



# **CIVIL RIGHTS/ EQUAL EMPLOYMENT OPPORTUNITY**

## **CONTRACTOR COMPLIANCE PLAN**

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**NEW MEXICO DEPARTMENT OF TRANSPORTATION  
2012 CONTRACTOR COMPLIANCE PROGRAM**

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# NEW MEXICO DEPARTMENT OF TRANSPORTATION

## 2012 CONTRACTOR COMPLIANCE PROGRAM

### I. PROGRAM

#### INTRODUCTION

The New Mexico Department of Transportation (NMDOT or Department), as a recipient of Federal financial assistance, has a responsibility to ensure contractors, subcontractors and suppliers working on Federal-aid highway construction contracts comply with Federal requirements including the equal opportunity requirements. This is accomplished through the contractor compliance review procedures, which are embodied in the Contractor Compliance Program (Program). The Program has been developed and prepared by the Department's Office of Equal Opportunity Programs (OEOP), pursuant to prescribed Federal regulations governing contractor compliance and labor compliance.

This Program provides invaluable guidance and direction with regard to contractor compliance activities. The Program is intended to ensure non-discrimination in hiring, employment and training practices of contractors, subcontractors and suppliers working on Federal-aid highway construction contracts.

#### PURPOSE

The purpose of the Contractor Compliance Program is to ensure that contractors and subcontractors do not discriminate and take affirmative action to assure equal employment opportunity. The specific purpose of the Program Plan is to assure compliance with 23 CFR 230 as set forth in the required contract provisions (Form FHWA-1273) and those Special Provisions that are imposed pursuant to Section 140 of Title 23, U.S.C. as established by Section 22 of the Federal Aid Highway Act of 1968.

Unless otherwise specified, the procedures of this Program apply to all Federal-aid highway construction contracts and subcontracts.

The primary NMDOT EEO Program objectives are:

- A. To ensure contractors do not discriminate in employment and contracting on the basis of race, disability, age, color, religion, sex, or national origin.

- B. To ensure contractors and subcontractors fulfill their EEO obligations under the contract.
- C. To ensure NMDOT fulfills its responsibility for administration and enforcement of the required EEO contract provisions on a contract by contract basis in accordance with Title 23 USC 140,

## SCOPE

This Program Plan is intended to provide instructions, procedures, and assignments of responsibility for the administration of contractor compliance requirements, regulations and provisions that are applicable to Federal and Federal-aid highway construction contracts under the jurisdiction of the Federal Highway Administration (FHWA) and the United States Department of Transportation (USDOT).

## AFFIRMATION OF POLICY

The Contractor Compliance Program continues to be an important aspect of the NMDOT. To ensure continued effectiveness, the Department will continue to implement quantitative and qualitative reviews. These reviews are designed to identify and correct discrimination, should it exist, in all facets of employment and to ensure EEO through Affirmative Action (AA). This includes efforts in achieving equal opportunity through positive, aggressive and continuous result-oriented measures to correct past and present discriminatory practices and their effects, if any, on the conditions and privileges of employment. These measures include, but are not limited to, recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation and training.

In issuing this Program, the NMDOT affirms its commitment and pledges its full support to EEO for all persons, regardless of race, disability, age, color, religion, sex, or national origin (including those for whom English is a second language or those who may have legal status under the Immigration Reform Act).

Recognizing that EEO can only be achieved through demonstrated leadership and aggressive implementation of a viable plan, this Program Plan sets forth specific responsibilities for contractors including subcontractors, NMDOT project managers and NMDOT OEOP staff. All responsible employees are expected to make every reasonable effort to carry out their contractor compliance responsibilities to assure that equal employment opportunity is available to all.

## II. RESPONSIBILITY FOR IMPLEMENTATION

To carry out the letter as well as the spirit and intent of the NMDOT Contractor Compliance program, the NMDOT has designated the OEOP as the principal authority for executing the program. The OEOP is charged with spearheading the commitment

to maximize EEO and affirmative action of contractor, subcontractors, and suppliers involved in the program. OEOP is supported in this effort by the District Engineers, Project Managers and other internal NMDOT staff.

#### OEOP DIRECTOR (Full-Time)

This OEOP Director provides EEO leadership to the NMDOT Secretary, Division Directors, District Engineers, Bureau Chiefs, Managers, Supervisors, and employees, and to FHWA, contractors and subcontractors. The OEOP Director reports directly to the Deputy Secretary of Business Support Office, and has regular access to the NMDOT Cabinet Secretary for all matters. The OEOP Director is responsible for implementing the following continuing programs:

- Americans with Disabilities Act (ADA) Program;
- Contractor Compliance Program (CCP);
- Disadvantaged Business Enterprise (DBE) Program;
- Small Business and DBE Supportive Services Program ;
- On the Job Training Program (OJT);
- Labor Compliance Program (LCP); and
- Title VI-Environmental Justice Program (non-discrimination program); Limited English Proficiency

The OEOP Director and the Human Resources Management Division Director share responsibility for the Title VII – Equal Employment Opportunity Program.

