



NMDOT Civil Rights/EEO Pre-Construction Conference Outline (CR-EEO Precon Outline)

(This Civil Rights/EEO Precon Outline applies to NMDOT or Local Public Agency (LPA) lead federal-aid projects)

1. Civil Rights/Equal Employment Opportunity (EEO) Opening Statement (Read Out Loud)

"The New Mexico Department of Transportation is committed to ensuring equal employment opportunity on all federal-aid highway construction contracts; and shall partner and work cooperatively with the Federal Highway Administration (FHWA) and the construction contractor to ensure compliance with all federal Civil Rights and Equal Employment Opportunity laws, regulations and statutes.

Title VI of the Civil Rights Act of 1964 makes it a Policy of the United States that discrimination will not occur in programs and activities receiving Federal Funds. This project contains federal funding. Therefore, as the Prime Contractor awarded this NMDOT federal-aid construction contract, you are mandated to abide by all Civil Rights and EEO obligations of the Contract. As a Federal Recipient and as a condition of contract award, the prime contractor and its subcontractors affirm that they will carry out all Civil Rights/EEO obligations and will work with the NMDOT and the FHWA in their review of its Civil Rights/EEO activities under this contract.

In the Civil Rights/EEO portion of the Precon, we will discuss specific Contractor Civil Rights/EEO Compliance Requirements of the Contract, including:

- A. Equal Employment Opportunity (EEO) and Affirmative Action (AA)
- B. Labor Compliance (LC)
- C. EEO and Labor Compliance Interviews
- D. Disadvantaged Business Enterprise Program (DBE)
- E. Americans with Disabilities Act Program (if applicable to this project).

We will also discuss timelines for various submittals, mandatory use of the Department's LCPTracker and B2Gnow software, and non-compliance procedures.

This outline contains a great deal of information pertaining to contractor requirements under each of the various programs. It is not meant to cover all Civil Rights/EEO requirements. I (PM) will be covering a few pertinent points under each program area. The remaining items are for your (Contractor's) information and reference.

I encourage the contractor to ask questions as we cover the various areas so that there is a clear understanding of the Civil Rights/EEO requirements under the contract and how the NMDOT or LPA will administer compliance oversight of these Contractor Compliance requirements."

2. Request Required Civil Rights/EEO Submittals

The following is a general list of required CR-EEO submittals to be obtained from the Contractor.

- A. - Form A-1237 Civil Rights/EEO Pre-Construction Report (completed by Contractor)
- B. - Company EEO Policy Statement
- C. - Letter Designating Company EEO Officer on Company Letterhead
- D. - Minority Group/Female Referral and Contact Letters
- E. - Letter of Indoctrination of Supervisory Personnel in Company EEO Policy
- F. - Department of Workforce Solutions (DWS) Notice of Award Form and attached Subcontractors List
- G. - Department of Workforce Solutions Statement of Intent to Pay Prevailing Wages

3. Fill Out Form A-1237 Civil Rights/EEO Pre-Construction Report

(This form is part of the submittals required of the Contractor at the Precon)

- A. Fill in any portion of the Pre-Construction Report not filled in by the Contractor
- B. Make a notation in the comments section of any items required of the Contractor.
- C. Verify that the Report signed by the Contractor.

4. Discussion of General EEO Requirements

A. Contractor EEO Responsibilities –

(Read Part A Out Loud)

- 1) The Contractor is responsible for compliance with all Equal Employment Opportunity requirements of the contract and the NMDOT Contract Compliance Program Manual.
- 2) The objective of EEO is to ensure nondiscrimination and provide Affirmative Action on the basis of race, color, religion, national origin, age, handicap or sex on this federal-aid construction project as required by the regulations (Executive Order 11246, as amended and 23 USC 140 and its implementing regulations at 23 CFR 230, subparts A and D., and FHWA-1273).

B. Contractor Responsible for Subs - The Contractor is responsible for ensuring its subcontractors comply with all Civil Rights and EEO requirements of the contract.

C. EEO Policy– FHWA-1273 II.1. – (The contractors EEO Policy should be submitted to the PM prior to or at the Precon) The Contractor is required to have an EEO Policy established and implemented before the start of the project.

