



**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**FOR**

**DIVISION OFFICE CIVIL RIGHTS PERSONNEL**

**MODULE 2**

# TABLE OF CONTENTS

	<u>TAB</u>
<b>Training Outline</b> .....	<b>1</b>
<b>Authorities</b>	
Executive Order 11246 .....	<b>2</b>
41 CFR 60-1 Obligations of Contractors & Subcontractors .....	<b>3</b>
41 CFR 60-4 Affirmative Action in Construction and 41 CFR 60-2, Revised Order No. 4, Nonconstruction .....	<b>4</b>
23 U.S.C. 140(a)-(d) .....	<b>5</b>
State EEO Assurances.....	<b>6</b>
23 CFR 230, Subpart A.....	<b>7</b>
23 CFR 230, Subpart C.....	<b>8</b>
23 CFR 230, Subpart D.....	<b>9</b>
FHWA Order 4710.8 .....	<b>10</b>
Federal-Aid Project Agreement (PR-2) .....	<b>11</b>
Required Contract Provisions .....	<b>12</b>
Consolidated EEO Poster” Equal Employment Opportunity Is the Law” .....	<b>13</b>
<b>Guidance</b>	
FHWA State Transportation Agency EEO Program Implementation Guide.....	<b>14</b>
State EEO Plan Update Checklist .....	<b>15</b>
Contract Compliance Review Report Checklist .....	<b>16</b>
Roles & Responsibilities Under E.O. 11246 & Title 23 U.S.C. 140 .....	<b>17</b>
Guidelines For Assessing Contract Compliance Review Officers .....	<b>18</b>
FHWA Correspondence on Effect of Program Consolidation Into OFCCP .....	<b>19</b>
Civil Rights/EEO Contract Compliance In Highway Construction--Paper by Humberto Martinez (Prepared Around 1979) .....	<b>20</b>
<b>Sample Documents</b>	
AAP/Contractor Compliance Program Document and Updates--Arkansas Highway and Transportation Department .....	<b>21</b>
Contractor Employment Data Analysis .....	<b>22</b>
Correspondence From Texas Division To TxDOT .....	<b>23</b>
<b>Handouts</b> .....	<b>24</b>



**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
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**Tab 1**

**Training Outline**

# **CONTRACTOR EEO COMPLIANCE PROGRAM**

**Federal Highway Administration  
Office of Civil Rights**

# TRAINING OBJECTIVES

- **To enable participants to:**
  - ➔ **Understand & apply program objectives & requirements to State Transportation Agencies (STA).**
  - ➔ **Review and recommend approval of STA EEO Contract Compliance Documents.**
  - ➔ **Review & concur in STA conducted reviews.**
  - ➔ **Apply strategies for compliance & enforcement.**

# TO START

- **Self Introductions**
  - Name
  - Title and Organization
  - What do you expect from training?
- **Training Materials and Handouts**
- **Fill out Tent Cards**
- **Action--Form Learning Groups**

# OBJECTIVE OF CONTRACT COMPLIANCE PROGRAM

- To ensure non-discrimination and affirmative action on the basis of race, color, religion, national origin, age, handicap or sex in the employment practices and related terms and conditions by Government and federally assisted contractors.

# **AUTHORITIES**

- **Basic Authorities for Program**
  - **Executive Order 11246, as amended**
  - **Executive Order 12086**
  - **OFCCP Rules 41 CFR 60-1 & 60-4**
  - **23 USC 140**
  - **State EEO Assurances**
  - **Contract Provisions**
  - **23 CFR 230 Subpart A,C & D**
  - **FHWA Order 4710.8**

# Executive Order 11246

- Signed by President Johnson on 9/24/65
- Applies to Government and federally assisted contractors, sub-contractors and suppliers holding contracts in excess of \$10,000.
- Superseded previous Executive Orders by Presidents Roosevelt, Truman, Eisenhower & Kennedy

# Executive Order 11246

- Prohibits discrimination on basis of race, color, religion, sex or national origin in the employment practices of Government and federally assisted contractors.
- Requires Government (Part II) & federally assisted contractors (Part III) to not discriminate and to take affirmative action (a first).



# Executive Order 11246

- **Affirmative action means going beyond mere passive non-discrimination by;**
  - **Taking positive steps designed to overcome barriers to equal opportunity keyed to problems and needs of minorities and women.**
  - **Obligation is contractual in nature.**
  - **Unlike Title VII of CR Act, prior finding of discrimination not necessary.**

# Executive Order 11246

- Requirement based on **national policy** and **constitutional imperative** not to subsidize discrimination in employment.
- Affirmative action steps may lend reality to nondiscrimination.

# Executive Order 11246

- Secretary of Labor responsible for implementation of Order.
- On 10/5/65 the Secretary delegated responsibility (Order No. 25-65) to Office of Federal Contract Compliance now Office of Federal Contract Compliance Programs (OFCCP).