#### DEPUTY DIRECTOR - Compliance Programs (Full-Time)

The Deputy Director ensures that OEOP policies and practices are effectively designed and implemented to achieve the goals of the Program area. The Deputy Director reports regularly on progress to the OEOP Director. The Deputy Director has primary responsibility for the Title VI Nondiscrimination program, including Limited English Proficiency. He also has supervisory responsibilities over the contractor compliance, labor compliance, and ADA programs. The Deputy Director encourages project managers or appropriate personnel dealing with contractor compliance to actively participate in the effective implementation of the program. The Deputy Director also provides guidance in carrying out the responsibilities of the Department as outlined in applicable regulations of the FHWA, the Federal Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), the U.S. Department of Labor (USDOL), and the New Mexico Department of Workforce Solutions (NMDWS - formerly the New Mexico Department of Labor).

#### CONTRACTOR COMPLIANCE COORDINATOR (Full-Time)

This position is responsible for the Contractor Compliance Program. It conducts a

comprehensive evaluation of each aspect of EEO functions and the resulting condition. Responsibilities include the following:

- A. Development and implementation of a program to ensure contractors comply with all equal opportunity requirements as required by FHWA-1273, 23 USC 140(a), 23 CFR 230 Subpart C&D.
- B. Support, guidance, and training of Project Managers (PM) and other District personnel in EEO program oversight and contractor compliance monitoring, verification, and enforcement.
- C. Support, guidance, and training of Local Public Agencies in EEO program oversight and contractor compliance monitoring, verification, and enforcement.
- D. Ensuring that required contract provisions are in all Federal-aid contracts of \$10,000 or more (FHWA-1273).
- E. Conducting contract compliance reviews of prime contractor and subcontractor EEO programs.
- F. Preparation and submittal of annual updates and reports required by the FHWA and other governmental bodies.
- G. Participation and support in conducting Civil Rights/EEO Pre-Construction Conferences.
- H. Support of Local Public Agency efforts in ensuring contractor compliance with EEO requirements on Federal-aid projects.
- I. Annual Form PR-1392: It will reflect the total employment on all Federal-Aid Highway projects in the state as of July 31<sup>st</sup>. The staffing figures will report the project work force on board in all or any part of the last payroll period preceding the end of July. Three (3) copies of the completed Form PR-1392 are forwarded to the FHWA Division Office by September 25th of each year.
- J. Maintenance and oversight of the OEOP Civil Rights/EEO website. The website will contain procedures, forms, bulletin board information, and documentation pertinent to the Civil Rights/EEO, Labor Compliance, and Disadvantaged Business Enterprise Programs. The website can be accessed at, [www.OEOP-NMDOT.com](http://www.OEOP-NMDOT.com)

DISTRICT ENGINEERS-

Each NMDOT District Engineer is responsible for ensuring sufficient monitoring, oversight, and enforcement is performed by District personnel on Federal-aid projects to ensure

contractor compliance with EEO contract requirements in his or her respective District. District Engineers will routinely delegate this responsibility to their Assistant District Engineers for Construction, District Audit Supervisors, and Project Managers.

#### NMDOT PROJECT MANAGERS AND STAFF

The NMDOT or LPA (Local Public Agency) Project Manager with the support of staff serves as the front line in contractor EEO oversight and verification responsibilities: The Project Manager, through daily coordination and communication with the contractor, ensures contractor compliance with all EEO program obligations. The NMDOT Project Manager and staff are supported in their EEO oversight responsibilities by the Assistant District Engineer for Construction, District Audit Section, and the OEOP staff. The LPA Project Manager is supported in his or her EEO oversight responsibilities by NMDOT District Operations personnel such as the ADE for Construction, ADE for Technical Support, District Local Governments Coordinator, and the District Audit Section. Support is also provided to LPAs from the OEOP staff in Santa Fe.

The NMDOT or LPA Project Manager EEO responsibilities include the following:

- Know and understand Federal-aid EEO contract requirements;
- Observe the prime contractors and subcontractors daily work activities for any indication of noncompliance with EEO requirements. The Project Manager and staff shall take note of and act on any discriminatory employment practices observed on the part of the contractor or subcontractors. Employment practices include hiring, firing, training, promotion, utilization of employees, recruitment, etc;
- The NMDOT Project Manager shall promptly notify the ADE for Construction and the OEOP of any contractor EEO non-compliance issues considered significant by the PM or that cannot be adequately addressed at the project level;
- LPA-The LPA Project Manager shall promptly notify the NMDOT District local Governments Coordinator or Technical Support ADE and the OEOP of any contractor EEO non-compliance issue;
- Seek guidance from the OEOP for questions or issues regarding the EEO program or contractor compliance requirements;
- Coordinate and interact with the contractor on a frequent basis to ensure all EEO obligations are met under the contract;
- Obtain and process all required EEO compliance documentation from contractors on Federally funded highway construction contracts.
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## PLANNING, SPECIFICATIONS AND ESTIMATES BUREAU

The Planning, Specifications and Estimates Bureau is responsible for insertion of proper EEO contract language and forms in the construction contract package as well as insertion of Indian Preference Clauses where appropriate.

## PROCUREMENT BUREAU

Responsibilities include insertion of all required EEO provisions in the appropriate construction contract proposals. The Division Director reviews the proposed specifications, contract proposals, and contract assembly to assure that the required Civil Rights/EEO, Labor Compliance, Wage Rates and DBE provisions are included.