- The EEO Policy must be posted on the Project Bulletin Board

D. Contractor Designated EEO Officer – Based on its submittal, the Contractor has designated the following individual(s) as its EEO Officer(s).

Company EEO Officer _____

Project EEO Officer _____

The EEO Officer(s) shall be responsible for and capable of effectively administering and promoting an active contractor program of EEO and shall be assigned adequate authority and responsibility to do so.

E. **Goals for Minority and Female Participation** – The *Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)* specify goals and timetables for minority and female participation in each trade on the project by County. The goals are;

- 1) Goal for female participation in each trade is, all Counties: 6.9%
 - 2) The majority of this project is located in _____ County.
 - 3) Goal for minority participation in each trade is: _____%
- The Contractor shall make a good faith effort to meet the above listed goals.

F. **Dissemination of Contractor's EEO Policy** – The Contractor is required to ensure that all of its employees who have an active role in the hiring, supervision, or advancement of its employees are aware of and implement the companies EEO Policy and EEO Contract Provisions. The contractor shall also disseminate its EEO Policy to all employees through meetings, handbooks, and other appropriate means. As a minimum, the Contractor will take the following actions:

- 1) EEO Officer shall indoctrinate Supervisory and Personnel Office employees in the Company EEO Policy within 30 days of the start of the Project.
- 2) Conduct periodic EEO Meetings of Supervisory and Personnel Office employees every 6 months – (Invite NMDOT or LPA Staff to attend)
- 3) Indoctrinate Recruitment Personnel in company procedures for locating and hiring minority and female employees.
- 4) Disseminate EEO Policy through Notices and Posters and other means.
- 5) Place EEO Policy on Project Bulletin Board.

G. **Nondiscrimination in Contractor Recruitment Practices, Contractor Personnel Actions, Training and Promotion, Selection of Subcontractors, Procurement of Materials and Leasing Equipment (FHWA-1273 II.4.-9.)** – The following bullet points summarize specific nondiscrimination requirements of the Contract.

- 1) The Contractor is prohibited from discriminating in its employment and recruitment practices
- 2) The Contractor is required to take affirmative action to identify sources of potential minority and women employees.
- 3) The Contractor is required to advise employees and applicants of training programs available.
- 4) The Contractor's EEO policy also pertains to its selection of subcontractors.
- 5) The Contractor shall document its activities with regard to requirements of this section.

H. **Contractor EEO Records and Reports** – The Contractor shall prepare and maintain records that document compliance with the EEO Policy and requirements of the Contract.

These records should include documentation of EEO meetings; the numbers of minority, women, and non-minority employees in each work classification on the project; and the progress and effort being made to increase the employment opportunities for minority and women.

- 1) Make records available for inspection - Such records shall be available at reasonable times and places for inspection by authorized representatives of the NMDOT, FHWA, DOL or Contracting Agency.
- 2) Maintain records for a period of 3 years after project completion.

3) PR-1391 Annual EEO Report - The Contractor and its subcontractors are required to submit an annual EEO report (PR-1391) to the NMDOT each July, for the duration of the project. The Contractor may generate a PR-1391 using the LCPtracker Software and submit the LCPtracker generated report. Monthly submittals of the PR-1391 are no longer required.

I. **Non-segregated Facilities** – The Contractor and all subcontractors shall maintain non-segregated facilities as per FHWA 1273, III.

J. **EEO Non-Compliance** –

(Read Out Loud)

- 1) The PM will notify the Contractor in writing of any EEO non-compliance issues and will provide the contractor with a reasonable time for corrective action.
- 2) Non-Compliance with contract EEO requirements may result in withholding of progress payments.
- 3) FHWA-1273, I.3 identifies grounds for debarment for a breach of any of the contract clauses as listed in the paragraph including certain EEO requirements.

K. **Bulletin Board, Notices, Posters**

1) Erect and Maintain Bulletin Board - The Contractor is required to erect and maintain a project bulletin board. The Bulletin Board with all required documents shall be erected prior to the start of construction. The Bulletin Board shall be maintained in a presentable manner for the life of the project.

