

EQUAL OPPORTUNITY CONTRACTOR COMPLIANCE TOOLKIT

REVISED SEPTEMBER 2016



**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS
EXTERNAL CIVIL RIGHTS SECTION**



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INTRODUCTION AND PURPOSE

The North Carolina Department of Transportation (NCDOT) is responsible for ensuring that contractors are fully aware of the Required Contract Provisions (FHWA -1273), and for assisting contractors in achieving compliance with their EO/EEO contractual obligations.

The External Civil Rights Section of the NCDOT Office of Civil Rights (OCR) is responsible for developing and implementing the Department's EO Contractor Compliance Program. As required, the Section also provides technical assistance and training to ensure that contractors understand and meet their EO/EEO contractual obligations.

The goal of Equal Employment Opportunity (EEO) is to ensure the full participation of minorities and women in work forces on federal-aid projects. The Federal Highway Administration's (FHWA) EEO requirements for contractors can be found in Sections II and III of the FHWA-1273 Required Contract Provisions. **These EEO provisions apply to all federally-funded highway construction contracts of \$10,000 or more, regardless of tier**, in all employment practices, including (but not limited to) recruiting, hiring and firing, training, promotions, compensation and benefits, and selection and retention of subcontractors. (Section I. informs contractors of potential penalties for not complying with the FHWA-1273, which includes Sections II & III, and applies to all contracts and subcontracts, regardless of amount.)

Contractors are required to take all necessary and reasonable steps to ensure that the terms and conditions of their contracts are fully met. Contractors are also required to fully cooperate with NCDOT (the contracting agency) and FHWA as a condition of their contracts, including providing ready access to files and records; and submitting all required and requested reports so that agencies can determine and, where necessary, obtain compliance.

This Contractor Compliance Toolkit provides clear and direct guidance on the equal opportunity terms construction contractors must meet when performing work on federal-aid highway contracts. The information provided herein should be used as a resource when documenting EO/EEO and Affirmative Action (AA) practices. This Toolkit also provides alternative methods for achieving compliance with Sections I-III of the FHWA-1273, which are highlighted in tan color for easy reference.

For more information regarding the Toolkit contact:
North Carolina Department of Transportation
Office of Civil Rights
External Civil Rights Section
919-508-1808

Note: Although most contractors will have to comply with the Form FHWA-1273 in its entirety, the OCR only monitors Sections I, II and III. Other NCDOT units are responsible for all other parts of the FHWA-1273, and may contact you directly regarding those requirements.



ACHIEVING COMPLIANCE WITH THE FHWA-1273

This section of the Toolkit provides specific guidance to assist contractors in achieving compliance with the Required Contract Provisions (FHWA-1273). The following is by no means an exhaustive list of reasonable actions; however, recommended below are key actions that contractors should consider taking to implement their EEO programs.

I. GENERAL

Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). **The prime contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts** (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. **The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.**

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Keys to achieving compliance:

Actions

- Insert an actual copy of the entire FHWA-1273 into every subcontract, regardless of amount or tier. (**Note:** Sections II & III of the FHWA-1273 do not have to be incorporated by reference in **purchase orders and agreements**, unless otherwise instructed by NCDOT).
- Require and check to confirm that subcontractors insert Form FHWA-1273 into all lower-tier subcontracts.
- **Read the FHWA-1273 in its entirety.** Contact a NCDOT Contractor Compliance Officer if you have any questions about your EO/EEO and AA obligations.
- Contact NCDOT-OCR and request “one-on-one” training with your Contractor Compliance Officer, on how to comply with the FHWA-1273.
- Establish procedures to ensure (**monitor and enforce**) compliance by all subcontractors (See Section II, 9b).

Documentation

- Form FHWA-1273 found in all subcontracts, including lower-tier subcontracts.
- Correspondences to subcontractors and checklists verifying that the FHWA-1273 is in lower-tier subcontracts.



II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

1. Equal Employment Opportunity

a. The contractor will work with the contracting agency (NCDOT) and the Federal Government (FHWA) to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

Keys to achieving compliance:

Actions

- Ensure that complete and accurate documents are provided to the NCDOT-OCR when your company (prime or subcontractor) is under review or part of a review.
- Provide ready access to EEO-related files, records, and **written** policies and procedures during an on-site verification, or upon request, to assist NCDOT-OCR in determining and obtaining compliance.
- Provide all requested items by the date specified in NCDOT's correspondence.

Documentation

- Records and reports, as necessary, to demonstrate efforts to comply with FHWA-1273.
- Include dates on requested items to document that they were submitted on time.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that 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."

Keys to achieving compliance:

Actions

- Copy and paste the above statement as is into contractor's existing EEO policy.
- Post the above statement as is on federal highway construction sites.