### **III. DISSEMINATION OF THE CONTRACTOR COMPLIANCE PROGRAM**

The Contractor Compliance Program will be disseminated as follows:

- Highway construction contractors and industry associations. The OEOP communicates the requirements of the Contractor Compliance Program to contractor personnel, the Associated Contractors of New Mexico (ACNM), and their Workforce Development Subcommittee.
- Minority and female organizations – These sources are informed about Contractor Compliance Program requirements and objectives at seminars, workshops and joint OEOP/FHWA/contractor meetings. OEOP also disseminates the Contractor Compliance Program information to any other organization upon request.
- Local and municipal government entities – The OEOP communicates the requirements of the Contractor Compliance Program to local and municipal government entities involved or interested in the highway construction program.
- The Contractor Compliance Plan is on NMDOT's website for the public to review.

### **IV. CONTRACTOR RESPONSIBILITIES**

In accordance with 23 CFR 230 and FHWA Form 1273, contractors and subcontractors are required to:

- A. Accept as the following as the contractor's policy statement:

“It is the policy of this Company to assure that the applicants are employed, and the employees are treated during employment, without regard to their race,

religion, sex, color, national origin, age, or disability. . Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.”

- B. Appoint an EEO Officer who has adequate authority and responsibility for administering and promoting an action EEO program.
- C. Ensure that all members of the contractor’s staff who have hiring, supervisory, promoting and terminating authorities are aware of the above policy and fully implement it.
- D. Disseminate the policy and other required posters and notices by placing a bulletin board in an area accessible to employees, applicants for employments, and potential employees.
- E. Ensure the all advertisements for employees contain the notation, “An Equal Opportunity Employer.”
- F. Recruit, hire, upgrade, promote, train, transfer, demote, layoff, and terminate employees without regard to the individual’s race, color, religion, sex, national origin, age or disability.
- G. Constructing a weatherized bulletin board capable of displaying all the required EEO posters, OSHA posters, Minimum Wage Rates, Company EEO Policy Statement and Emergency Phone Numbers.
- H. Filing a Statement of Intent to Pay Prevailing Wages (Intent) and Affidavit of Wages Paid (Affidavit) on behalf of all contracting tiers on the project. The Intent form must be provided at the Precon for each respective contract and must accompany each Application for Permission to Subcontract. Payments will not be made to a non-compliant contractor until an Intent form is filed.
- I. Filing the Affidavit of Wages Paid prior to the final payment to a contractor. Bond monies and retainage will be released only to contractors who have filed Affidavits pursuant to the regulations. Any contractor or subcontractor who files a false statement or refuses to file any statement or record required to be filed under the regulations shall be considered as non-compliant and shall be subject to debarment proceedings. The NMDOT and the prime contractor must keep all certified payroll records for at least four (4) years after the completion of the contract.
- J. Submitting weekly certified payrolls numbered in sequence throughout the

duration of the project. The submitting of these payrolls must be done by the contractor through LCP Tracker. The payrolls must list everyone working at the project site. The wage rates contained in the proposal contract must be utilized for determining the wages for each employee. Corrections or omissions to a certified payroll must be made on a supplemental payroll. The prime contractor is responsible for the submittal of each subcontractor's timely submittal of its weekly certified payrolls. Certified payroll must be prepared and submitted no later than seven (7) calendar days following the close of the payroll period.

## **V. CONTRACTOR COMPLIANCE REVIEW PROCEDURES**

The contractor compliance review process is used to determine if contractors and subcontractors are complying with the equal employment opportunity requirements of Federal-aid construction contracts. In general, prime contractors and subcontractors must not discriminate on the basis of race, color, national origin, sex, age, or disability in all personnel actions and in subcontracting.

A compliance review consists of the following elements:

- Review Scheduling
- Contractor Notification
- Preliminary Analysis
- Onsite Verification and Interviews
- Exit Conference
- Compliance Determination
- Formal Notification

### **REVIEW SCHEDULING**

Because construction workforces are not constant, particular attention is paid to the proper scheduling of equal opportunity compliance reviews. Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor's workforces:

- Which hold the greatest potential for employments and promotion of minorities and women (particularly in higher skilled crafts or occupations);
- Working areas which have significant minority and female labor forces within a reasonable recruitment area;
- Working on projects that include special training provisions; and where compliance with equal opportunity requirements is questionable. (Based on previous PR-1391's (23 CFR part 230, subpart A, Appendix C) Review Reports and Hometown Plan Reports);
- Review specifically requested by the Washington Headquarters shall receive priority scheduling;

- Compliance reviews in geographical areas covered by area wide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in 230.415;
- Reviews shall be conducted prior to or during peak employment periods.
- No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by FHWA;
- For compliance reviews based on an area work force (outside the area wide plan coverage), the contract compliance coordinator shall define the applicable geographical area by considering the following;
  1. The geographical area from which the contractor recruits employees, i.e. reasonable recruitment area;
  2. Metropolitan Statistical Area (MSA) or current census tracts; and
  3. The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

## CONTRACTOR NOTIFICATION

The Contractor Compliance Coordinator provides written notification to the contractor of the pending compliance review at least two (2) weeks prior to the onsite verification and interviews, unless circumstances warrant shorter notice. This notification shall include the scheduled dates, an outline of mechanics and basis of the review, requisite interviews, and documents required.

The contractor shall provide a meeting place on the day of the visit either at the local office of the contractor or at the jobsite.