In those instances when an on-site project bulletin board is not feasible, the contractor shall create a project bulletin board notebook containing all required documents. This notebook shall be readily accessible to all employees and shall be available on site and kept in the superintendents or foremen's vehicle or other convenient location for use by its employees. The Project Manager shall approve the use of a Bulletin Board Notebook in lieu of a project Bulletin Board at the contractors request and in only those instances in which it is not feasible or practical to locate the Bulletin Board at the site of work.

2) Location of Bulletin Board - The Bulletin Board shall be placed in a conspicuous location on the project or in close proximity to the project readily accessible to employees, applicants for employment, or potential employees.

Where will the Project Bulletin Board Be Located? _____

3) Required Notices and Posters –

- a) Contractor is required to post certain Notices, Posters and EEO Documents on the Bulletin Board as indicated on Form A-1245 *Bulletin Board Checklist for Federal-Aid Projects*.
- b) Contractor shall maintain Bulletin Board Items in a presentable manner for the life of the project.
- c) The required posters and bulletin board checklists may be obtained by the Contractor online from the NMDOT CCRB Website located at <http://dot.state.nm.us>, or by contacting the NMDOT Office of Equal Employment Opportunity at 505-827-1774.

4) Inspection of Bulletin Board - The NMDOT or LPA Project Manager or designee will inspect

the Project Bulletin Board within the first two weeks of the start of construction then periodically during the course of the project to verify that all required EEO and Labor Compliance notices and posters are present. The Contractor will be notified of any items needing corrective action.

- 5) Inform Employees - The Contractor shall notify all of its employees of the information contained on the Bulletin Board. The Prime Contractor is responsible to ensure all personnel, including Subcontractors, know where the bulletin board is located.

5. Discussion of Labor Compliance Requirements

- A. Davis-Bacon Act and all related Acts - The Contractor and all subcontractors shall abide by all Labor Compliance Requirements of the Contract including the Davis-Bacon Act and all related Acts. (FHWA-1273 IV, V.)
- B. Covered Employees – The Davis-Bacon Act and Minimum wage requirements apply to all Contractor and Subcontractor laborers and mechanics working at the site of work or working off-site at facilities dedicated exclusively and located adjacent or virtually adjacent to the actual construction site.
- C. Wage Decision - The Contract contains both a State and Federal Wage Decision. Whenever differences exist between the minimum wage rates shown under the federal or state wage decision, the higher wage rate for the classification shall govern. The wage rate is the combined wage and fringe rates.
- D. Rate of Pay – No laborer or mechanic shall receive less than the prevailing wage rate including fringe benefits as indicated in the Wage Decision for the classification of work being performed unless the laborer or mechanic is in an approved apprenticeship or training program.
- E. Payroll Records – Payroll records shall be maintained for each covered employee on the project. The weekly payrolls are to include information on employees and wages in order to comply with the Davis-Bacon or “Little Davis-Bacon” requirements of the contract. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under FHWA-1273 IV.3 and the NM Public Works Minimum Wage Act including; employee name, employee identification number, ethnicity, gender, classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, each payroll must identify the contractor or subcontractor’s name and address, project number, week ending date and payroll number.
- F. Employee Classifications as per Wage Decision – The work classifications of covered employees on payrolls shall be as shown on the Wage Decision.
- G. Request for New Classification – When the classification of work to be performed on the project by a laborer or mechanic is not covered by a classification on the wage decision, the contractor may make a request for an additional work classification to the US Department of Labor following procedures set forth in FHWA-1273 IV.1.b.
- H. Work Performed in More Than One Classification - Laborers and mechanics should be paid no less than the prevailing wage rate for the classification of work actually performed.