Documentation

- An EEO operating policy, signed and dated by the company's senior-most official, posted on the jobsite.

2. EEO Officer

The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program, and who must be assigned adequate authority and responsibility to do so.

Keys to achieving compliance:

Actions

- Designate an EEO Officer who already has, *or is given*, the authority to make EEO-related decisions, and evaluate and propose changes to official company policies, speak on behalf of the company in EO compliance matters and reviews, and inform all employees of the EEO Officer's duties and role.
- Include the EEO Officer's name and contact information on all posted and distributed EEO-related policies and



announcements.

- Ensure that the EEO Officer has or acquires (through formal training) the experience and expertise necessary to implement a compliant EEO program.
- The EEO Officer must assure the fulfillment of the EEO program and must be able to manage internal and external pressures.
- Make sure the Resident Engineer and NCDOT-OCR know the name of your EEO Officer.
- Make the EEO Officer responsible for conducting and documenting meetings with supervisors and other types of employees.

Documentation

- The posted EEO policy with the EEO Officer's information and disseminated EEO announcements sent to employees with dates and distribution methods documented.
- Certification of the EEO Officer's experience and/or completion of any EEO-related training.
- Attendance sheets, meeting agendas and minutes outlining what was discussed.

3. Dissemination of Policy

All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

Keys to achieving compliance:

Actions

- The EEO Officer conducts all EEO-related meetings with management, supervisors, and office staff who are responsible for personnel actions.
- Explain and review the implementation of the company's entire EEO program.

Documentation

- Meeting agendas, minutes or notes, sign-in sheets and copies of handouts.
- Dates and electronic calendars verifying that meetings have occurred no less frequently than specified.
- Confirmation that officials understand the company's responsibilities regarding EEO.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

Keys to achieving compliance:

Actions

- Create an orientation process that includes mention of the FHWA-1273's EEO obligations.
- Hold orientation meetings conducted by the EEO Officer with all new supervisors and office personnel to review the contractor's EEO policy, program, and contract obligations.

Documentation

- Meeting agendas, minutes and notes, sign-in sheets that include job titles, and copies of handouts.
- Dates and electronic calendars verifying that meetings have occurred within 30 days of start dates.
- Confirmation that new officials understand their EEO responsibilities, and the company's.



c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

Keys to achieving compliance:

Actions

- Develop written procedures for locating and hiring minorities and women (**recruitment process**).
- The EEO Officer should conduct meetings with personnel involved in recruitment to provide instruction on the contractor's recruitment procedures.

Documentation

- Meeting agendas, minutes or notes, sign-in sheets and copies of handouts.
- Confirmation that all personnel involved in recruitment understand the company's EEO responsibilities.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

Keys to achieving compliance:

Actions

- Post your EEO policy, EEO Officer designation memo, discrimination complaint procedures, and the required federal and state posters on bulletin boards at your home office, job trailers and job sites (For information on Federal posters visit: <http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm>; for information on State posters go to: <http://www.nclabor.com/posters/posters.htm>).
- Identify other locations where employees frequent or congregate, and where job seekers, applicants, and interviewees *most* visit, and place bulletin boards or policies there.
- Create movable poster displays when necessary or find ways to put on equipment or on/in company vehicles.
- Ensure that posters, policies and complaint procedures are translated into languages that employees and applicants can read and understand, when necessary.
- Allow subcontractors to also post their EEO policies on the prime contractor's job site bulletin board.
- Post a list of EEO Officers (names and contact information) for all subcontractors on the site.

Documentation

- Copies of EEO policy and discrimination complaint procedures translated, if applicable.
- Pictures of bulletin boards with required posters, EEO policies, procedures, and contacts.
- Observation checklists reflecting review of bulletin boards.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Keys to achieving compliance:

Actions

- Include EEO policies and implementation procedures in employee handbooks, mass mailings, e.g., paycheck stuffers, newsletters, email blasts, etc.
- Ensure that above materials are readable, understandable by all employees, and translated when appropriate.
- Review EEO program policies and procedures in periodic meetings with all employees.
- Have "Know Your Rights" sessions with all employees, reviewing your company's discrimination complaint procedures in detail, and State and Federal agencies that can also be contacted.

Documentation

- Copies of handbooks, newsletters, paycheck stuffers translated if applicable with dates of distribution.
- Meeting agendas, minutes or notes, sign-in sheets and copies of handouts.
- Employee's signed confirmation that they understand the company's EEO program and procedures.
- Records showing when and how updates to the EEO policy were distributed to employees.