The contractor shall supply all of the following information to the Contractor Compliance Coordinator prior to the onsite verification and interviews:

- Current Form PR-1391 developed from the most recent payroll;
- Copies of all current bargaining agreements, if applicable;
- Copies of purchase orders and subcontracts containing the EEO clause;
- A list of recruitment sources available and utilized;
- A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission or other Federal, State or local agency regarding the contractor or any source of employees;
- A list of promotions made during the past six (6) months, to include race, national origin, and sex of employee, previous job held, job promoted into and corresponding wage rates;
- An annotated payroll to show job classification, race, national origin and sex
- A list of minority or female owned companies contacted as possible

- subcontractors, vendors, material suppliers, etc.; and
- Any other necessary documents or statements requested by the Contractor Compliance Coordinator for review prior to the actual onsite visit.

For a project review, the prime contractor is responsible for ensuring that all active subcontractors are present at the meeting and have supplied the documentation as listed above.

## PRELIMINARY ANALYSIS - PHASE I

Before the onsite verification and interviews, the Contractor Compliance Coordinator shall analyze the employment patterns, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to;

- The contractor's current workforce;
- The contractor's relationship with referral sources, e.g. union employment agencies, community action agencies, minority and female organizations, etc.;
- The minority and female representation of sources;
- The availability of minorities and females with requisite skills in a reasonable recruitment area;
- Any pending EEOC or Department of Justices cases or local or State Fair Employment Agency cases which are relevant to the contractor and/or the referral sources; and
- The related projects (and/or contractor) files of FHWA regional or division and State Coordinator's offices to obtain current information relating to the status of the contractor's projects, value, scheduled duration, written corrective action plans, PR-1391 or Manpower Utilization Reports, training requirements, previous compliance reviews, and other pertinent correspondence and/or reports.

## ONSITE VERIFICATION AND INTERVIEWS PHASE II

Phase II of the review consists of the construction or home office site visit(s). During the initial meeting with the contractor, the following topics shall be discussed:

- Objectives of the visit;
- The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and
- Arrangements for the site tour(s) and employee interviews.

The Contractor Compliance Coordinator shall make a physical tour of the employment site(s) to determine that:

- EEO posters are displayed in a weatherized and conspicuous place in a legible fashion;
- Facilities are provided in a non-segregated basis (e.g., work areas, washroom, time-clocks, locker rooms, storage areas, parking lots and drinking fountains);
- Supervisory personnel have been oriented to the contractor's EEO commitments;
- The employee referral source system is being implemented;
- Meetings have been held with employees to discuss EEO policy, particularly new employees; and
- Employees are aware of their right to file complaints of discrimination.

The Contractor Compliance Coordinator should interview at least one minority, one non-minority, and one woman in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.

The Contractor Compliance Coordinator shall also determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

The Contractor Compliance Coordinator shall determine and the report shall indicate the following:

- Whether there is reasonable representation and utilization of minorities and women in each craft, classification or occupation. If not, whether has the contractor done anything to increase recruitment, hiring, upgrading, and training of minorities and women;
- Whether the contractor is taking any action to meet the contractual requirement to provide equal employment opportunity;
- Whether the action taken by the contractor is acceptable and whether those steps can reasonably be expected to result in increased utilization of minorities and women;
- Whether there is impartiality in treatment of minorities and women;
- Whether affirmative action measures are of an isolated nature and whether or not they are continuing;
- Whether the contractor's efforts have produced results.

## EXIT CONFERENCE

During the exit conference with the contractor, the following topics shall be discussed:

- Any preliminary findings that, if not corrected immediately or corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of non-compliance;
- The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews);

- Any other matter that would best be resolved before concluding the onsite portion of the review.

Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the contract compliance officer shall prepare the review report and make a determination of either:

- Compliance, and so notify the contractor, or
- Non-compliance, and issue a 30 day show cause notice. The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of noncompliance particularly if deficiencies are not addressed by the plan are uncovered during the final analysis and report writing. A voluntary corrective action plan should be accepted with the understanding that it only address those problem uncovered prior to the exit conference.

## **VI. COMPLIANCE DETERMINATIONS**

The compliance status of the contractor will be determined in part by evidence of good faith efforts in the following areas:

- The contractor's equal employment opportunity (EEO) policy;
- Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;
- The authority and responsibilities of the EEO officer;
- The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;
- The extent of participation and minority and female utilization in training programs;
- The contractor's review of personnel actions to ensure equal opportunities;
- The contractor's participation in apprenticeship or other training;
- The contractor's relationship (if any) with unions and minority and female union membership;
- Effective measures to assure non-segregated facilities, as required by contract provisions;
- The contractor's procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment;
- The adequacy of the contractor's records and reports.

A contractor shall be considered to be in compliance when all the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to achieve this goal shall be result-oriented, initiated and maintained and in good faith, and emphasized as any other

vital management function.

A contractor shall be considered to be in noncompliance when the contractor has discriminated against applicants or employees with respect to the conditions or privileges or employment or the contractor fails to provide evidence of every good faith effort to provide equal opportunity.

OEOP must issue a compliance determination to the contractor within 15 days of concluding the compliance review.

## **VII. SHOW CAUSE NOTICE**

A Show Cause Notice shall be issued when a determination of noncompliance is made based upon:

- The findings of a compliance review;
- The results of an investigation which verifies the existence of discrimination; or
- Area wide plan reports that show an underutilization of minorities throughout the contractor's workforce.

### Responsibility for issuance

Show cause notices will normally be issued by NMDOT to Federally assisted contractors when the state has made a determination of noncompliance, or when FHWA has made such a determination and has requested the state to issue the notice.

