

State of Wisconsin Department of Administration  
Division of Energy, Housing and Community Resources

## **FLEXIBLE FACILITIES PROGRAM IMPLEMENTATION HANDBOOK**

### **CHAPTER 6: EQUAL OPPORTUNITY**



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## CHAPTER 6: EQUAL OPPORTUNITY

### 1.0 Compliance Regulations

The State of Wisconsin and Flexible Facilities Program (FFP) grantees, subrecipients, and contractors working on an FFP project, as recipients of federal financial assistance from U.S. Department of Treasury, are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of federal funds. Those requirements include ensuring that entities receiving federal financial assistance from Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities:

- *Title VI of the Civil Rights Act of 1964 (Title VI)*, 42 USC § 2000d-1 et seq., and Treasury's implementing regulations, *31 CFR Part 22*;
- *Section 504 of the Rehabilitation Act of 1973 (Section 504)*, 29 USC § 794;
- *Title IX of the Education Amendments of 1972 (Title IX)*, 20 USC § 1681 et seq., and Treasury's implementing regulations, *31 CFR Part 28*;
- *Age Discrimination Act of 1975*, 42 USC § 6101 et seq., and Treasury's implementing regulations at *31 CFR Part 23*; and
- *2 CFR Part 200.321* for the promotion of small businesses, minority-owned businesses (minority business enterprises [MBE]), women-owned businesses (women's business enterprises [WBE]), veteran-owned businesses in contracting.

Additional equal opportunity related laws and requirements may apply to the building/construction, facility improvements, contracting, and other activities for the grantee's FFP project. Grantees and subrecipients are responsible for complying with all laws applicable to their project.

### 2.0 Protected Classes

The compliance regulations in the section above prohibit discrimination based on:

- Race,
- Color,
- National Origin,
- Disability,
- Sex, and/or
- Age.

## 3.0 Contracting

Grantees, subrecipients, prime contractors and subcontractors should take all necessary affirmative steps to ensure that small businesses, minority-owned business enterprises [MBEs], women-owned business enterprises [WBEs], disabled veteran-owned businesses [DVBs], and labor surplus area firms are considered for contracting opportunities, in accordance with [2 CFR 200.321](#) and Department policy.

The definitions of the terms for the purposes of FFP compliance are listed below:

- **Small Business** – A business firm that matches the revenue and employment status of a small business in their industry, as specified in [13 CFR Part 121.101](#) and the [North American Industry Classification System \(NAICS\)](#). Registered small businesses may be found in directories available on the [U.S. Small Business Administration website](#).
- **Minority-Owned Business Enterprise- (MBE)\*** – A firm that is at least 51% owned, controlled, and actively managed by one or more members of an eligible minority group member; is a sole proprietorship, corporation, LLC, or joint ventures; is organized in a for profit basis and currently performing a useful business function; and is not held in trust. If the business is a subsidiary or affiliate, the parent company must be at least 51% owned by a minority or minority owners. Eligible racial ethnic categories include: American Indian, Asian-Indian, Asian-Pacific, Black, Eskimo or Aleut, Hispanic, and Native Hawaiian [[Wis. Stat. § 16.287\(1\)](#) and [Wis. Admin. Code §§ 84.01\(29\)\(a-e\)](#)].
- **Women-Owned Business Enterprise (WBE)\*** – A firm that is at least 51% owned, controlled, and actively managed by one or more women; is a sole proprietorship, corporation, LLC, or joint ventures; is organized in a for profit basis and currently performing a useful business function; and if held in trust, it must be a woman or women as the owner, beneficiary, and trustee of the trust. If the business is a subsidiary or affiliate, the parent company must be at least 51% owned by a woman or women owners.
- **Disabled Veteran-Owned Business (DVB)\*** – A firm that it least 51% owned, controlled, and actively managed by one or more service-disabled veterans; is a sole proprietorship, corporation, LLC, or joint ventures; is organized in a for profit basis and currently performing a useful business function; and is not held in trust. If the business is a subsidiary or affiliate, the parent company must be at least 51% owned by a service-disabled veteran owner or service-disabled veteran owners. The headquarters must be located in Wisconsin. A disabled veteran is defined as having a Certificate of Release or Discharge from Active Duty (Form DD214); being a resident of Wisconsin; having a Disability Rating of at least 0% with the Department of Veteran’s Affairs or an Armed Services Branch [[Wis. Stat. § 16.283\(1\)\(b\)](#) and [Wis. Admin. Code § 82.22](#)].
- **Labor Surplus Area Firm** – A business that operate in a “labor surplus area” as designated by the U.S. Department of Labor (USDOL). USDOL publishes a list of

LSAs on a fiscal year basis on the [USDOL Labor Surplus Area website](https://www.dol.gov/agencies/eta/lsa) [<https://www.dol.gov/agencies/eta/lsa>].

\*A directory of MBE, WBE and DVB firms may be accessed on the [Wisconsin Supplier Diversity Program](https://supplierdiversity.wi.gov/Pages/Home.aspx) website [<https://supplierdiversity.wi.gov/Pages/Home.aspx>].

Giving consideration in contracting opportunities means:

- 1) Including these business types on solicitation lists;
- 2) Soliciting these business types whenever they are deemed eligible as potential sources;
- 3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- 4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
- 5) Utilizing organizations such as the [U.S. Small Business Administration](#) and the [M.U.S. Department of Commerce Minority Business Development Agency \(MBDA\)](#), [Wisconsin MBDA Center](#), and [Wisconsin Supplier Diversity Program](#); and
- 6) Including the required equal opportunity language provided in the *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03 for Chapter 3 of the [Handbook](#)) in all contracts; and requiring all contractors working on the FFP project to include the required equal opportunity language in all subcontracts (all tiers). This is required for all FFP grantees, subrecipients, prime contractors, and subcontractors.

Grantees and subrecipients should also promote contracting opportunities for and reach out to small business, MBE, WBE, DVB, and labor surplus area firms for contracting and supplier opportunities; and encourage MBE, WBE, and DVB contractors to register on the [State's Supplier Diversity website](#).

## 4.0 Reporting

In order to carry out its enforcement responsibilities under [Title VI of the Civil Rights Act](#), the State of Wisconsin Department of Administration Division of Energy, Housing and Community Resources (DEHCR) will collect and review information from grantees to ascertain their compliance with the applicable requirements. Treasury's implementing regulations, [31 CFR Part 22](#), and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, [28 CFR Part 42](#), provide for the collection of data and information from grantees (see [28 CFR Part 42.406](#)). Grantees will be required to collect data from subrecipients, prime contractors, and subcontractors, and submit data in reporting documents verifying [Title VI](#) compliance in contracting and

the small business, MBE, WBE, DVB, and labor surplus area firm status of contractors and subcontractors.

In the *Quarterly Report* (Attachment FFP-09-01 of the *Handbook*), grantees are to report contractors' classifications pertaining to equal opportunity and civil rights compliance.