4. Recruitment

When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

Keys to achieving compliance:

Actions

- Ensure that all advertisements and internal postings contain the "An Equal Opportunity Employer" statement, including all ads run through the North Carolina Division of Employment Security (NCDES).
- Identify publications (including the Internet and social media) in the recruitment area with high minority or female readerships and place ads in them for employment and training positions.
- Identify minority communities and women's groups and circulate announcements for openings by other appropriate means.

Documentation

- Copies of actual job announcements, EOE statement, date and name of media outlet.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

Keys to achieving compliance:

Actions

- Utilize census.gov to pull civilian labor force data in order to determine the available workforce in the local area.
- Develop a system that outlines how to identify and utilize referral sources to locate capable minority and female candidates (in either your project or home recruitment area): e.g., technical schools, community colleges, Job Corps, YWCA, women in construction groups, local community organizations and, social services.
- Make your EEO obligations known to NCDES offices and temporary service organizations, and specify your recruitment expectations (based on your existing workforce representation).
- Post flyers and ads on bulletin boards in places frequented by minorities and women.
- Place job announcements on internet sites (including social media), and radio stations.
- Maintain an applicant log to track the name, position applied for, date applied, race, gender, referral source, and hiring decision. Keep a log of all efforts made to locate minority and female applicants.
- Add a *voluntary* information form to your employment applications to collect demographic data on applicants.

Documentation

- Written recruitment procedures describing roles and responsibilities of internal staff and referral sources, even if no project specific recruitment was conducted.
- Lists of publications and referral sources identified or used.
- Copies of correspondence sent to referral sources announcing positions and EEO needs.
- Applicant log, annotated by race and gender.
- Copies of voluntary EEO information received from applicants.
-



b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

Keys to achieving compliance:

Actions

- Not Applicable in North Carolina.

Documentation

- N/A

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

Keys to achieving compliance:

Actions

- Discuss with employees recruiting procedures and the importance of diversity in meetings where they are asked to refer applicants.
- Establish an employee referral system that documents when current employees refer minority and female applicants for positions where they are underrepresented (**utilize applicant log**).

Documentation

- Meeting agendas, minutes or notes, sign-in sheets and copies of handouts.
- Log of conversations with employees regarding referral of minorities and females.
- Annotated database of all referred employees and those making recommendations.

5. Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

Keys to achieving compliance:

Actions

- Incorporate EEO considerations into the development and execution of all company policies and practices.
- The EEO Officer should routinely visit jobsites, sometimes unannounced, to observe and determine if work environments, facilities, tools, and privileges are being administered fairly.
- During site visits, randomly interview employees, inquiring about EO issues (e.g., training and promotional opportunities) and speak with others, reminding them of EEO obligations. Document all conversations with employees.
- Develop an inspection checklist for project site visits and make it available to NCDOT during the compliance review process.

Documentation

- Written records of site visit observations (e.g., checklist) and conclusions.
- Transcripts of employee interviews.



b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

Keys to achieving compliance:

Actions

- Evaluate wages utilizing spreadsheets annotated by job classification, race and gender to identify and document whether discrepancies exist.
- Document corrective actions taken to remedy wage discrepancies (among races and genders, including individuals), or the reasons why any differences in rates are justified.
- Identify all personnel involved and ensure EEO Officer's involvement.

Documentation

- Written records of evaluations complete with tables, findings and conclusions, and corrective actions taken, if needed. *Blank templates will not be sufficient documentation of periodic wage evaluations.*

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

Keys to achieving compliance:

Actions

- Identify and review all personnel actions (e.g., hiring, interviews promotions, layoffs, etc.) and practices (at least annually, but also taking the length of each contract into consideration) to determine and document if all actions are being administered fairly. Again, use spreadsheets annotated by job classification, race and gender (and also by project), in the process.
- Evaluate company policies to determine their effects, positive or negative, on the opportunities of minorities and women.
- Develop corrective action procedures, including decision-making channels, to follow when evidence of discrimination is discovered. Document corrective actions, whenever taken.
- Identify all personnel involved and ensure EEO Officer's involvement.
- Contact NCDOT-OCR for technical assistance, as needed, when developing practices, such as those used in applicant selection and interviews.

Documentation

- Records of employees trained, hired, promoted, demoted and terminated in each trade by gender, race and national origin
- Written records of reviews complete with tables, observations, findings and conclusions, and corrective actions taken, if required.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

Keys to achieving compliance:

Actions

- Identify the EEO Officer as the company contact for discrimination complaints in postings and procedures.
- Develop a discrimination complaints procedure that includes the bases for filing a complaint (e.g., race, gender, disability, etc.).



- Include reasonable timeframes for filing, processing, and investigating complaints, state and federal contacts and avenues of appeal, and a form to log complaints.
- Post the discrimination complaint procedures on bulletin boards at offices and jobsites in locations accessible to all employees. Disseminate the procedures through newsletters, by adding it to the company handbook, and other effective means.
- Discuss the discrimination complaint procedures in meetings with employees.