### Content of Show Cause Notice

- Notify the contractor of their noncompliance status, the basis for the determination, and their obligation to either agree in writing to take prompt action to correct deficiencies or show cause within 30 days of why formal proceedings should not be instituted.
- Allow the contractor fifteen (15) days from the date of receipt of notification to submit a corrective action plan outlining specific actions addressed to the deficiencies noted and setting specific dates for completion and/or continuation of corrective actions.
- Include the requirement to submit monthly progress reports and advise the contractor of the possibility of sanction imposition if the corrective action plan or its execution is not considered sufficient to insure EEO.

- Schedule a compliance conference to be held approximately fifteen (15) days from the date of the contractor's receipt of the notice and specify the date, time and place of the conference.
- Contain advice as to the availability and willingness of the compliance officer to conciliate within the time limits of the show cause notice.

#### Preparing and processing the Show Cause Notice

The OEOP or FHWA official who conducted the investigation or review shall develop complete background data for the issuance of the show cause notice and submit the recommendation to the OEOP Director or the HCR, as appropriate.

The recommendation, background data, or final draft notice shall be reviewed by appropriate state or FHWA legal counsel.

The notice shall be personally served to the contractor or delivered by certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.

The date of contractor's receipt of the Show Cause Notice shall begin the 30 day show cause period.

The 30 day Show Cause Notice shall be issued directly to the non-compliant contractor or sub-contractor with an informational copy sent to any concerned prime contractors.

#### Conciliation efforts during show cause period

The Contractor Compliance Coordinator is required to attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts shall be directed toward correcting contractor program deficiencies and initiating corrective action which will maintain and assure equal opportunity. Records shall be maintained in the state, FHWA division or FHWA regional office's case files, as appropriate, indicating actions and reaction of the contractor, a brief synopsis of any meeting with the contractor, notes on verbal communication and written correspondence, request for assistance or interpretation, and other relevant matter.

In instances where the contractor is determined to be in compliance after a Show Cause Notice has been issued, the Show Cause Notice will be rescinded and the contractor formally notified. The FHWA Washington Headquarters, Office of Civil Rights, shall immediately be notified of any change in status.

The Contractor Compliance Coordinator shall, after having had a conference with the

contractor and making the necessary changes to the contractor's submission, determine if the contractor is in compliance or if sanctions should be imposed. If required, formal hearings will be scheduled.

Following-up with a review by the Contractor Compliance Coordinator where the contractor's response, as changed if necessary, indicated that he may be in compliance by virtue of corrective actions completed by documentation submitted indicating that adequate Affirmative Action efforts were made.

In the event NMDOT withholds a contractor's progress payment for failure to comply with EEO requirements on the same basis as for failure to comply with any of the contract requirements, the Department shall impose contract sanctions as it or the FHWA may determine to be appropriate. Such sanctions cannot be applied until the contractor has exercised his option regarding the opportunity for a hearing.

### **VIII. CORRECTIVE ACTION PLANS**

When a contractor is required to show cause and the deficiencies cannot be corrected within the 30 day show cause period, a written corrective action plan may be accepted. The written corrective action plan shall specify clear unequivocal action by the contractor with time limits for completion. Token actions to correct cited deficiencies will not be accepted.

When a contractor submits an acceptable written correction action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports.

When an acceptable corrective action is not agreed upon and the contractor does not otherwise show cause as required, the formal hearing process shall be recommended through appropriate channels by the Contract Compliance Coordinator immediately upon expiration of the 30 day show cause period.

When a contractor, after having submitted an acceptable corrective action plan and being determined in compliance is subsequently determined to be in noncompliance based upon the contractor's failure to implement the corrective action plan, the formal hearing process must be recommended immediately. There are no provisions for reinstating a show cause notice.

When, however, a contractor operating under an acceptable corrective action plan carries out the provisions of the corrective action plan but the actions do not result in the necessary changes, the corrective action plan shall be immediately amended through negotiations. If, at this point, the contractor refuses to appropriately amend the corrective action plan, the formal hearing process shall be recommended immediately.

A contractor operating under an approved voluntary corrective action plan (i.e. plan entered into prior to the issuance of a show cause) must be issued a 30 day show cause notice if the contractor fails to implement the corrective action plan or doesn't result in corrective action plan changes.

### FOLLOW- UP REVIEWS

A follow up review is an extension of the initial review process to verify the contractor's performance of corrective action and to validate progress report information. Therefore, follow-up reviews shall only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

A follow-up review shall be reported as a narrative summary referencing the initial review report.

### HEARING PROCESS

When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing contractors into compliance within the prescribed 30 days, the reviewer shall immediately recommend that the NMDOT obtain approval from the Office of Federal Contract Compliance Programs (OFCCP) for a formal hearing. The Contractor will be notified of this action.

Recommendations to the FHWA for hearing approval shall be accompanied by full reports of findings and case files containing any related correspondence. The following items shall be included in the recommendation:

- Copies of all Federal and Federal-Aid contracts and/or subcontracts to which the contractor is party;
- Copies of any contractor or sub contractor certifications;
- Copy of show cause notice;
- Copies of any corrective action plans;

State highway administrations through FHWA regional and division offices, will be advised of decisions and directions affecting contractors by the FHWA Washington Headquarters, Office of Civil Rights, for the Department of Transportation.

### Responsibility determinations

In instances where requests for formal hearings are pending OFCCP approval, the contractor may be declared a non-responsible contractor for inability to comply with the

equal opportunity requirements.