# Executive Order 11246

- **OFCCP assigned responsibility for specific industries to 15 contracting agencies.**
  - **15 Agencies primarily responsible for administration & enforcement of Order.**
  - **Conduct reviews, hold hearings and impose sanctions.**

# **Executive Order 11246**

- OFCCP issued rules, regulations, supervised the agencies and coordinated program wide efforts.**
- Delegation by OFCCP to agencies was by SIC.**
- In construction, agency contracting with firm was assigned responsibility for compliance.**

# Executive Order 12086

- Issued by President Carter effective 10/8/78.
- Consolidated program authority in OFCCP.
- Eliminated compliance function of Departments of Treasury, Defense, Interior, Commerce, HEW, HUD, **Transportation**, Energy, EPA, GSA and SBA.
- Title 23 USC 140 program continued.

# OFCCP Implementing Rules

- **41 CFR 60-1**
- **41 CFR 60-2**
- **41 CFR 60-4**

# OFCCP Rules {60-1}

- **Implement Parts II, III & IV of Order**
- **Apply to all Govt. contracting agencies & federally assisted contractors & subcontractors.**
- **Apply to agencies administering federally assisted contracts (FHWA).**
- **FHWA to require STA to include EO clause in non-exempt contracts {41 CFR 1.4(b)}.**



# **OFCCP RULES {60-1}**

## **Selected Requirements**

- **Contractor to;**
  - **Include EO clause in all subcontracts & purchase orders {60-1.4}.**
  - **Take such action w/respect to subcontractors or suppliers as OFCCP directs.**

# OFCCP RULES {60-1}

## Selected Requirements

- **State Transportation Agency to;**
  - ™ **Include EO clause in all Federally assisted contracts.**
  - **Assist and cooperate w/FHWA & OFCCP.**
  - **Furnish information required.**
  - **Not do business w/debarred firms.**
  - **Carry out sanctions and penalties for violations of Order.**
  - **Be subject to cancellation, termination or suspension of grant if it fails or refuses to comply.**

# OFCCP RULES

## Exemptions {60-1.5}

- Transactions under \$10,000 (12 month period)
- Work outside U.S.
- Contracts w/State or local govts.  
(Only applies to agency involved)
- Work on or near Indian reservations  
(Preference O.K., discrimination on basis of tribal affiliation prohibited.)

# OFCCP RULES

## Compliance Reviews

{41 CFR 60-1.20}

- Purpose is to determine if contractor maintains nondiscriminatory hiring & employment practices and is taking affirmative action.
- Reasonable efforts to correct deficiencies to be made through conciliation & persuasion.
- Contractor required to make written commitment to correct deficiencies.

# OFCCP RULES

## Complaints

{41 CFR 60-1.21 thru 1.24}

- May be filed within 180 days of alleged violation w/ OFCCP Director.
- OFCCP may investigate or refer to EEOC for processing under Title VII
- OFCCP investigated complaints to be processed within 60 days from receipt.

# OFCCP RULES

## Jurisdiction

{41 CFR 60-1.25}

- Director may;
  - Inquire into any matter pending before an agency.
  - Assume jurisdiction.
  - Conduct investigation.
  - Issue recommendations, findings.
  - Order sanctions.

# OFCCP RULES

## Enforcement {41 CFR 60-1.26}

- **May be based on;**
  - **Complaint investigation**
  - **Analysis of AAP**
  - **On-site review**
  - **Refusal to allow review/provide records**
  - **Any substantial or material violation**

# OFCCP RULES

## Sanctions & Penalties

### {41 CFR 60-1.27}

- Publish name of contractor.
- Request DOJ action including criminal proceedings for furnishing false information
- Recommend DOJ or EEOC action under Title VII.
- Direct contracting agency to cancel, terminate, or suspend any contract and refrain from further contracts with firm.
- If contracting agency refuses, OFCCP may take action directly.



# OFCCCP RULES {41 CFR 60-1}

## Other Requirements

- Required Posters {41 CFR 60-1.42}

- Consolidated EEO Poster;

- “EQUAL EMPLOYMENT  
OPPORTUNITY IS THE LAW”**

- (See sample in your Reference Manual)

# OFCCP RULES {41CFR 60-2}

- **Known as OFCCP Revised Order No. 4**
- **Covers Non-Construction Contractors with;**
  - **50 or more employees**
  - **Contract of \$50,000 or more**
- **Provides review procedures to be followed.**
- **Provides guidance for development & monitoring of AAPs.**

# OFCCP RULES {41CFR 60-4}

## General

- Establishes specific affirmative action standards for construction contractors.
- Applies to;
  - Contracts in excess of \$10,000.
  - Entire construction workforce engaged in construction sites (public and private).

# OFCCCP RULES {41CFR 60-4}

## General

- **Responsibilities-FHWA & State**
  - Include required contract provisions in 41 CFR **60-4.2(d)** which are the Goals and Timetables for each trade & Standard Federal EEO Construction Contract Specifications under 41 CFR **60-4.3**.
  - Notify OFCCCP within 10 working days of award of covered contract.

# OFCCP RULES {41CFR 60-4}

## General

- Contractor to notify OFCCP in writing within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier {41 CFR 60-4.2} .

# OFCCP RULES {41CFR 60-4}

## General

- Goals & timetables in **Appendix A**;
  - Women 6.9% in aggregate nationwide.
  - Minorities X% by SMSA/EA in each craft.