Documentation

- Copy of discrimination complaint procedures with date posted and distribution methods.
- Copy of complaint log with complainant’s name, race, gender, complaint basis (e.g., race, national origin, age, etc.), date complaint filed, resolution, and whether appealed, if known.
- Materials from complaint investigations that corroborate the content in the complaints log.

6. Training and Promotion

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

Keys to achieving compliance:

Actions

- Make use of your company’s recruitment process to attract minorities and women for training opportunities.
- Note on your applicant log if an applicant was placed in a training position.
- Track the progress, graduation, and promotion (i.e., status changes) of trainees.
- See 6(c) & (d) below for further guidance regarding current employees.

Documentation

- Ads mentioning training opportunities.
- Applicant logs and training reports.
- Maintain records of employee and trainee participation.

b. Consistent with the contractor’s work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

Keys to achieving compliance:

Actions

- Develop and implement a written training process that complies with the applicable requirements of Form FHWA-1273 and any additional conditions required by NCDOT and other state and federal agencies (e.g., U.S. Dept. of Labor).
- Provide skill development opportunities for minorities and women such as an apprenticeship or on the job training with the goal of assisting them in moving up to higher paying job classifications.
- Place notices for training opportunities in the geographical area where the project is located, on bulletin boards at social services offices, and other organizations that serve the underutilized groups.
- Establish working relationships with vocational and technical schools, and develop programs that offer summer jobs, internships, and other training opportunities to female and minority students.



Documentation

- Written training process, as specified.
- Copies of actual notices, including dates and locations where posted.
- Communications to employees on skill development opportunities and the applicable entrance requirements.
- Written communications, telephone calls or meetings with organizations (include dates, names, and results of the contact).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

Keys to achieving compliance:

Actions

- Create (and put in writing) entrance requirements for training programs and opportunities.
- Let current employees and applicants know if your company has On-the-Job Training (OJT) obligations under NCDOT's alternative program.
- Use posters, meetings, paycheck stuffers, etc. to ensure that all employees know that your company provides internal training (skill development), including requirements and how to apply.
- Post training opportunities with entrance requirements on office and jobsite bulletin boards.

Documentation

- Written criteria for training programs.
- Copies of announcements documenting methods and dates of distribution.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

Keys to achieving compliance:

Actions

- Review performance data for *ALL* employees, particularly minority and female employees, to determine training and promotion potential. Summarize and document all activity.
- Utilize spreadsheets annotated by job classification, race, and gender to determine whether minorities and women are being underrepresented in training and promotion.
- Request information from employees regarding their professional and career goals. Use this information to expand your training offerings, if deemed company-related.
- Establish a process whereby you meet with employees to discuss training and career paths. The performance evaluation process is a good start.

Documentation

- Written records of employee performance data complete with tables, findings and conclusions, and corrective actions, if taken.
- Written records of one-on-one or group meetings with employees.
- Copies of employee performance evaluations that document conversations about training and promotion.

7. Unions (Due to the length of this section, refer to FHWA-1273) – Not Applicable in N.C.

8. Reasonable Accommodation for Applicants/Employees with Disabilities

The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.



Actions

- Secure ADA training for the EEO Officer and remain current on changes to the ADA.
- Update the company's EEO program and policies to focus efforts to comply with ADA. Include references to "the Americans with Disabilities Act" in documents.
- Develop written Reasonable Accommodations procedures that consider all job classifications and support EEO/AA obligations.
- Inform all employees of ADA and Reasonable Accommodations policies and procedures. Provide internal training, as needed.
- Contact NCDOT-OCR for further ADA guidance, technical assistance, or training.

Documentation

- Certificates and other records confirming ADA training for the EEO Officer and internal staff.
- Written policies and procedures for ADA and Reasonable Accommodations.
- Documentation for reasonable accommodation requests, determinations, and actions.
- Meeting minutes, electronic calendars and attendance reports verifying discussion of the above.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment

The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

Keys to achieving compliance:

Actions

- Develop a procedure for identifying qualified or prequalified subcontractors, vendors and material suppliers.
- Track the use of subcontractors on federally-assisted projects by ownership type and workforce representation.
- Document efforts taken to identify and provide contract opportunities to underrepresented DBE types to diversify subcontracting on the project.
- Establish objective criteria and use those criteria when awarding subcontracts or making purchasing decisions.
- Develop a process to evaluate subcontractor performance on contracts. This should include documenting reasons for subcontractor dismissal.