- I. Maintenance of Records - The contractor and subcontractors are required to maintain payroll records, fringe benefits records and other basic wage and hour type records for its employees on this project. These records shall be maintained for a period of 3 years from completion of the contract.
- J. Payroll Submittals – The contractor and each subcontractor shall furnish certified payrolls for each consecutive week starting from the first week it performs work on the project through the last week it performs work on the project or project completion, whichever comes first. Certified payrolls shall be submitted by uploading required payroll information into LCPtracker. The submitted payrolls shall cover a one week (7 day) period. The payroll submittal shall be accompanied by a Statement of Compliance. The final payroll shall include the words, “Final Payroll” in the comments area. The Prime Contractor is responsible for payroll submittals of its subcontractors.
- K. Frequency of Payroll Submittals - Certified Payrolls including the Statement of Compliance shall be submitted weekly and are due no later than seven (5) working days following the end of the payroll period.
- L. Numbering of Payrolls – The contractor and subcontractors shall number each submitted payroll consecutively starting with payroll #1 for the first week in which work is performed on the project.
- M. Non-performing Week - The contractor and subcontractors shall submit their payroll as a Non-performing Week for any week in which no work is performed on the project. The payroll submitted as a Non-performing Week shall continue the payroll numbering sequence.
- N. Statement of Compliance – Each payroll submitted must be accompanied by a “Statement of Compliance” signed by the contractor or subcontractor. LCPtracker automatically generates a Statement of Compliance with each payroll submittal.
- O. Mandatory Use of LCPtracker - The prime contractor and all subcontractors working on NMDOT or LPA Federal-aid projects are required by contract to use the LCPtracker labor compliance software to report EEO and weekly payroll information. On NMDOT lead projects, the **CCRB** will set the project up and make it ready for use in LCPtracker. On LPA lead projects, the LPA will set the project up in LCPtracker. The Prime Contractor is responsible for setup of its subcontractors in LCPtracker. Inquiries for User ID’s and training opportunities shall be directed to the NMDOT Office of Equal Opportunity Programs, at 505-827-1774.
- P. Payment Once a Week - Covered employees shall be paid at least once a week.
- Q. Overtime - The Contractor is required to pay overtime at the rate of one-and-one-half times the employee’s basic pay rate plus fringe benefits for all hours worked in excess of 40 hours per week. Fringe benefits are required to be paid on all regular and overtime hours worked. However, the required fringe benefit amount, as listed in the wage decision, is NOT calculated at time and one-half when figuring the overtime rate.
- R. Apprentice and OJT Payroll Requirements - Apprentices/Trainees must appear on the contractors’ payroll classified as an apprentice or trainee. Apprentices shall be paid the percentage of the prevailing wage as approved by DWS and the fringe as provided in the

applicable Collective Bargaining Agreement. Trainees shall be paid the wage and fringe provided in the approved OJT program.

- S. Posting of Wage Decision - The wage decisions must be conspicuously posted and accessible to all employees on the project site. Generally they are posted on the project bulletin board and in the Contractors Project Office.
- T. Records Availability - The contractor and subcontractors are required make payroll records available for inspection, copying, or transcription by authorized representatives of the NMDOT, LPA, USDOL, NMDWS or OFCCP upon request.
- U. Payroll Data Verification – The NMDOT or LPA Project Manager shall verify the data contained on the contractor and subcontractor submitted certified payrolls. Should errors or discrepancies be found, the Project Manager shall reject the payroll in LCPtracker. The Project Manager shall notify the contractor or subcontractor of the error and shall require the contractor or subcontractor to correct the error and resubmit the payroll.

V. Non-Compliance

(Read Out Loud)

- 1) Non-Compliance in Submittal of Timely Payrolls – Monthly progress payments shall be withheld if a contractors’ or subcontractors’ payrolls are not submitted timely. Payrolls shall be considered delinquent or late if not submitted within (5) working days following the pay period ending date.
- 2) Failure to Pay Wages - In the event the contractor fails to pay its covered employees’ wages due under the contract, the NMDOT or LPA has the authority to withhold funds from the contractor, as may be determined necessary, to pay covered employees of the contractor the full amount of wages required by the contract.
- 3) Non-Compliance with FHWA-1273 Part IV - Failure of the Contractor to comply with the requirements of Section IV, Davis-Bacon and Related Acts Provisions, may be considered as grounds for contract termination and debarment under 29 CFR 5.12.
- 4) Failure to Pay Overtime Wages – In the event the contractor or subcontractor fails to pay overtime wages to its covered employees as required by FHWA-1273, V.1., it shall be liable to the affected employee for its unpaid wages and to the United States for Liquidated Damages.