# 23 USC 140

- Federal Aid Highway Act of 1968, as amended {**23 USC 140(a)**};
  - Requires STAs to provide written assurance as a condition for receipt of federal funds, that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex.
  - Fed. Aid. Hwy. Act of 1973 added sex {**23 USC 324**}.

# 23 USC 140

- Provides for OJT and OJT Supportive Services Programs for highway construction. {23 USC 140(b)}
  - Up to one half of 1% of STP and HBRRP funds per year may be used for OJT Programs under 140(b).
  - Auto take down from STP apportionments NTE \$10M per year.
- Provides for DBE Supportive Services Programs {23 USC 140(c)}.



# **STATE EEO ASSURANCES**

- **Required by Federal Aid Highway Act of 1968, Section 22(a).**
- **STA assures that employment on projects will be provided without regard to race, color, creed, national origin or sex.**

# STATE EEO ASSURANCES

## Require STA to;

- **Establish Equal Opportunity Program-- (Contract Compliance and Internal EEO).**
- **Furnish required information and reports.**
- **Appoint EO Coordinator w/EO Program as primary duty.**

# **STATE EEO ASSURANCES**

## **Require STA to;**

- **On own initiative, enforce EEO contract requirements.**
- **Liaison w/agencies & organizations involved in Equal Opportunity.**
- **Include EEO Requirements in bid specifications.**

# **23 CFR 230, SUBPART A**

- Provides policies & procedures.

## **Applies to;**

- EEO on Construction Contracts and Supportive Services.
- Federal-aid highway construction projects.
- Direct Federal highway projects.
- All subcontracts of \$10,000 or more (Does not include material supply).

# 23 CFR 230, SUBPART A

## Require;

- Incorporation of Special Provision in Appendix A (Revised).
- Require Training Special Provision in Appendix B at STA discretion using guidelines provided {23 CFR **230.111(c)**}
- OJT goals (No longer published by Hdqtrs.)
- Training programs to be submitted to Division Administrator for approval.

# **23 CFR 230, SUBPART A**

- **DOL approved apprenticeship & training programs need not be approved by Division if DOL has approved the EEO aspects of program.**
- **Trainees under OJT program exempt from minimum wage rates.**
- **STAs have option of allowing training as a bid item.**

# 23 CFR 230, SUBPART A

- STA required to establish OJT/SS procedures subject to fund availability {23 CFR 230.113}
- OJT/SS proposals to be submitted to FHWA for approval.
- OJT/SS program primary objective is to increase effectiveness of OJT program.
- STA to make best efforts to use minority or women organizations/firms.
- Monitoring by STA & Division.

# CONTRACT PROVISIONS

## Required contract provisions;

- Pursuant to E.O. 11246 & 23 USC 140.
- Apply to all Fed-aid construction contracts & subcontracts of \$10,000 +.
- Constitute EEO & Affirmative Action standards for Contractor.
- EEO Clause of 41 CFR 60-4.3 & ADA of 1990 incorporated by reference.



# CONTRACT PROVISIONS

## Require contractor to;

- Cooperate w/STA, FHWA, DOL.
- Adopt EEO Policy.
- Designate EEO Officer.
- Educate all personnel.
- Conduct meetings w/supervisory & personnel office employees before start of work & not less than every 6 months.

# CONTRACT PROVISIONS

## Require contractor to;

- Educate new supervisory employees within 30 days of hire.
- Instruct employees who recruit.
- Post notices & posters.
- Inform all employees of EEO policy by meetings, handbooks, or other means.

# CONTRACT PROVISIONS

## Require contractor to;

- Include “An Equal Opportunity Employer” in all advertisements for employees.
- Place advertisements in publications with minority/women focus.
- Conduct systematic & direct recruitment through sources likely to yield minorities & women.

# CONTRACT PROVISIONS

## Require contractor to;

- Identify sources of minorities/women.
- Establish referral procedures w/sources.
- Abide by valid bargaining agreement to extent that the contractor can comply w/EEO contract requirements.
- Encourage present employees to refer minority/women applicants.

# CONTRACT PROVISIONS

## Require contractor to;

- **Ensure nondiscrimination in;**
  - Wages, working conditions & benefits
  - Hiring, Upgrading, Promotion
  - Transfer, Demotion, Layoff, Termination
- **Periodically review the above and take corrective action where discrimination is found.**
- **Include all affected persons in corrective action.**

# CONTRACT PROVISIONS

## Require contractor to;

- Investigate complaints and take corrective action that includes all affected persons.
- Assist in increasing skills of minorities & women employees & applicants.
- Make full use of OJT & apprenticeship training programs.
- Advise employees & applicants of training opportunities.

# CONTRACT PROVISIONS

## Require contractor to;

- Review training & promotion potential of minority group & women employees.
- Encourage minority & women employees to apply for training & promotion.
- Exert best efforts to gain Union cooperation in increasing opportunities for minorities and women.

