If you have a Tidbit
you would like to
contribute please
contact the
Civil Rights Office***

experience was more recent and arguably more relevant. Mr. Johnson received a score of 75 to Ms. Joyce's 73 in the graded oral interview, where

70 was a passing score. The Court upheld the county's use of Ms. Joyce's gender as a positive factor in choosing between these similarly-qualified candidates -- especially since no woman had ever held the position of road dispatcher.

For more information log on to: http://www.civilrights.org/research_center/civilrights101/supremecourt.html

***Thanks to Reneiase Bagsby
for this Tidbit.***

many educational programs, to reach their highest potential. Her civil rights service continued throughout her life and continues to make lasting impressions. In a 1988 speech Rosa Parks said: "I am leaving this legacy to all of you . . . to bring peace, justice, equality, love and a fulfillment of what our lives should be. Without vision, the people will perish, and without courage and inspiration, dreams will die—the dream of freedom and peace."

Mrs. Parks received numerous awards, including the 1979 NAACP Spingarn Medal, given for outstanding achievement by an African American; the Presidential Medal of Freedom (1996), the Congressional Gold Medal (1999), the Martin Luther King Sr. Award; the Rosa Parks Peace Prize in 1994 in Stockholm, Sweden. She was also inducted into the Michigan Women's Hall of Fame in 1983

for her achievements in civil rights. In 1998, Mrs. Parks attended the groundbreaking ceremony of the Rosa Parks Library and Museum at Troy State University in Montgomery Alabama. Mrs. Parks holds two lifetime memberships in the NAACP, and was presented the Military Purple Heart, by Vietnam Veteran Mr. Jaime Vazquez, after hearing Mrs. Parks was attacked and robbed in her home.

Mrs. Parks at the age of 92 was laid in state at the Capitol Rotunda, the first woman to be so honored. The attendees at Mrs. Parks Service of Remembrance and Thanksgiving were noted dignitaries such as: Ms. Condoleezza Rice, US Secretary of State; The Honorable Artur Davis, US Congressman, 7th District of Alabama; The Honorable Robert Riley, Governor, State of Alabama; The Honorable Bobby Bright, Mayor, City of Montgomery; Cicely Tyson, Actress; and Reverend

Jesse Jackson Sr., Founder and President, Rainbow/PUSH Coalition.

I had the privilege to act as a military escort for Mrs. Parks on a visit to Elmendorf AFB in 1997. Her always calm, dignified demeanor commanded the attention of everyone present whenever she entered a room. She spoke about the history of the civil rights struggle and how far the American society has come as well as acknowledging how far we still have to go. Mrs. Parks' comments stirred the hearts of everyone while inspiring and encouraging servicemen and women to respect each other's differences while embracing the dream of equality. In the words of Mrs. Rosa Parks, I choose to accept the legacy she has left behind of bringing peace, justice, equality, love and a fulfillment of what our lives should be along with a vision to pass that legacy on to my children.

*Contributed by: Reneiase Bagsby
Ext.EEO, Title VI and ADA Officer, CRO*



Project/Procurement information for the Alaska Department of Transportation and Public Facilities can be viewed at the following web address:

<http://dot.alaska.gov/procurement/index.shtml>

Also on the Civil Rights Office Links Web Page under Procurement — links to the Alaska Unified Certification Program Members' procurement pages:

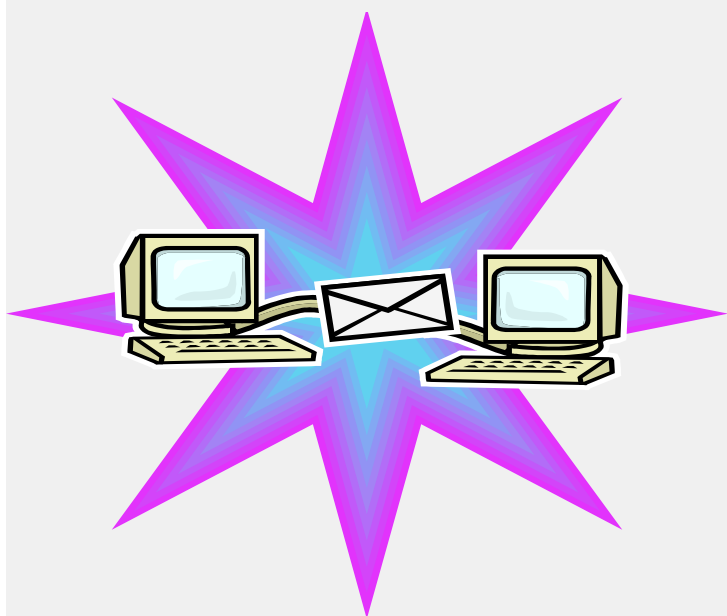
<http://www.dot.state.ak.us/cvlrts/links.shtml>