State highway administrations shall refrain from entering into any contract or contract modification subject to E.O. 11246, as amended, with a contractor who has not demonstrated eligibility for government contracts and Federally assisted construction contracts pursuant to E.O. 11246, as amended.

The OEOP shall provide written notification to the OFCCP within 10 working days of the contractor, or any subcontractor that does not comply with applicable goals for minority and female participation which have been identified in a Federal-aid project.

### Review Reports

The Contractor Compliance Coordinator shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

The completed compliance review report shall contain documentary evidence to support the determination of the contractor's or subcontractor's compliance status.

Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence.

The compliance review report shall contain at least the following information:

- Complete name and address of contractor;
- Project(s) identification;
- Basis for the review, i.e., area work force, project work force, home office work force, and target area work force;
- Identification of Federal or Federal-aid contract(s);
- Date of review;
- Employment data by job craft, classification or occupation by race and sex in accordance with basis for the review listed above. This shall be the data verified during the onsite;
- Identification of local unions involved with contractor, when applicable;
- Determination of compliance status; compliance or noncompliance;
- Copy of show cause notice or compliance notification sent to contractor;
- Name of Contract Compliance Coordinator who conducted the review and whether that person is a state, division or regional compliance specialist;
- Concurrences at appropriate levels.

Each contractor (joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor.

Each review level is responsible for ensuring that required information is contained in the report.

When the project review is conducted, the project work force shall be reported, When an area wide review is conducted (all Federal-aid, Federal and non Federal projects in an area) then area wide work force shall be reported. When a home office review is conducted, only home office work force shall be reported. Other information required by regional offices shall be detached before forwarding the reports to the Washington headquarters, HCR, shall be provide all of the following:

- Corrective action plans;
- Show case notices or compliance notifications; and
- Show cause recessions.

While other data and information should be kept by regional offices (including progress reports, correspondence, and similar review backup material), it should not be routinely forwarded to the Washington Headquarters, HCR, however this information should be sent to FHWA division office within 15 days.

### Contract Sanctions

NMDOT may impose contract sanctions and initiate appropriate legal proceedings under applicable Federal-aid highway projects. NMDOT will actively cooperate with the FHWA and the Office of Federal Contract Compliance Programs in all investigations and enforcement actions initiated by either agency. Sanctions imposed will be reviewed by the agency's Office of General Counsel to ensure legal sufficiency.

NMDOT has adopted a procedure for withholding a contractor's progress payments as per Sections I and II of the Required Contract Provisions for Federal-aid Construction Contracts (Form FHWA-1273) for failure to comply with EEO requirements.

## **IX. COMPLAINT PROCEDURES**

Complaints of discrimination may be filed directly with the NMDOT or with other Federal, State and Local authorities by employees of contractors performing services under Federal-aid contracts. Once the NMDOT has been notified that a complaint has been filed, the Department is responsible for the following:

- Notifying the FHWA Division Office within ten (10) working days of the allegations. At a minimum, the following information should be included in every notification to the Division Office:

- Name, address and phone number of the complainant;
- Name(s) and address(es) of discriminating party or agency;
- Basis of complaint (i.e., race, disability, age, color, religion, sex, or national origin);
- Date(s) of alleged discriminatory act(s);
- Date complaint was received by the Department;
- A statement of the complaint;
- Other agencies (Federal, State or Local) with which the complaint has been filed;
- An explanation of the actions the NMDOT has taken or proposes to take to resolve the complaint.

- Acknowledging receipt of the allegation, informing the complainant of action taken or proposed to process the allegation, and advising the complainant of other avenues of redress available within ten (10) working days.
- Investigating the allegation and, based on the information obtained, determining whether or not discrimination occurred.
- Preparing report of findings and notifying the complainant of the findings within forty-five (45) days from the receipt of the allegation. The notification should advise the complainant of the decision reached, including proposed disposition of the matter, and of the avenues available for appeal if the complainant is dissatisfied with the decision. The proposed resolution should require action adequate to correct and prevent similar occurrences of discrimination.
- Providing the FHWA Division Office with the Report of Finding within forty-five (45) days after receipt of the allegation.
- Periodically informing the FHWA Division Office regarding the status of complaints.

This procedure will not prohibit informal attempts to resolve complaints; but such informal attempts and their results should be summarized in the Report of Findings.

The fact that an allegation has been filed directly with FHWA does not relieve the Department, upon being informed of the allegation, of responsibility for taking action pursuant to the NMDOT's internal procedures to resolve the matter.



## APPENDIX LIST

- A. Organization Chart
- B. List of Civil Rights Laws
- C. Affirmative Action Requirements
- D. Sample Desk Audit Letter
- E. Sample Civil Rights/EEO Pre –Construction Report
- F. Sample Civil Rights/EEO Pre-Construction Outline
- G. Sample Bulletin Board Checklist (Federal-Aid Projects)
- H. Sample Bulletin Board Checklist (100% State Projects)
- I. EEO Package (with samples) sent to Contractors
- J. Sample Form 1392
- K. Civilian Labor Force (CLF) Report