# CONTRACT PROVISIONS

## Require contractor to;

- **Exert best efforts to develop training programs with unions.**
- **Exert best efforts to incorporate EEO Clause in each union agreement binding union to non-discriminatory referrals.**



# CONTRACT PROVISIONS

## Require contractor to;

- Obtain information on union referral practices & policies.
- Engage in direct recruitment when union fails to provide minorities and women.
- Notify STA of union's failure.

# CONTRACT PROVISIONS

## Require contractor to;

- Not discriminate in selection and retention of subcontractors, material suppliers and lessors of equipment.
- Notify all potential subcontractors & suppliers of this obligation.
- Exert best efforts to use DBEs.
- Ensure subcontractor compliance.

# CONTRACT PROVISIONS

## Require contractor to;

- **Keep such reports as necessary to document compliance.**
- **Keep records for 3 years after work completion.**
- **Records should document;**
  - **EEO workforce profile by classification.**
  - **Efforts with unions.**
  - **Efforts to increase minorities & women.**
  - **Efforts to utilize DBEs.**

# CONTRACT PROVISIONS

## Require contractor to;

- **Submit annual report to STA each July indicating EEO workforce profile employed in each classification (FHWA-1391)**
- **Certify to non-segregated facilities.**
- **Obtain similar certification from subcontractors & material suppliers.**

# 23 CFR 230, SUBPART C

## General

- **Establish FHWA requirements for STA Internal EEO/AAPs & Contractor Compliance Programs.**
- **Affirmative Action is defined as Federal EEO Bid Conditions.**
- **Requires STA to develop program in standard format (Appendix A).**
- **Programs that meet or exceed standards of rule comply w/basic FHWA requirements.**

# **23 CFR 230, SUBPART C**

## **Major Program Components**

### **(Appendix A, Part I)**

- **Organization & structure.**
- **EEO Coordinator & staff.**
- **District/Division staff.**
- **Project staff.**
- **Compliance procedures.**

# **23 CFR 230, SUBPART C**

## **Major Program Components**

### **(Appendix A, Part I)**

- **Accomplishments;**
  - **In compliance, non-compliance.**
  - **Show cause notices issued/rescinded.**
  - **Follow-up reviews.**
  - **Reviews conducted.**
  - **Major breakthroughs.**
  - **Contract sanctions.**

# 23 CFR 230, SUBPART C

## Major Program Components

### (Appendix A, Part I)

- **Complaint Procedures**
- **Training Programs**
- **Minority Business Enterprise**
- **Liaison with EEO Organizations/Groups**
- **Innovative Programs**
- **EEO Program to be prepared annually by STA for FHWA approval.**



# 23 CFR 230, SUBPART D

## **General**

- **Provide procedures for conducting;**
  - **Compliance reviews.**
  - **Consolidated compliance reviews.**
- **Establish FHWA & STA responsibilities.**
  - **FHWA to provide guidance & direction.**
  - **STA to assure compliance by contractors & cooperate with FHWA.**
  - **STA to take action under its contract administration procedures to ensure compliance.**

# 23 CFR 230, SUBPART D

## General

- Non-compliance by STA may result in project specific or program wide sanction by FHWA {**23 CFR 630, Subpart C, Appendix A, Form PR-2**}.
  - Cancel, terminate, suspend agreement.
  - Withhold further Federal aid.
  - Refer matter to Dept. of Justice.

# 23 CFR 230, SUBPART D Compliance Review Stages

- Review Scheduling
- Contractor Notice
- Desk Audit/Preliminary Analysis
- On site Verification & Interviews
- Exit Conference
- Compliance Determination
- Formal Notice

# Compliance Review Stages

## Review Scheduling

- **Projects with most opportunities**
- **In areas with significant minority/female labor force**
- **Before or at peak employment**
- **Questionable compliance**
- **No home office review of firm w/less than 15 employees**

# Compliance Review Stages

## Review Scheduling

- **Defining Area for Area Wide Reviews;**
  - **Union boundaries**
  - **Contractor recruitment area**
  - **SMSA or EA**
  - **County project(s) located**

# Compliance Review Stages

## Contractor Notification

- At least 2 weeks prior
- Describe review and purpose
- Dates
- Request meeting site
- Attendance by all active subcontractors

# Compliance Review Stages

## Contractor Notification

- Information required {23 CFR 230.409(c)(3)}.
  - PR-1391 & annotated payroll.
  - Current bargaining agreements.
  - Purchase orders & subcontracts.
  - List of recruitment sources.
  - Status of EEOC, OFCCP or other actions.
  - List of promotions for past 6 months.
  - Minority/women businesses contacted.

# Compliance Review Stages

## Desk Audit/Preliminary Analysis

- Involves the review and analysis of all data submitted by contractor.

## On Site Verification

- Initial meeting;
  - Objective of review.
  - Material submitted & discrepancies.
  - Arrangements for site tour and interviews.



# Compliance Review Stages

## On Site Verification

- **Physical Tour;**
  - **EEO Posters.**
  - **Nonsegregated facilities.**
  - **Knowledge of supervisory personnel.**
  - **Employee awareness.**
  - **Implementation of referral sources.**
  - **Verify employment data.**

# Compliance Review Stages

## On Site Verification

- Interview 1 minority/1 female per trade and the superintendent.
- Verify how employees were hired.

