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February 24, 2025

Hon. Pam Bondi, Attorney General
Christine Stoneman, Section Chief
U.S. Department of Justice, Civil Rights Division
Federal Coordination and Compliance Section
950 Pennsylvania Avenue, NW, 4CON, 7th Floor
Washington, DC 20530
Via email to FCS.CRT@usdoj.gov, christine.stoneman@usdoj.gov

Re: Title VI Complaint, Wisconsin Department of Administration

Dear Attorney General Bondi:

We represent Contractors for Equal Opportunity, a nationwide association of companies negatively impacted by race discrimination in government contracting programs. Please consider this letter a civil-rights complaint under Title VI of the Civil Rights Act of 1964 against the Wisconsin Department of Administration (DOA) for its discriminatory Supplier Diversity Program. DOA is a recipient of federal funds and therefore subject to the nondiscrimination provisions of Title VI. We are filing this complaint with the U.S. Department of Justice because DOA receives federal grants from multiple federal agencies.

President Trump's Executive Orders

Since he took office on January 20, 2025, President Trump has issued multiple executive orders requiring agencies to identify, investigate, and ultimately terminate race-based programs. Under *Ending Radical and Wasteful Government DEI Programs and Preferencing*, all agencies must recommend actions to align agency enforcement activities “with the policy of equal dignity and respect.”¹ Also, the Executive Order on *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, declares it to be the policy of the United States “to protect the civil rights of all Americans” and orders “all agencies to enforce our longstanding civil-rights laws.”² Furthermore, under this Executive Order “every contract or grant

¹ White House, *Executive Order on Ending Radical and Wasteful Government DEI Programs and Preferencing* (Jan. 20, 2025), available [here](#).

² White House, *Executive Order on Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025), available [here](#).

award” must ensure that the recipient is in “compliance in all respects with all applicable Federal anti-discrimination laws.”

Investigating civil rights violations is one of the most fundamental duties of the Attorney General. In this complaint, we are asking you to open an investigation into a state-based supplier and procurement program that discriminates openly against small businesses based on race. Many states operate similar programs (19 states by our count). These programs are similar to the federal Disadvantaged Business Enterprise Program. As you may know, a federal judge ruled that the DBE program is unconstitutional because it discriminates based on race.³ If that federal program is unconstitutional, then these state-based counterparts are similarly unconstitutional. We therefore request that you investigate these programs and determine that they are operating in violation of Title VI. Each state agency operating such a program receives federal funds and is therefore bound by Title VI and subject to your jurisdiction.

Wisconsin Supplier Diversity Program

DOA’s Supplier Diversity Program is a state program that ensures at least 5% of all goods and services purchased by the State of Wisconsin are from certified minority-owned business enterprises (MBEs). This goal applies to all state procurement and contracting areas, including engineering and architectural services, building construction services, state-funded highway construction, and general procurement (various supplies and services purchased for state business).

To achieve this 5% goal, the Supplier Diversity Program discriminates against certain contractors and suppliers by imposing a 5% bid preference for “minority-owned business enterprises” (MBEs). Under the bid preference, MBEs that submit bids are treated as though their total bid is 5% less than the actual bid, creating an unlevel playing field and inflating the costs of goods and services by discriminating against non-MBE firms. DOA explains the preference as follows: state agencies must award contracts to MBEs that submit “the lowest qualified responsible competitive bid when the bid is not more than 5% higher than the apparent low bid.”⁴

For fiscal year 2023, DOA touted that “diverse suppliers accounted for \$205,387,642 of the \$3,366,750,7876 State Agency and University of Wisconsin System spending in general procurement, facilities construction, architecture/engineering, and state highway services.”⁵

³ See *MAMCO v. USDOT*, 2024 WL 4267183, No. 23cv72 (Sept. 23, 2024).

⁴ Supplier Diversity Report, FY 2023, page 6, available at this [link](#). This is the most recent fiscal year.

⁵ *Id.* The Program’s webpage is supplierdiversity.wi.gov.

Through the program, DOA also sets a goal that 5% of a state spending be through MBEs. As can be seen by the following chart, however, 24 state agencies exceed this goal.

	Agency General Procurement	% Diverse Spend
1	Financial Institutions, Department of	36.46%
2	Safety and Professional Services, Department of	29.74%
3	Supreme Court	29.48%
4	Aging and Long-Term Care, Board on	25.27%
5	Agriculture, Trade and Consumer Protection, Department of	21.95%
6	Secretary of State	19.57%
7	Child Abuse and Neglect Prevention Board	19.47%
8	Workforce Development, Department of	16.60%
9	Children and Families, Department of	14.76%
10	Lower Wisconsin State Riverway Board	14.70%
11	Wisconsin Technical College System Board	13.76%
12	Employee Trust Funds, Department of	13.22%
13	Administration, Department of	11.75%
14	Elections Commission	10.93%
15	Justice, Department of	10.91%
16	Public Defender Board	10.40%
17	Insurance, Commissioner of	9.47%
18	Transportation, Department of	8.85%
19	Wisconsin Housing and Economic Development Authority	8.82%
20	Legislative Technology Services Bureau	7.21%
21	Health Services, Department of	7.11%
22	Public Service Commission	6.06%
23	Natural Resources, Department of	5.67%
24	Public Instruction, Department of	5.55%

According to DOA’s rules, an MBE must be at least 51% “owned, controlled and actively managed by one or more minority group members.”⁶ DOA defines “minority” to include only the following racial groups: “American Indian,” “Asian-Indian,” “Asian-Pacific Origin,” “Black,” “Eskimo or Aleut,” “Hispanic,” or “Native Hawaiian.”⁷ DOA thereby excludes many racial minorities, such as Arabs, Persians, Turks, and any number of other racial groups from north Africa to northern Asia. DOA also excludes from the definition of “minority” all non-Hispanic individuals

⁶ Wis. Adm. Code § 84.03. DOA’s administrative rules regarding the Minority Supplier Program are available at this [link](#).