## Appendix B

### Civil Rights Laws

- A. **Title VI of the 1964 Civil Rights Act**, 42 U.S.C. 2000, provides in Section 601 that: “(N)o person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (Proscribes discrimination in impacts, services, and benefits of, access to, participation in, and treatment under Federal-aid recipients’ and contractors’ programs or activities)
- B. **The Civil Rights Restoration Act of 1987**, This statute restored the intent of Title VI and the broad, institution wide scope and coverage of nondiscrimination statutes to include all programs and activities of Federal-aid recipients, sub-recipients and contractors, whether those programs and activities are Federally funded or not.
- C. **Section 504 of the Rehabilitation Act of 1973**, 29 U.S.C. 790, provides that: “(No) qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.” (Prohibits discrimination based on physical or mental handicap).
- D. **Section 503 of the Rehabilitation Act of 1973**, 29 U.S.C. 790 – requires that: “(A)ny contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and non-personal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract, the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in Section 7(6).” This Section also applies to any subcontract in excess of \$2,500 entered into by a prime contractor.
- E. **The Americans with Disabilities Act**, P.L.101-336 – provides that: “(N)o qualified individual with a disability shall, by reason of such disability, be excluded from the

participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.” (Provides enforceable standards to address discrimination against individuals with disabilities).

- F. **The Age Discrimination in Employment Act of 1975** – prohibits “unreasonable discrimination on the basis of age” by recipients of Federal financial assistance.
- G. **Executive Order 11141** – prohibits discrimination based on age by Federal contractors.
- H. **Executive Order 11246, as amended by E.O. 11375 and E.O. 11478** – proscribes employment discrimination by Federal and Federally-assisted contractors and requires EEO through Affirmative Action. (Note: The authority to determine and obtain compliance with E.O. 11246, as amended, is retained by the Office of Federal Programs of the United States Department of Labor. While required to incorporate E.O. 11246 requirements in all non-exempt contracts, neither FHWA, the state DOTs nor prime contractors have the authority to determine compliance with the order. FHWA, State DOTs and prime contractors, as relates to subcontractors, material suppliers and vendors, have an obligation to determine and obtain compliance with all terms and provisions of contracts in which they are engaged. Compliance determinations and requirements to correct deficiencies directed by FHWA, the State DOTs or prime contractors, related to subs, are under the authority to contract law and the rights and obligations of parties to contracts, not the Executive Order, even though the basis for a determination may well be the provisions in the contract required to be inserted by the E.O. and regulations to implement it.
- I. On May 28, 1998, **E.O. 11478** was further amended to include “sexual orientation” as one of the proscribed bases for discrimination in Federal Government employment.

Appendix C

**AFFIRMATIVE ACTION REQUIREMENTS**

The following are the affirmative action requirements and minimum action suggestions for compliance with contract EEO provisions:

<b>Requirement</b>	<b>Minimum Action Suggested</b>
The contractor shall provide a letter of written notification to the District Director of the OFCCP within ten (10) working days of award of any construction subcontract in excess of \$10,000 pursuant to the contract document, "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity".	The contractor will send notification letter to the OFCCP District Director within ten (10) working days of award.
The contractor shall include the contract documents, "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" and "Standard Federal EEO Construction Contract Specifications" in all solicitations or subcontracts in excess of \$10,000.	The contractor will include the contract "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" and the "Standard Federal EEO Construction Contract Specifications" in all subcontracts in excess of \$10,000.

<p>The contractor must ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment with specific attention to minority and female individuals working at such sites or in such facilities.</p>	<p>The contractor shall discuss and document this policy at its company superintendents' meetings before start of project and also send a memorandum to all foremen, superintendents, and other on-site supervisory personnel stating the company's policy of maintaining a working environment free of harassment, intimidation and coercion.</p>
<p>The contractor shall establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its union, if applicable, have employment opportunities available, and maintain a record of the organization's responses. For work on or near Indian Reservations, it shall not be a violation of the Equal Opportunity Clause for a contractor to extend a publicly announced preference in employment to Indians living on or near an Indian Reservation in connection with employment opportunities on or near an Indian Reservation.</p>	<p>The Contractor shall send letters to minority and female recruitment sources and maintain copies of the letters and responses in the EEO project file. Appropriate action should be taken, and results should be well documented.</p>

<p>The contractor shall endeavor to direct its recruitment efforts, both oral and written, to minority and female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations (previously stated) describing the openings, screening procedures, and testing to be used in the selection process.</p>	<p>Personal contacts should be made or a recruitment letter should be sent to minority, female, veteran and disability recruitment sources. Appropriate action should be taken.</p>
<p>The contractor has primary responsibility for meeting the training requirements imposed by the special provision pursuant to the contract Training Special Provision (if applicable).</p>	<p>Prior to commencing construction, the contractor (pursuant to the contract Training Special Provision) shall submit to the Project Manager the number of trainees to be trained, projected classifications, and starting time, as well as the training program to be used. The contractor may also be required to update trainee information monthly. The contractor shall provide training aimed at developing full journeymen in the type of trade or job classification involved for each trainee/apprenticeship specified in the contract.</p>