# Compliance Review Stages

## Exit Conference

- Preliminary findings.
- Time to final determination (15 days).
- Voluntary Correction Action Plans (VCAP-15 days after exit conference).

# Compliance Review Stages

## Compliance Determination

- **In compliance when contractor has;**
  - **Implemented contract provisions or exerted good faith efforts to do so.**
- **In non-compliance when contractor has;**
  - **Discriminated**
  - **Failed to provide evidence of good faith efforts.**

# Compliance Review Stages

## Compliance Determination-Show Cause Procedures

- Contractor to be notified of compliance determination within 15 calendar days of exit conference.
- Show Cause issued when noncompliance or finding of discrimination is made and no VCAP submitted and approved.

# Compliance Review Stages

## Compliance Determination-Show Cause Procedures

- Issued normally by STA.
- FHWA may issue.

# Compliance Review Stages

- Show Cause to (Sample notice in **Appendix A** to 23 CFR 230, Subpart D);
  - Notify contractor of determination & basis.
  - Notify contractor of requirement to respond within 30 calendar days.
  - Schedule compliance conference within 15 days of receipt of notice.
  - Advise contractor of STA's availability to conciliate.
  - Be issued via certified mail.

# Compliance Review Stages

- **May be rescinded if contractor comes into compliance by;**
  - **Correcting all deficiencies found.**
  - **Submitting an approvable corrective action plan.**
- **Finding of non compliance with approved corrective action plan will result in imposition of sanctions without another Show Cause Notice.**



# Compliance Review Stages

- Follow up reviews important extensions of original review.
- Compliance review reports to be completed within 15 calendar days of exit conference.
- Review reports approved by Division.

# **FHWA ORDER 4710.8**

- **Clarifies OFCCP & FHWA Roles**
  - **FHWA & States enforces Title 23.**
  - **FHWA & State insert appropriate E.O. clauses in contracts.**
  - **FHWA & State do not independently have authority to enforce E.O. Requirements including minority/female goals.**
  - **FHWA/States may refer violations to OFCCP.**
- **FHWA Form 86, Compliance Data Report canceled.**

# ROLES & RESPONSIBILITIES

## Office of Civil Rights

- Provide training & technical assistance.
- Participate w/Division Office in process or program evaluations.
- Determine compliance w/program.
- Make determinations of discrimination.
- Assist Division & STA in enforcement.

# ROLES & RESPONSIBILITIES

## Division Office

- Provide technical assistance to STA.
- Approve program document.
- Provide feedback to STA on program.
- Approve compliance review reports.
- Take lead role in program evaluations.
- Assist Office of Civil Rights in enforcement.
- Follow up.

# **DIVISION OFFICE**

## **What To Look For**

**Whether or not review reports;**

- Support compliance determinations?**
- Indicate that all contract requirements were covered?**
- Reflect strategic planning with respect to;**
  - Location?**
  - Timeliness?**
  - Project Activity?**
- Contain adequate recommendations?**

# **DIVISION OFFICE**

## **What To Look For**

- **Are VCAPs/Corrective Action Plans adequate to correct deficiencies?**
- **Do review reports indicate repetition of deficiencies by same contractors?**
- **Do review reports focus on critical crafts?**

# **DIVISION OFFICE**

## **SUGGESTED ACTIVITIES**

- **Review STA Program Document.**
- **Review individual review reports.**
- **Analyze Statewide employment data.**
- **Provide feedback to STA.**
- **Accompany STA personnel on reviews (See Guidelines for Assessing Reviewers).**
- **Conduct process/program evaluations.**

# IMPLEMENTATION

## REVIEWING DOCUMENT

- Reference--{23 CFR 230, Subpart C & Appendix A, Part I}
- Action: Review the following;
  - FHWA STA EEO Program Guide
    - Section I.A. (page 2)
    - Section II.A. (page 10)
  - FHWA Program Document Review Checklist



# **IMPLEMENTATION**

## **REVIEW OF REPORTS**

- Action: Review the following;**
  - Findings by Texas Division on TxDOT reviews**
  - Example of STA Contract Compliance Document**
  - Guidelines For Assessing STA Contract Compliance Review Officers**

# **COMPLIANCE & ENFORCEMENT**

## ■ **Authorities**

- **23 USC 140**
- **23 CFR 230, Subparts A, C & D**
- **23 CFR 630, Subpart C, Appendix A (PR-2)**
- **PR-1273, Required Contract Provisions**
- **STA EEO Contract Compliance Program**
- **STA Contract Administration Procedures**

# SUMMARY

- Program requires non-discrimination, equal opportunity and affirmative action.
- Executive Order 11246 and 23 USC 140 programs co-exist.
- Both programs have same objective.
- E.O. Program allows for “make whole” remedies. 23 USC Program does not.
- STA’s have more expedient means for enforcement.
- Program enforceable in law & contract.