Documentation

- Copies of bid solicitations from interested firms.
- Maintain a list of contracts awarded to subcontractors and suppliers, annotatable by NCDOT business certification type (MBE, WBE, etc.) and dollar amounts involved.
- Reports detailing subcontractor utilization and performance.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

Keys to achieving compliance:

Actions

- Extend the "An Equal Opportunity Employer" note to requests for bids. Provide notice that an equal opportunity to bid and fair consideration will be given to all interested subcontractors.



- Distribute letters or memos to all potential subcontractors highlighting EEO obligations, including lower tier subs. (**Note:** *Potential subcontractors* are those prequalified to do work with NCDOT).
- Announce prime and subcontractor EEO obligations at pre-bid meetings.

Documentation

- Copies of correspondence stating EEO obligations and the contractor’s commitment to compliance.
- Copies of requests for bids (or proposals, if applicable) and other ads for supplies or services.
- Meeting minutes and sign-in sheets.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

Keys to achieving compliance:

Actions

- Primes should meet with **all** covered subcontractors scheduled to perform work on a project to inform them of their EEO obligations, review the EEO sections of FHWA-1273, answer their questions, and communicate your reporting expectations.
- Develop and maintain a system for monitoring, enforcing, and documenting subcontractor compliance for all tiers, beyond just including the FHWA-1273 in the subcontract agreement.
- Facilitate periodic meetings or conference calls with subcontractors to reiterate the EO/EEO requirements or to discuss key issues.
- Create and utilize forms and reports to document monitoring efforts.
- Make sure each subcontractor’s EEO Officer is present at the on-site review when their involvement is requested by NCDOT-OCR.
- Request “one-on-one” training or assistance from NCDOT-OCR for your EEO Officer on how to comply with this part of the FHWA-1273.

Documentation

- Written record of efforts to monitor and address subcontractor compliance with EEO obligations.
- Form FHWA-1273 found in all subcontracts, and subcontractors’ subcontracts.
- Written procedures to track subcontractors’ EO/EEO compliance.
- Meeting agendas and sign-in sheets with subcontractors.
- Correspondence with subcontractors regarding EEO-related matters.

10. Assurance Required by 49 CFR 26.13(b)

a. The requirements of 49 CFR Part 26 and the State DOT’s U.S. DOT-approved DBE program are incorporated by reference.

Keys to achieving compliance:

Actions

- FHWA included **49 CFR 26.13(b)** in the revised FHWA-1273 as letter “b.” of provision #10. Make sure the FHWA-1273 (in its entirety) is physically incorporated into every subcontract, regardless of amount or tier.

Documentation

- Form FHWA-1273 found in all subcontracts, as instructed.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.



Keys to achieving compliance:

Actions

- The EEO Officer should make sure that senior management and all subcontractors are familiar with *statement b.* above when reviewing their contracts with them. (**Note:** Meeting the project's stated DBE goal may not demonstrate a good faith effort to provide equal opportunity in subcontracting.)
- Add a section to your contracts for each subcontractor to initial that they understand *statement b.* above. (**Note:** This applies even if they do not expect to be subcontracting work to lower tier subcontractors.)

Documentation

- Meeting minutes, attendance records, and electronic calendars showing when this section was communicated.
- Documentation of initialed assurances in contracts.

11. Records and Reports

The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

1. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

Keys to achieving compliance:

Actions

- Note the race, gender, and job category for each of your employees on all certified payrolls when submitting them to OCR during a compliance review. The proper job categories are found on the 1391 report, and are listed on page 21 of this Toolkit.
- Create and maintain printable spreadsheets or databases, and record all personnel actions taken while on federal-aid projects; include columns for job category, race, and gender. Personnel actions include, at a minimum; hiring, upgrading, promoting, transfer, demotion, layoff, and termination.
- Retain copies of all documents and records for three years following the date of the final payment for each project.

Documentation

- Electronic and/or paper copies of all documents recommended throughout this Toolkit.
- Copies of correspondence from agencies that have contacted or reviewed the company or project.
- Dates verifying project records have been kept for three years.
- Copies of your Contractors Employment Utilization Reports (CEUR).

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be



required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

Keys to achieving compliance:

Actions

- Develop a procedure to ensure that all 1391 reports are submitted to the project's NCDOT Resident Engineer on or before the due date communicated by NCDOT-OCR. (**Note:** Prime contractors must also include steps to make sure their subcontractors get their 1391 reports to them in time to send them all to the RE by the due date.)
- File copies of all 1391 reports submitted (must include signatures and dates signed).

Documentation

- Written company procedures for annual reporting.
- Copies of all correspondence received from NCDOT and all communication from primes to subcontractors, with dates.
- Copies of 1391 reports, and the supporting payroll reports.



III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. **The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated.** The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

Keys to achieving compliance:

Actions

- Conduct periodic inspections to ensure that your employees have equal access to all common spaces and facilities.