<p>The contractor shall not discriminate on the basis of race, disability, age, color, religion, sex or national origin in the award and performance of Federally-funded contracts. In this regard, the contractor agrees to ensure that DBE participants have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds.</p> <p>The contractor shall submit the names of DBE subcontractor(s) and/or supplier(s) which were solicited prior to the letting and which the contractor is tentatively considering for participation in the project.</p>	<p>The contractor shall take all necessary and reasonable steps to ensure that DBE participants have the maximum opportunity to compete for and perform contracts.</p> <p>The contractor shall complete the Notice to Construction Contractors Bidders List of Quoters for the DBE. Failure to comply with this requirement shall render a bid non-responsive and the bid shall be rejected.</p>
<p>The contractor shall document and maintain a record of all solicitations of offers for subcontracts for DBE construction contractors and suppliers including circulation of solicitations to minority and female contractor associations and other business associations.</p>	<p>The contractors should contact DBE firms prior to subcontracting any item of work. Copies of all letters and solicitations, as well as the results thereof, should be kept in the EEO file. A DBE Directory may be obtained from the OEOP.</p>
<p>The Contractor shall conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.</p>	<p>The contractor shall conduct an EEO promotional opportunities review and document the EEO file by memo including who was contacted and how they were encouraged.</p>
<p>The contractor shall provide immediate written notification to the OFCCP Director when a union or unions with which the contractor has a collective bargaining agreement has not referred a minority person or females to the contractor or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its contractual obligations.</p>	<p>Not applicable if the contractor is open shop.</p>

<p>The contractor shall maintain a current file of the name, address, and telephone number of each minority and female off-the-street applicant, of the recruitment source or community organization, and of the action taken with respect to each contact.</p>	<p>The contractor shall maintain copies of all applicants in job files with a notation of action taken.</p>
<p>The contractor shall develop on-the-job training opportunities and/or participate in training programs for areas which expressly include minorities and females, including upgrading programs and apprenticeship and/or trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the DOL. The contractor and/or his approved training program coordinator shall provide notice of these programs to minority and female recruitment sources.</p>	<p>The contractor shall comply with the Training Special Provision in the contract and participate in an approved program.</p>
<p>The contractor shall disseminate its EEO Policy by providing notice of the policy and training programs to the unions and requesting their cooperation in assisting the contractor in meeting their EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specifically reviewing the policy with all management personnel and with all minority and female employees at each construction project; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.</p>	<p>The contractor shall maintain copies of its EEO policy on all job sites and office bulletin boards; shall publish its EEO policy in all company publications; and shall review the policy at least annually at superintendents' meetings.</p>

<p>The contractor, through utilization of the employee referral source system, shall encourage present minority and female employees to recruit other minorities and females. Where reasonable, the contractor will provide after school, summer and vacation employment to minority and female youths both on the site and in other areas of a contractor's work force.</p>	<p>The contractor, when EEO policy is reviewed with employees, shall encourage them to recruit friends and relatives.</p>
<p>The contractor shall ensure that minority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.</p>	<p>The contractor shall conduct on-site visits to ensure that company EEO policy is being followed and document by memo to file.</p>
<p>The contractor shall ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.</p>	<p>The contractor, during periodic job reviews, shall make sure facilities are available and utilized in a non-discriminatory manner. A Statement for Non-Segregated Facility should be included in subcontracts in excess of \$10,000.</p>
<p>The contractors and subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more shall submit employment data as contained in Form - 1391 to the Project Manager annually to reflect the contractor's workforce on the last pay period in July.</p>	<p>The Contractor shall submit Form -1391 to the Project Manager annually to reflect the contractor's workforce on the last pay period in July.</p>
<p>The contractor shall attempt to meet or exceed the State Tri-Annual DBE Goal set by the Department.</p>	<p>The contractor shall submit the information indicating all payments for DBEs and non-DBEs.</p>

<p>The contractor shall complete and submit the External Desk Audit Package when requested by the NMDOT. The audit contains information necessary to determine whether compliance with the contract's AA goals, training requirements, and DBE goals has been attained. Further, the audit determines whether discrimination exists within the contractor's company wages, working conditions, employee benefits, hiring, upgrading, promotions, transfers, demotions, layoffs, terminations, subcontracting, and training practices.</p>	<p>The contractor shall complete the External Desk Audit Package and submit it to the Department no later than the due date set by the Department for receipt of the package.</p>
<p>The contractor shall review at least annually the company's EEO policy and AA obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of the items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.</p>	<p>The contractor shall conduct meetings periodically and properly document such meetings.</p>

**APPENDIX L**

	Women	Minorities	White	Hispanic	African American	American Indian/ Native American	Asian American	2+
All trades	2.86%	67.45%	32.18%	53.48%	1.10%	12.56%	0.12%	0.22%
Caprenters	1.38%	66.78%	33.28%	48.96%	0.46%	16.55%	0.17%	0.63%
Iron Workers	2.22%	69.78%	28.89%	60.00%	0.89%	8.89%	0.00%	0.00%
Cement Mason	0.00%	95.38%	4.10%	72.31%	1.54%	21.54%	0.00%	0.00%
Truck Drivers	3.26%	76.30%	24.00%	67.78%	1.11%	7.41%	0.00%	0.00%
Pipe Fitters	1.67%	59.54%	40.35%	46.92%	0.94%	11.37%	0.00%	0.31%
Operators	64.13%	3.93%	35.68%	50.10%	0.97%	13.53%	0.25%	0.00%
Electricians	2.30%	54.65%	45.35%	42.94%	1.38%	10.33%	0.00%	0.00%
Mechanics	0.51%	50.76%	49.24%	41.41%	1.01%	8.33%	0.00%	0.00%
Painters	11.14%	66.13%	33.33%	52.25%	2.34%	11.53%	0.00%	0.00%
Laborers	2.82%	77.40%	21.52%	64.08%	1.03%	11.84%	1.70%	0.00%

## CIVILIAN LABOR FORCE PERCENTAGES