# DISCUSSION

- **Questions?**
- **Comments/Feedback on Training**
  - **What did we do right?**
  - **What can we do better?**
  - **Any other comments or recommendations?**
  - **On scale of 1-5, with 1 being lowest, how would you rate module?**

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**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 2**

**Executive Order 11246**



# Executive Order 11246--Equal employment opportunity

**Source:** The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

## Part I--Nondiscrimination in Government Employment

[Part I superseded by Executive Order 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

## Part II--Nondiscrimination in Employment by Government Contractors and Subcontractors

### Subpart A--Duties of the Secretary of Labor

**Sec. 201.** The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

### Subpart B--Contractors' Agreements

**Sec. 202.** Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a

collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

[Sec. 202 amended by Executive Order 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 203.** (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.



(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by Executive Order 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684.; Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 204.** The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

### **Subpart C--Powers and Duties of the Secretary of Labor and the Contracting Agencies**

**Sec. 205.** The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 206.** (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 207.** The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 208.** (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

## **Subpart D--Sanctions and Penalties**

**Sec. 209.** (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

- (1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- (2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
- (3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- (4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of

Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 210.** Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 211.** If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 212.** When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **Subpart E--Certificates of Merit**

**Sec. 213.** The Secretary of Labor may provide for issuance of a United States Government

Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

**Sec. 214.** Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

**Sec. 215.** The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

### **Part III--Nondiscrimination Provisions in Federally Assisted Construction Contracts**

**Sec. 301.** Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 302.** (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

**Sec. 303.** (a) The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 304.** Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

## **Part IV--Miscellaneous**

**Sec. 401.** The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by Executive Order 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**Sec. 402.** The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

**Sec. 403.** (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by Executive Order 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

**Sec. 404.** The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

**Sec. 405.** This Order shall become effective thirty days after the date of this Order.

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 3**

**41 CFR 60-1 Obligations of Contractors & Subcontractors**

## OFCCP: Rules and Regulations Under Executive Order 11246

*Following is the text of OFCCP Rules and Regulations implementing Executive Order 11246. Codified as 41 CFR 60-1, the rules read as amended at 61 FR 19982, effective May 3, 1996.*

### PART 60-1 — OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

#### Table of Contents

#### Subpart A — Preliminary Matters; Equal Opportunity Clause; Compliance Reports

Section.	
60-1.1	Purpose and Application.
60-1.2	Administrative Responsibility.
60-1.3	Definitions.
60-1.4	Equal Opportunity Clause.
60-1.5	Exemptions.
60-1.6	[Reserved]
60-1.7	Reports and Other Required Information.
60-1.8	Segregated Facilities.
60-1.9	Compliance by Labor Unions and by Recruiting and Training Agencies.
60-1.10	Foreign Government Practices.
60-1.11	Payment or Reimbursement of Membership fees and Other Expenses to Private Clubs.

#### Subpart B — General Enforcement; Compliance Review and Complaint Procedure

60-1.20	Compliance Reviews.
60-1.21	Filing Complaints.
60-1.22	Where to File.
60-1.23	Contents of Complaint.
60-1.24	Processing of Matters.
60-1.25	Assumption of Jurisdiction by or Referrals to the Director.
60-1.26	Enforcement Proceedings.
60-1.27	Sanctions and Penalties.
60-1.28	Show Cause Notices.
60-1.29	Preaward Notices.
60-1.30	Contract Ineligibility List.
60-1.31	Reinstatement of Ineligible Prime Contractors and Subcontractors.
60-1.32	Intimidation and Interference.
60-1.33	Conciliation Agreements.
60-1.34	Violation of a Conciliation Agreement or Letter of Commitment.

#### Subpart C — Ancillary Matters

60-1.40	Affirmative Action Compliance Programs.
60-1.41	Solicitations or Advertisements for Employees.
60-1.42	Notices to be Posted.
60-1.43	Access to Records and Site of Employment.
60-1.44	Rulings and Interpretations.
60-1.45	Existing Contracts and Subcontracts.
60-1.46	Delegation of Authority by the Director.

#### 60-1.47 Effective Date.

Authority: Sec. 201, E.O. 11246 (30 FR 12319), as amended by E.O. 12086.

SOURCE: 43 FR 49240, Oct. 20, 1978, unless otherwise noted.

### Subpart A — Preliminary Matters; Equal Opportunity Clause; Compliance Reports

#### Sec. 60-1.1. Purpose and Application

The purpose of the regulations in this part is to achieve the aims of Parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts. The regulations in this part apply to all contracting agencies of the Government and to contractors and subcontractors who perform under Government contracts, to the extent set forth in this part. The regulations in this part also apply to all agencies of the Government administering programs involving Federal financial assistance which may include a construction contract, and to all contractors and subcontractors performing under construction contracts which are related to any such programs. The procedures set forth in the regulations in this part govern all disputes relative to a contractor's compliance with his obligations under the equal opportunity clause regardless of whether or not his contract contains a "Disputes" clause. Failure of a contractor or applicant to comply with any provision of the regulations in this part shall be grounds for the imposition of any or all of the sanctions authorized by the order. The regulations in this part do not apply to any action taken to effect compliance with respect to employment practices subject to Title VI of the Civil Rights Act of 1964. The rights and remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or



contract; neither do the regulations limit the exercise by the Secretary or Government agencies of powers not herein specifically set forth, but granted to them by the order.