DBE Office Online Reporting System (DOORS)

For FAA Concessionaires

WHAT IS DOORS?

DOORS is a web-based system for reporting participation under the Disadvantaged Business Enterprise (DBE) Program. The purpose of DOORS is to provide an easier, more efficient method of submitting and recording DBE program commitments/awards and payments.



WHY USE DOORS?

DOORS provides instruction menus at the top of all pages and will automatically calculate and total data fields. DOORS will also generate a discrepancy report if data is incorrect or incomplete.

DOORS can randomly issue a user and a recipient account ID and a password in compliance with the rules for password creation.

WHEN?

DOORS allows access to previously recorded and edited records from past fiscal years, as

well as access to a National DBE contractor participation listing.

DOORS provides recipients, and Regional and National Offices of Civil Rights in the Federal Aviation Administration, an effective tool to handle requests for information from the US Department of Transportation, Office of the Secretary.

***DOORS Training Scheduled
for March 2006 in
Anchorage and Fairbanks***

WHO?

Recipient designee requests for a new user account in DOORS must be approved by FAA Regional Office of Civil Rights, External Program Manager. An email message from your External Program Manager will be sent once the account is approved.

A user account is your own personal user account that you use to log in and enter data.

A recipient account is for purposes of identifying all recipients in DOORS, or a consultant working for multiple recipients in multiple FAA regions.

Quick Reference Guide and or Users Manual for DOORS are available from Jonathan Larson at:

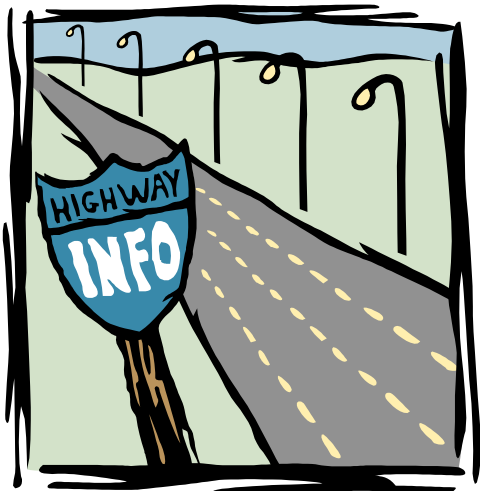
Phone: (425) 227-2097

Email: jonathan.larson@faa.gov

*Contributed by: Jonathan Larson
EEO Specialist/External Program manager
Office of Civil Rights
Northwest Mountain Region
Federal Aviation Administration*

Requests for Information About DBE Firms

Occasionally (less than once a year) the Civil Rights Office receives a request for information from a DBE firm's file. Some of the file is considered public information, but the firm and owners' financial information is protected from disclosure by 49 CFR 26.109, which states:



(a) *Availability of records.*

(1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information

concerning the DBE program, release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

Recently we received a request from the Alaska State Child Support Enforcement Office, for the annual financial records of a DBE firm. The agency made the request based on its criminal investigation of the DBE owner and could have obtained a subpoena for this information. Because the regulations are written so that the financial information



submitted by a DBE firm is confidential no matter the source, the Civil Rights Office (CRO) was put in the position of potentially denying access to information requested as part of a criminal investigation. A possible result of the denial of access to information, in this case, could have led to criminal sanctions against CRO management. After discussions with the Attorney General's Office and the General Counsel's Office at the US Department of Transportation, the office pursued the only apparent option available, which was to request a waiver from 49 CFR 26.109, as permitted under 49 CFR 26.15, which states in part :

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(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must

agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.