Documentation

- Records of EEO Officer's project site visits and related conversations.



EO CONTRACT COMPLIANCE REVIEW PROCESS

The primary purpose of an Equal Opportunity (EO) Contract Compliance Review is to determine whether a federal contractor is in compliance with its contractual nondiscrimination and affirmative action requirements. An EO Contract Compliance Review involves an evaluation and determination of a contractor's compliance with those contract provisions relative to equal employment opportunity, subcontracting and training. A compliance review can be conducted on the prime contractor and its active subcontractors or an independent review can be conducted on a subcontractor only.

An EO Contract Compliance Review consists of the following components:

- Preliminary Analysis
- Onsite Verification and Interviews
- Compliance Determination
- Corrective Action Plans (If a noncompliance determination is rendered)

PRELIMINARY ANALYSIS

Prior to conducting an on-site compliance review the contractor is required to provide an itemized listing of documents and information requested by NCDOT-OCR. The prime contractor is responsible for the timely submission of complete and accurate documentation from the subcontractors actively working on a federally-funded highway construction project. Please note that in very few instances do the requirements not apply to highway construction contractors, therefore, please submit an accurate and complete response to any NCDOT-OCR request for information. Answering N/A without a supporting justification could result in a deficiency and subsequent non-compliance determination.

An analysis is conducted of all information provided to determine employment patterns, contractor EO policies and practices, minority and female utilization and representation in the current workforce, minority and female availability with reasonable proximity to the project, equitable distribution of work hours among current workforce by race and gender, recruitment sources, pending discrimination complaints and previous compliance findings, etc.

ON-SITE VERIFICATION AND INTERVIEWS

The contractor's EEO program is evaluated during the on-site review by verifying information, interviewing company officials, supervisors, employees, and trainees. Additional documents and records can be requested for review during the on-site review.

Any indications of discrimination in employment including hiring, wage rates, work hours, promotions, training, supervision, job assignments, equipment, layoff and recall and access to overtime opportunities will be clarified.

An exit conference will be held at the on-site with the prime contractor only. A compliance determination is not made during the exit conference and only those minor deficiencies identified that can be addressed within 15 days after the on-site review will be discussed at the exit conference.

COMPLIANCE DETERMINATION

A contractor is in compliance when the equal opportunity requirements have been effectively implemented or there is evidence that a good faith effort (GFE) has been made. Efforts to achieve equal opportunity shall be results-oriented, initiated and maintained in good faith, and emphasized as any other vital management function. GFE requires a



contractor to undertake specific, targeted efforts, which are reasonably calculated to result in the desired compliance, not merely those which demonstrate “paper” compliance.

For example, to be considered a valid good faith effort for recruitment “form letters” should specify the positions for which referrals are sought, the number of employees needed, position requirements, estimated dates, the appropriate contact person, salary range, and other sufficient information to elicit interest and effort to refer potential employees. If the contractor’s only efforts are multiple copies of form letters, which have never produced referrals, then those efforts are merely paper compliance and **not acceptable**.

If a contractor is found to be in noncompliance, efforts to bring the contractor into compliance are initiated through the issuance of a Show Cause Notice. The notice advises the contractor to show cause within 30 days or why sanctions should not be imposed.

CORRECTIVE ACTION PLANS AND FOLLOW-UP

A Corrective Action Plan (CAP) must be developed by the contractor if deficiencies cannot be corrected within 30 days of the show cause notice. The contractor’s written CAP must state a clear commitment to correcting the deficiencies; specify clear and unequivocal actions that the contractor will take to remedy the deficiencies, time limits for completion and reporting to NCDOT-OCR.

After the CAP is accepted by NCDOT-OCR, the show cause notice is rescinded and the contractor will be considered in compliance. Should the contractor fail to effectively implement the corrective action plan or submit required documentation, sanctions may be imposed.

A follow-up review is conducted on any contractor issued a show cause notice. The follow-up review may be in the form of a telephone conference call or another on-site review.



ANNUAL EEO REPORT (FHWA FORM 1391)

The FHWA-1273 requires that prime contractors and subcontractors submit an Annual EEO Report (FHWA -1391) each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract. This information is to be reported on Form FHWA-1391 for all active federal-aid construction projects. . If on-the-job training is being required by special provisions, the contractor will be required to collect and report training data. Appropriate sanctions may be enforced for contractors failing to report, such as withholding of progress payments.

Entries made for “Job Categories” are to be confined to the listing shown on the FHWA 1391 report. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees working on federal construction projects must be accounted for. **NOTE:** Surveyors are not considered construction trade and should not be reported on the form.

WHO HAS TO REPORT?