6. Discussion of Labor and EEO Compliance Interviews (Wage Rate Interviews)

- A. Interviews will be Conducted - Labor and EEO Compliance Interviews will be conducted during the course of the project by the NMDOT or LPA Project Manager’s field staff.
- B. How to conduct Interviews – The interviews will be conducted on the job during normal working hours utilizing Form A-1077 *Labor and EEO Compliance Interview* or the *Spanish version*, Form A-1265. . The project Superintendent or foreman shall be notified at the beginning of the day that Labor and EEO Compliance Interviews will be conducted. Interviews will be conducted in a manner so as not to disrupt or interfere with the work. The contractor superintendent’s or foreman’s presence is not required during the interview unless requested by the NMDOT or LPA Project Manager or their designee.
- C. Who will be Interviewed – Contractor and subcontractor employees working at the site of work

in covered classifications are subject to interviews. Covered classes of workers include all classifications listed in the contract wage decision.

- D. Frequency of Interviews – Normally, two to four Labor and EEO Compliance Interviews should be conducted each week during the course of the project. The goal is to conduct enough interviews to ensure a representative sampling has been made for all covered classes of workers employed on the project. A representative sampling is, at a minimum, 50% of employees in each covered classification. More interviews may be conducted should circumstances warrant.
- E. Purpose of Interviews – Labor and EEO Compliance Interviews will be used to verify contractor and subcontractor compliance with certain labor and EEO requirements of the contract. The information gathered is reviewed and verified by the NMDOT or LPA Project Manager's office staff to ensure employee statements and employer payroll information match, to ensure minimum wage rates are being complied with, and to ensure employees know about and are indoctrinated into the employers' EEO Policy and procedures.
- F. Authorization to Interview Employees - The contractor or subcontractor shall permit the NMDOT or LPA Project Manager or other authorized agency representatives to interview employees during working hours on the job. (FHWA-1273 IV.3.c.)
- G. Non-Compliance - The NMDOT or LPA Project Manager shall notify the prime contractor in writing of any issue of non-compliance revealed by the Labor and EEO Compliance Interview and shall require corrective action be taken by the contractor or its subcontractors to resolve the issue. The contractor will have seven calendar days to review and respond to any findings noted by the Project Manager. If the Project Manager is unable to resolve the issue, the Project Manager should contact CCRB for further guidance or assistance.

7. Discussion of Disadvantaged Business Enterprise (DBE) Requirements

- A. Opening Statement – The NMDOT or LPA Project Manager shall make the following opening statement regarding the DBE Program:

“The Contractor is required to comply with all provisions of the DBE Program under 49 CFR 26. The Department's long range DBE Program objective is to establish a level playing field for DBE contractors to compete for federally assisted highway construction projects as prime contractors and subcontractors. It is the intent of the NMDOT to provide opportunities to DBE firms so they can in time graduate from the DBE Program and perform as prime contractors and subcontractors without DBE Program assistance.”
- B. Project DBE Goal and Listing of DBE Subcontractors – The NMDOT or LPA Project Manager shall insert the DBE goal for the project and list the DBE subcontractors in the space provided in the EEO Preconstruction Conference Outline form A-1244. The Project Manager shall state the Project DBE goal and the listed DBE subcontractors.
- C. Good Faith Effort (GFE) to Meet the Goal - The Contractor is required to make a Good Faith Effort to meet or exceed the DBE goal by the time the project is complete and final acceptance is issued. In determining Good Faith Effort, the NMDOT will consider the quality, quantity, and intensity of the different kinds of efforts that the Contractor has made. The efforts employed by the Contractor should be those that one could reasonably expect a contractor to make if it was actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.
- D. B2Gnow, Tracking of Goal Achievement – The NMDOT utilizes the web-based software program

B2Gnow to collect, track, and report DBE participation and goal achievement on federal-aid projects. It is also used to collect, verify, and manage prompt payment information for prime contractors and subcontractors on federal-aid projects.