The CRO applied for a waiver for the records requested by the Child Support Enforcement Office to the US Secretary of Transportation. This waiver is still pending with the Secretary.

The reason this request for information is highlighted is because the CRO may petition the US DOT for a waiver to the regulations for special or exceptional circumstances not contemplated when rulemaking for 29 CFR Part 26. If the CRO does make such a request, it will be as limited as possible. In the almost seven years Part 26 has been in effect, this is the first request for a waiver made by the CRO.

*Contributed by: Jon Dunham
Manager, Civil Rights Office*

Welcome to CRO's New Administrative Assistant



Hazel Johnson started with the Civil Rights Office (CRO) in December of 2005 as the Administrative Assistant. She is originally from Leesville,

Louisiana where she met her husband. Hazel's family moved to the Fairbanks area in 1989 where she worked for the department in both the construction and leasing sections. She left Fairbanks in 2001, returning to the Anchorage area in 2005. Hazel has a 9-year history in Alaska Department of Transportation and Public Facilities budget management and financial administration. She has 70 semester hours

in Business/Office Administration from Jackson State University as well a Bookkeeping Certificate from the Universal Accounting Center. Hazel has professional memberships in the American Institute of Professional Bookkeepers and the National Association for Tax Professionals.

*Contributed by: Jon Dunham
Manager, Civil Rights Office*

UPCOMING EVENTS & TRAINING OPPORTUNITIES

January 2006

✓ **Revision of DBE Goals for Highway & Airport Projects for Federal Fiscal Year 2006** **RESERVATIONS REQUIRED**

Reservations: Beckie Oliva, Support Services Coord.
Phone: (907) 269-0844
email: bekie_oliva@dot.state.ak.us

Questions: Jon Dunham, CRO Manager
Phone: (907) 269-0850
email: jon_dunham@dot.state.ak.us

Anchorage— January 25 (Wed.) 4:00-6:00pm
Alaska Railroad Historic Depot
421 W 1st Avenue; Anchorage

Juneau— January 27 (Fri.) 2:00-4:00pm
Assembly Chambers
155 S Seward Street; Juneau

Fairbanks— January 26 (Thu.) 4:00-6:00pm
Noel Wein Library Conference Room
1215 Cowels Street; Fairbanks

March 2006

✓ **Annual Unified Certification Program Meeting—Anchorage & Fairbanks**

Questions: Linda Babb, AUCP Coordinator
Phone: (907) 269-0852
email: linda_babb@dot.state.ak.us

Fairbanks— March 6 (Monday) 8:00am-4:30pm
AGC Training Room
3750 Bonito Street, Fairbanks

Anchorage— March 8 (Wednesday) 8:00am-4:30pm
Frontier Building
3601 C Street, Room 890
Anchorage, Alaska

✓ **FAA Concessionaire's DOORS Training—Anchorage & Fairbanks**

Questions: Jonathan Larson, EEO Specialist
Phone: (425) 227-2097
email: jonathan.larson@faa.gov

Fairbanks— March 7 (Tuesday) 8:00am-4:30pm
AGC Training Room
3750 Bonito Street, Fairbanks

Anchorage— March 9 (Thursday) 8:00am-4:30pm
Frontier Building
3601 C Street
Anchorage, Alaska



✓ **Mayor's Diversity Business Fair—2nd Annual** **March 28, 2006 (Tuesday 9:00am - 2:00pm)**

Location: Sheraton Anchorage
401 E 6th Avenue
Anchorage, Alaska

Questions: Municipality of Anchorage
Office of Equal Opportunity
(907) 343-4895

Sponsored by: Municipality of Anchorage
Alyeska Pipeline



Notes & News About Certification



Newly Certified Firms

➤ **John's Excavating Inc**
Anchorage, Alaska

Line of Work:

Construction: Clearing (Manual); Clearing/Grubbing (Mechanical); Earthwork – Excavation & Embankment; Earthwork—Site Work; Mobilization/Demobilization; Underground – Sewer/Water Line Installation