- All prime contractors and subcontractors regardless of tier who have Federal-aid contracts of \$10,000.00 or more must report on form FHWA-1391.
- Subcontractors are required to submit their reports to the prime contractors.

PERIOD TO REPORT

- The report should coincide with the information submitted on the certified payroll for the last full payroll period ending in July. A full payroll period is seven (7) days.
- If the federal contract is active during this payroll period but no work was performed, contractors must submit a 1391 report indicating “NO ACTIVITY”. **Do not** report any other payroll period in the month of July.

ACTIVE PROJECTS:

- If the prime contractor works during the month of July they must file Form FHWA-1391.
- If the prime contractor completed work on June 30 and performed no work in July, they still are required to file Form 1391 because the final acceptance did not come before July 1 and the project is considered active.
- If the project was accepted by NCDOT as complete in June, the prime contractor does not have to file a Form 1391 report because the project is considered complete before July 1.
- If the work order is dated August 1, the prime contractor does not have to file a Form FHWA-1391 because the project was not active in July.

NCDOT may request additional 1391 reports when conducting a compliance review of a contractor.

Completing Form 1391: Follow the instructions shown below for completing the appropriate boxes on Form 1391.

Box 1: Check whether you are a prime contractor or a subcontractor on this project.

Box 2: Indicate the complete name and address of the firm.

Box 3: Enter the NCDOT contract number (e.g., C300200). Do not complete this report if the project is not a federal-aid project.

Box 4: Prime contractors indicate the contract value of the entire project. Do not enter the bid amount. Subcontractors indicate the amount of the subcontract only. Do not consider plan changes.

Box 5: Indicate the county and state of the project location.

Box 6: Enter the FFY for date of the Form 1391.



- Box 8:** The report must be signed by the firm’s representative (e.g., EEO Officer) certifying the reported data to be true.
- Box 9:** Indicate the date the report was completed.
- Box 10:** The Form FHWA-1391 must be signed by the “State Highway Official”. Prime contractors are not authorized to sign as a “State Highway Official”. NCDOT has designated their Resident Engineers as the “State Highway Official” responsible for reviewing the 1391 reports.

DUE DATE: All 1391 Reports are due to the Resident Engineer on or before the second Friday in August, or the deadline specified in the *1391 Memo to Contractors*. Every effort should be made to submit this report before the deadline. If all reports for a project are not received by the deadline, the resident engineer initiates action to withhold progress payments until the forms are received.

Questions regarding the FHWA -1391 report should be directed to the External Civil Rights Section at 919-508-1808.

DEFINITIONS OF JOB CATEGORIES

LIST OF TRADES (FORM FHWA 1391)	
Officials	Construction managers, project engineers, superintendents, etc. who have management level responsibility and authority.
Supervisors	All levels of project supervision, if any, between management and foremen levels. <i>For example: first-line supervisors.</i>
Foremen/Women	Men and women in direct charge of craft workers and laborers performing work on the project.
Clerical	Persons who perform a combination of clerical tasks to support office, business, and administrative operation.
Equipment Operators	Use machinery that moves construction materials, earth, and other heavy materials and applies asphalt and concrete to roads and other structures. <i>For example: paving, surfacing, and tamping equipment operators, crushing and grinding workers, dredge and excavating operators, etc.</i>
Mechanics	Repair and maintain engines and hydraulic, transmission, and electrical systems for equipment such as cranes, bulldozers, and trackhoes.
Truck Drivers	Drivers that operate industrial trucks and tractors.
Ironworkers	Person who install iron or steel girders, columns, and other construction materials to form buildings, bridges, highways, tunnels, and other structures.
Carpenters	Construct, erect, install, or repair structures and fixtures made of wood.
Cement Masons	Smooth and finish poured concrete surfaces and work with concrete to create sidewalks, curbs, roadways, or other surfaces.
Electricians	Install and maintain all of the electrical and power systems.
Pipefitter/Plumbers	Pipelayers, Plumbers, Pipefitters, Steamfitters.
Painters	Stain, varnish, and apply other finishes to buildings and other structures and apply decorative coverings to walls and ceilings.
Laborer-Semi Skilled	Performs job that require physical strength, training, and experience. <i>Examples include: helpers, bridge worker, grade checker, and oiler/greaser/firer.</i>
Laborer-Unskilled	Performs jobs that require little skill and can be learned quickly.