- 1) **Mandatory Use of B2Gnow Software** – The contractor and all subcontractors on NMDOT or LPA federal-aid projects are required to use B2GNow as per the contract.
 - 2) **Reporting of all Payments** - The Contractor and all subcontractors are required to upload monthly payment information into B2Gnow and confirm receipt of payment. This is how DBE participation will be tracked for this project.
 - 3) The contractor can obtain a user ID and password for access to the system by contacting the CCRB office at (505) 827-1774. B2GNow training is available for contractor personnel. Contact the CCRB office for inquiries on training.
- E. **Should Contractor Anticipate Not Meeting DBE Goal** – The contractor should periodically during the course of the project make a DBE goal assessment to determine if the DBE goal will be achieved. The sooner it is realized the DBE goal will not be met, the more time will remain before project completion to pursue other opportunities to meet the goal. The contractor shall notify the NMDOT or LPA Project Manager immediately should it anticipate it will not meet the DBE goal. The Project Manager and the CCRB will provide any support needed to the contractor in this effort. The contractor shall document all efforts to meet the goal.
- F. **Termination/Substitution/Replacement of DBE Firms** – The DBE Program Provisions addresses termination, substitution and replacement of a DBE firm on the project. The contractor shall adhere to these provisions in meeting its DBE obligations under the contract. In general:
- 1) The contractor cannot terminate for convenience a DBE subcontractor or approved substitute DBE firm, and then perform the work themselves without prior approval from the NMDOT or LPA Project Manager.
 - 2) If a DBE subcontractor is terminated or fails to complete its work on the contract, the prime contractor shall make good faith efforts to find a replacement DBE subcontractor.
 - 3) Substitutions/Terminations/Replacements of DBE subcontractors on the project will not be allowed without prior submission of written justification to the NMDOT or LPA Project Manager and the CCRB for approval.
- G. **Failure to Meet DBE Goal** – If at Substantial Completion of the project, the contractor fails to meet the DBE goal, it shall notify the NMDOT or LPA Project Manager in writing. An assessment will be made of the contractor's good faith efforts in its attempt to meet the goal. If the good faith efforts are acceptable to the CCRB, no further action will be taken. If the good faith efforts are unacceptable, action will be taken against the contractor as per the DBE Program Provisions. Failure to meet the goal may result in Liquidated Damages for the difference between the DBE goal and the actual DBE participation achieved.
- H. **Monitoring for Commercially Useful Function** – The NMDOT or LPA Project Manager shall monitor and document DBE Subcontractor construction activities during the course of the project to verify Commercially Useful Functions are being performed. This will be done through a combination of daily routine documentation of DBE work activities and field verification using Form A-1239 *Commercially Useful Function Interview and Assessment*.

- 1) A DBE subcontractor performs a Commercially Useful Function when it is responsible for execution of the work or a distinct element of the work of a contract or subcontract and carries out its responsibilities by actually performing, managing and supervising the work involved.
- I. Prompt Payment Requirements – Prime contractors shall pay all subcontractors including DBE subcontractors their respective subcontract amount for undisputed acceptable work within seven calendar days after the prime contractor receives payment for such work from the NMDOT or the LPA. The prime contractor is required to release retainage payments to the subcontractors (including DBE subcontractors) within thirty calendar days of satisfactory completion of the entire subcontractor’s work and final payment of such work by the NMDOT or LPA.
 - J. Counting DBE Participation Towards Goals – When a DBE participates in a contract, only the value of the work actually performed by the DBE will be credited towards DBE project goals. See the DBE Program Provisions for Counting DBE Participation towards Goals and Credit for DBE Truck Owner-Operators for more information.
 - K. Records Requirements – The prime contractor will keep such records necessary to ensure compliance with its DBE utilization obligations.
 - L. Compliance Procedures – Compliance procedures are specified in the Selected DBE Program Provisions under the paragraph titled, Compliance Procedures. The contractor shall make itself fully aware of the provision. For non-compliance with the DBE Program Provisions of the contract, the NMDOT or LPA shall initiate administrative action against the contractor that may include but is not limited to:
 - 1) Termination of the contract.
 - 2) Withholding a percentage of partial payments pursuant to the NMDOT Standard Specifications for Highway and Bridge Construction.
 - 3) Initiation of appropriate debarment or decertification proceedings.
 - 4) Referral of any unlawful actions to the appropriate enforcement agencies. Other actions as appropriate.