#### Sec. 60-1.2. Administrative Responsibility

The Director has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the Executive order. All correspondence regarding the order should be directed to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210.

#### Sec. 60-1.3. Definitions

"Administering agency" means any department, agency and establishment in the executive branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

"Administrative law judge" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

"Agency" means any contracting or any administering agency of the Government.

"Applicant" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

"Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contract" means any Government contract or any federally assisted construction contract.

"Contracting agency" means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, which enters into contracts.

"Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

"Director" means the Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor or any person to whom he delegates authority under the regulations in this chapter.

"Equal opportunity clause" means the contract provisions set forth in §60-1.4(a) or (b), as appropriate.

"Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

"Government" means the government of the United States of America.

"Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services," as used in this section includes, but is not limited to the following services: Utility, construction, transportation, research, insurance, and fund depository. The term "Government contract" does not include (1) agreements in which the parties stand in the relationship of employer and employee, and

(2) federally assisted construction contracts.

"Minority group" as used herein shall include, where appropriate, female employees and prospective female employees.

"Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

"Order," "Executive Order," or "Executive Order 11246" means parts II, III, and IV of the Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive order amending such order, and any other Executive order superseding such order.

"Person" means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

"Prime contractor" means any person holding a contract and, for the purposes of Subpart B of this part, any person who has held a contract subject to the order.

"Recruiting and training agency" means any person who refers workers to any contractor or subcontractor or who provides for employment by any contractor or subcontractor.

"Rules, regulations, and relevant orders of the Secretary of Labor" used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the order.

"Secretary" means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

"Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

"Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do

not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

"Subcontractor" means any person holding a subcontract and, for the purposes of Subpart B of this part, any person who has held a subcontract subject to the order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

"United States" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States. (As amended at 61 FR 19982, eff. May 3, 1996)

#### Sec. 60-1.4. Equal Opportunity Clause

(a) *Government contracts.* Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the Order in each of its Government contracts (and modifications thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of com-

pensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24,

1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to

ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such govern-

ment which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in all Government

contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director may designate.

(e) *Incorporation by operation of the order.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

#### Sec. 60-1.5. Exemptions

(a) *General — (1) Transactions of \$10,000 or under.* Contracts and subcontracts not exceeding \$10,000, other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No agency, contractor, or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: *Provided*, that where a contractor has contracts or subcontracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding \$10,000, the \$10,000 or under exemption does not apply, and the contracts are subject to the order and the regulations issued pursuant thereto regardless of

whether any single contract exceeds \$10,000.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed \$10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States.

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, any agency, instrumentality or subdivision of such government, except for educational institutions and medical facilities, are exempt from the requirements of filing the annual compliance report provided for by §60-1.7(a)(1) and maintaining a written affirmative action compliance program prescribed by §60-1.40 and part 60-2 of this chapter.

(5) *Contracts with certain educational institutions.* It shall not be a violation of the equal opportunity clause for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion. The primary thrust of this provision is directed at religiously oriented church-related colleges and universities and should be so interpreted.

(6) *Work on or near Indian reservations.* It shall not be a violation of the equal opportunity clause for a construction or nonconstruction 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. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.

(b) *Specific contracts and facilities —*

(1) *Specific contracts.* The Director may exempt an agency or any person from requiring the inclusion of any or all of the equal opportunity clause in any specific contract or subcontract when he deems that special circumstances in the national interest so require. The Director may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or

where group exemptions will contribute to convenience in the administration of the order.

(2) *Facilities not connected with contracts.* The Director may exempt from the requirements of the equal opportunity clause any of a prime contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order.

(c) *National security.* Any requirement set forth in these regulations in this part shall not apply to any contract or subcontract whenever the head of an agency determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the head of the agency will notify the Director in writing within 30 days.

(d) *Withdrawal of exemption.* When any contract or subcontract is of a class exempted under this section, the Director may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

#### Sec. 60-1.6. [Reserved]

#### Sec. 60-1.7. Reports and Other Required Information

(a) *Requirements for prime contractors and subcontractors.* (1) Each prime contractor and subcontractor shall file annually, on or before the 31st day of

March, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with §60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided*, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1)(i), (ii), and (iv) of this section.

(2) Each person required by §60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with §60-1.7(a)(1), or at such other intervals as the Director may require. The Director may extend the time for filing any report.

(3) The Director or the applicant, on their own motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is ground for the imposition by the Director, an applicant, prime contractor or subcontractor, of any sanctions as autho-

ized by the order and the regulations in this part.

(b) *Requirements for bidders or prospective contractors* (1) *Certification of compliance with Part 60-2: Affirmative Action Programs.* Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part C)-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Director or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Director requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Director requests.

(c) *Use of reports.* Reports filed pursuant to this section shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

#### **Sec. 60-1.8. Segregated Facilities**

(a) *General.* In order to comply with his obligations under the equal opportunity clause, a prime contractor or subcontractor must insure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, or national origin cannot result. He may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. His obligation extends further to insuring that his employees are not assigned to perform their ser-

vices at any location, under his control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities" as used in this section means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees.