GLOSSARY OF ABBREVIATIONS

AAP	Affirmative Action Plan
CAP	Corrective Action Plan
CCP	Contractor Compliance Program
CCRP	Contract Compliance Review Process
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DOL	Department of Labor
DOT	Department of Transportation
EEO	Equal Employment Opportunity
EO	Equal Opportunity
EOCCP	Equal Opportunity Contractor Compliance Program
FHWA	Federal Highway Administration
GFE	Good Faith Effort
NCDOT	North Carolina Department of Transportation
OCR	Office of Civil Rights
SCN	Show Cause Notice
SHA	State Highway Agency
STA	State Transportation Agency
VCAP	Voluntary Corrective Action Plan



GLOSSARY OF TERMS

Affirmative Action – efforts exerted toward achieving equal opportunity positive, aggressive and continuous results-oriented measures to correct past and present discriminatory practices and the effects on the conditions and privileges of employment and contracting.

Civilian Labor Force (CLF) - the aggregate of employed persons classified in accordance with the criteria established by the Bureau of Census and the US Department of Commerce.

Compliance - a satisfactory condition that exists when a contractor (e.g., prime/sub, material supplier or vendor) has effectively implemented the entire contract EO requirements or can demonstrate that every good faith effort toward achieving them has been made.

Compliance Specialist - a Federal or State employee regularly employed and experienced in applying and interpreting applicable civil rights policies, practices, and procedures in the course of conducting compliance reviews.

Construction has the meaning set forth in 23 U.S.C. 101(a) and is inclusive of all expenses or functions incidental to construction including preliminary engineering work in project development or engineering services performed under contract or purchase order for an STA.

Contractor - any person, corporation, partnership, or unincorporated association that holds an FHWA direct or federally assisted construction and/or consultant contract or subcontract regardless of tier, inclusive of material suppliers and vendors.

Corrective Action Plan (CAP) - a contractor's unequivocal written and signed commitment outlining positive actions taken or proposed to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies.

Desk Audit - a careful and systematic examination of information documents, data and materials requested of and provided by a contractor.

Discrimination - an act or failure to act, whether intentional or unintentional, through which a person in the United States, solely because of race, color, national origin, sex, age, religion, or disability, has been subjected to unequal treatment under any program or activity of a recipient, sub-recipient or contractor receiving financial assistance from FHWA under Title 23 U.S.C.

Equal Employment Opportunity (EEO) – The opportunity to obtain employment, promotions, and other benefits of employment without discrimination because of race, color, religion, sex, marital status, sexual preference/orientation, national origin, age, physical, sensory or mental disability, or status.

Equal Opportunity (EO) - the absence of partiality or distinction in employment treatment and contractor selection, so that the rights of all persons to compete and perform work, and be employed, trained and advanced on the basis of merit, ability and capability is maintained.

Equal Opportunity Compliance Review – means an evaluation and determination of a nonexempt direct Federal or Federal-aid contractor's or subcontractor's compliance with equal opportunity requirements based on: 1) Project workforce – employees at the physical location of the construction activity; or 2) Area workforce – employees at all Federal and Federal-aid project in a specific geographical area..."



FHWA Form 1273 - the standard Federal form containing required contract provisions and proposal notices physically required to be incorporated in each Federal-aid highway construction contract and subcontracts at any tier. The FHWA-1273 sets forth the components of an acceptable equal employment and contracting opportunity program meeting Federal legislative and regulatory requirements and can serve as a contractor's affirmative action plan (AAP).

Good Faith Effort - affirmative action measures implemented to meet the established intent and objectives of the equal opportunity provisions of the contract.

Minority - an individual who appears to belong, or is regarded in the community as belonging to generally recognized racial/ethnic minority groups in the U.S., identified as African Americans, Hispanics, American Indians, Asian-Pacific Americans and Subcontinent Asian and Pacific Americans.

Noncompliance - the condition that exists when a contractor has failed to meet required contract specifications and has demonstrated an apparent lack of good faith efforts in implementing all of the equal opportunity requirements.

Representation - employment rates of minorities and women accumulating work hours in a contractor's workforce is compared to their availability in the relevant CLF.

Show Cause Notice - a written notification to a contractor based on the determination of the compliance specialist that the contractor is in noncompliance with the equal opportunity requirements of the contract.

Terms and Conditions of Employment - all aspects of the employment relationship between an employee and his or her employer including, but not limited to, recruitment, hiring, tool and equipment assignments, optional or forced over time, compensation, fringe benefits, leave policies, job placement, physical environment, work related rules, work assignments, training and education, opportunities to serve on committees and decision-making bodies, opportunities for promotion, and maintenance of a nondiscriminatory working environment.

USDOT - means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Aviation Administration (FAA).

Utilization - For contract compliance purposes, having minorities and/or women accumulating work hours in a particular occupation, craft, and job classification or receiving contracts than would be reasonably expected based on their availability.

Voluntary Corrective Action Plan (VCAP) - a contractor's voluntarily developed or negotiated agreement to remedy each deficiency identified at the exit portion of a compliance review.



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