➤ **Pak's Custom LLC**
Juneau, Alaska

Line of Work:

Concession: Automotive Parking Lots

➤ **SofTec Solutions Inc**
Englewood, Colorado

Line of Work:

Consultant: Business Services

➤ **Wells Technology**
Bemidji, Minnesota

Line of Work:

Supplier: Electrical; Non-Construction; Plumbing; and Steel

Recertified Firms

➤ **A&D Drilling LLC**
Anchorage, Alaska

➤ **Arrowhead Environmental Services Inc**
Wasilla, Alaska

➤ **Gary Kangas Enterprises**
Fairbanks, Alaska

➤ **JKM General Contractors LLC**
Anchorage, Alaska

➤ **Redoubt Industries Inc**
Kenai, Alaska

➤ **RIM Design LLC**
Anchorage, Alaska

➤ **Summit Associates**
Concord, California

➤ **West Bay Corporation**
Kodiak, Alaska



*New Challenge to the DBE Program
(Continued from page 2)*

often referred to as “disparity” or “availability” studies, though there can also be rigorous and scientifically valid studies which may have different names. Whatever label is applied to a study, however, the key point is that it be designed to determine, in a fair and valid way, whether evidence of the kind the 9th Circuit decision determined was essential to a DBE program including race-

conscious elements exists. USDOT expects each State DOT to conduct a statewide study. Such a study should be conducted in cooperation with transit and airport recipients in the state.

Alaska DOT will be revisiting its FHWA and FAA Goal submittals during January and February 2006. Meetings will be held in Anchorage on January 25, 2006, Fairbanks

on January 26, 2006 and Juneau on January 27, 2006. Watch the CRO web page for more details.

(<http://www.dot.state.ak.us/cvlrts/>)

*Contributed by: Jon Dunham
Manager, Civil Rights Office*

CIVIL RIGHTS OFFICE — STAFF MEMBERS

CRO Manager—Jon Dunham

Responsible for overall Civil Rights Programs implementation and reporting to Federal Highway Administration, Federal Aviation Administration, and Federal Transit Administration for Alaska Department of Transportation and Public Facilities. Overall supervision of the Civil Rights Office Staff.

Compliance Programs—

Reneise D Bagsby Performs contract compliance reviews and enforcement of external EEO, DBE, and OJT programs. Administers the Title VI program under the Civil Rights Act of 1964. Investigates discrimination complaints. Administers department ADA Program. Directly supervises compliance program staff.

Valerie Fletcher-Mitchell Performs audits of ADOT&PF programs and sub-recipients of federal assistance funds based on Title VI of the Civil Rights Act of 1964. Reviews Environmental Documents for compliance with Title VI of the Civil Rights Act of 1964 and the Environmental Justice Executive Order. Provides technical assistance, oversight, and training of ADOT&PF personnel and Federal Highway Administration sub-recipients on Title VI requirements and compliance.

Stacy Seibert Performs contract compliance reviews and enforcement of external EEO, DBE, and OJT programs.

Mary Caterinichio Maintains the Civil Rights Office database and works with contractors and Federal Highway Administration and Federal Aviation Administration on numerous aspects of reporting.

DBE Certification—

Eileen Oliver Administers the DBE certification program by coordinating functions between Alaska Unified Certification Program Members, DBEs, and various agencies representing minority or women owned, small or disadvantaged businesses. Oversees certification outreach, processing of DBE applications, recertifications and annual reviews.

Linda K Babb Assists businesses with navigating the DBE certification process. Conducts outreach, validates applications and performs recertifications and annual reviews. Liaison for the Alaska Unified Certification Program.

Sharon White-Wheeler Assists businesses with navigating the DBE certification process. Conducts outreach, validates applications and performs recertifications and annual reviews.

Support Services—Beckie M Oliva

Administers the DBE and OJT Support Services programs, working with contractors bidding on Alaska Department of Transportation and Public Facilities projects.

Administrative Staff—

Hazel Johnson Assists with Civil Rights Office budget, provides office support and assists with the 75% reimbursement training program.

Anna J Kline Handles all incoming communication with the Civil Rights Office and supports the administrative functions of the Civil Rights Office staff.

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