⁷ Wis. Adm. Code § 84.02(29).

from the Caribbean and South America, such as those from Brazil, Belize, Guyana, Haiti, and Suriname.

The Supplier Diversity Program Violates Title VI

Title VI states that no person shall be subject to discrimination “on the ground of race, color, or national origin” “under any program or activity receiving Federal financial assistance.”⁸ Under this law, “it is never permissible to say ‘yes’ to one person but to say ‘no’ to another person even in part because of the color of his skin.”⁹ Race-based preferences “are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.”¹⁰ “That principle cannot be overridden except in the most extraordinary case.”¹¹

DOA cannot offer any justification to defend its Supplier Diversity Program, which illegally discriminates by enforcing a 5% racial preference on all bids and by employing a 5% target for using MBEs. Under *Students for Fair Admission v. Harvard* (which was a Title VI case), a program like this one must pass several independent tests. Here, DOA cannot satisfy any of them.

First, DOA’s program is illegal because it does not “remediat[e] specific, identified instances of past discrimination that violated the Constitution or a statute.”¹² DOA has never identified any past intentional discrimination that it perpetrated, or explained how a bid preference or racial target is narrowly designed to remedy that past discrimination.

Second, DOA cannot “articulate a meaningful connection between the means they employ and the goals they pursue.”¹³ For example, DOA employs the same type of “overbroad” and “imprecise” racial categories employed by Harvard and North Carolina.¹⁴ DOA “group[s] together all Asian” business owners, uses an arbitrary definition of “Hispanic,” and does not explain why business owners from Jordan, Iraq, Iran, and Egypt are excluded from the program.¹⁵

Third, DOA’s program uses race as a “negative.”¹⁶ White business owners, because they are white, do not have access to the 5% bid preference. DOA contracts

⁸ 42 U.S.C. § 2000d.

⁹ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 310 (2023) (Gorsuch, J. concurring) (cleaned up).

¹⁰ *Rice v. Cayetano*, 528 U.S. 495, 517 (2000) (quotation omitted).

¹¹ *SFFA*, 600 U.S. at 208. DOA, as a subunit of the State of Wisconsin, is not immune. Title VI explicitly abrogates state immunity. See 42 U.S.C. § 2000d-7.

¹² *SFFA*, 600 U.S. at 207; see also *Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021).

¹³ *SFFA*, 600 U.S. at 215.

¹⁴ See *id.* at 216.

¹⁵ *Id.*

¹⁶ *Id.* at 218.

are “zero-sum” because there are only a limited number of contracts. Therefore, race is used by DOA as a “negative”: “A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.”¹⁷

Fourth, DOA’s program furthers “stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution.”¹⁸ It is simply a pernicious racial stereotype to claim, as DOA does here, that all black businesses need help because their owners are black, and that no Arab-owned businesses need help because their owners are Arab.

Fifth, and finally, DOA’s program has no “logical end point.”¹⁹ DOA has run this program since 1983, and the agency offers no plan to wrap it up. Apparently, it will continue forever: “In short, there is no reason to believe that respondents will—even acting in good faith—comply with the Equal Protection Clause any time soon.”²⁰

Under *SFFA*, a race-based government program must meet all five of these requirements to comply with Title VI. DOA cannot meet any of these, let alone all five.

DOA is subject to Title VI

Title VI applies to a “program or activity” that receives federal funds. This includes “all the operations of... a department...of a state,” when “any part of which receives federal financial assistance.”²¹ As the U.S. Department of Justice explains in its Title VI manual, “[W]hen any part of a state or local government department or agency is extended federal financial assistance, the entire agency or department is covered.”²²

According to USASpending.gov, in the last 12 months, DOA received \$243.7 million in federal funds from 64 separate transactions.²³ Several different agencies have issued grants to DOA, including the Departments of Energy, Treasury, Health and Human Services, Housing and Urban Development, and Commerce.

¹⁷ *Id.* at 218–19.

¹⁸ *Id.* at 221.

¹⁹ *Id.*

²⁰ *Id.* at 225.

²¹ See USDOJ Title VI Manual, p. 21 (quoting 42 U.S.C. § 2000d-4a(1)).

²² USDOJ Title VI Manual, p. 24 (quoting S. Rep. No. 100-64, at 16 (1988), reprinted in 1988 U.S.C.C.A.N. 18).

²³ The recipient identifier is EQL7FFLJRC99 (UEI) and 809035728 (Legacy DUNS).

Therefore, it is beyond question that Title VI applies to DOA, and it is forbidden from discriminating based on race, yet it does, as explained above.²⁴

USDOJ Should Investigate These Allegations

Based on this clear evidence of a Title VI violation, we ask that you open a formal investigation based on this complaint and find that DOA's Supplier Diversity Program violates Title VI. Corrective action should include, at a minimum, a requirement that the Supplier Diversity Program be open to all businesses regardless of race, or that the program should be terminated immediately so that all procurement and contracting decisions at DOA are race neutral.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Daniel P. Lennington
Managing Vice President & Deputy Counsel

²⁴ DOA itself admits that Title VI applies to its actions in its nondiscrimination statement, which is available [here](#).