(b) *Certification by prime contractors and subcontractors.* Prior to the award of any nonexempt Government contract or subcontract or federally assisted construction contract or subcontract, each agency or applicant shall require the prospective prime contractor and each prime contractor and subcontractor shall require each subcontractor to submit a certification, in the form approved by the Director, that the prospective prime contractor or subcontractor does not and will not maintain any facilities he provides for his employees in a segregated manner, or permit his employees to perform their services at any location, under his control, where segregated facilities are maintained; and that he will obtain a similar certification in the form approved by the Director, prior to the award of any nonexempt subcontract.

#### **Sec. 60-1.9. Compliance by Labor Unions and by Recruiting and Training Agencies**

(a) Whenever compliance with the equal opportunity clause may necessitate a revision of a collective bargaining agreement the labor union or unions which are parties to such an agreement shall be given an adequate opportunity to present their views to the director.

(b) The Director shall use his best efforts, directly and through agencies, contractors, subcontractors, applicants, State and local officials, public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting and training agency or other representative of workers who are



or may be engaged in work under contracts and subcontracts to cooperate with, and to comply in the implementation of, the purposes of the order.

(c) In order to effectuate the purposes of paragraph (a) of this section, the Director may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(d) The Director may notify any Federal, State, or local agency of his conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his judgment has failed to cooperate with himself, agencies, prime contractors, sub-contractors, or applicants in carrying out the purposes of the order. The Director also may notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever he has reason to believe that the practices of any such labor organization or agency violates Title VII of the Civil Rights Act of 1964 or other provisions of Federal law.

#### **Sec. 60-1.10. Foreign Government Practices**

Contractors shall not discriminate on the basis of race, color, religion, sex, or national origin when hiring or making employee assignments for work to be performed in the United States or abroad. Contractors are exempted from this obligation only when hiring persons outside the United States for work to be performed outside the United States (see 41 CFR 60-1.5(a)(3)). Therefore, a contractor hiring workers in the United States for either Federal or nonfederally connected work shall be in violation of Executive Order 11246, as amended, by refusing to employ or assign any person because of race, color, religion, sex, or national origin regardless of the policies of the country where the work is to be performed or for whom the work will be performed. Should any contractor be unable to acquire a visa of entry for any employee or potential employee to a country in which or with which it is doing business, and which refusal it believes is

due to the race, color, religion, sex, or national origin of the employee or potential employee, the contractor must immediately notify the Department of State and the Director of such refusal.

#### **Sec. 60-1.11. Payment or Reimbursement of Membership Fees and Other Expenses to Private Clubs**

(a) (1) A contractor which maintains a policy or practice of paying membership fees or other expenses for employee participation in private clubs or organizations shall ensure that the policy or practice is administered without regard to the race, color, religion, sex, or national origin of employees.

(2) Payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, sex, religion, or national origin constitutes a violation of Executive Order 11246 except where the contractor can provide evidence that such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin. OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions.

(b) The contractor has the responsibility of determining whether the club or organization restricts membership on the basis of race, color, religion, sex, or national origin. The contractor may make separate determinations for different chapters of an organization, and where it does so, may limit any necessary corrective action to the particular chapters which observe discriminatory membership policies and practices.

**Effective Date Note:** At 46 FR 3896, Jan. 16, 1981, Sec. 60-1.11 was added. At 46 FR 18951, Mar. 27, 1981, the effective date was deferred until further notice.

**Subpart B — General  
Enforcement; Compliance  
Review and Complaint  
Procedure**

**Sec. 60-1.20. Compliance Reviews**

(a) The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to insure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. It shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

(c) [Reserved]

(d) Each agency shall include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should exceed the amount of \$1 million or more, the prospective contractor and his known first tier subcontractors with subcontracts of \$1 million or more will be subject to a

compliance review before the award of the contract. No such contract shall be awarded unless a preaward compliance review of the prospective contractor and his known first-tier \$1 million subcontractors has been conducted within 12 months prior to the award. The awarding agency will notify OFCCP and request appropriate action and findings in accordance with this subsection. OFCCP will provide awarding agencies with written reports of compliance within 30 days following the request. In order to qualify for the award of a contract, a contractor and such first-tier subcontractors must be found to be in compliance pursuant to paragraph (b) of this section, and with part 60-2 of these regulations.

**Sec. 60-1.21. Filing Complaints**

Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended by the Director for good cause shown.

**Sec. 60-1.22. Where to File**

Complaints may be filed with the OFCCP, 200 Constitution Avenue, NW, Washington, D.C. 20210, or with any OFCCP regional or area office.

**Sec. 60-1.23. Contents of Complaint**

(a) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his/her authorized representative. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met.

(b) If a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. In the event such information is not furnished to the Director within 60 days of the date of such request, the case may be closed.

**Sec. 60-1.24. Processing of Matters**

(a) *Complaints.* OFCCP may refer appropriate complaints to the Equal Employment Opportunity Commission (EEOC) for processing under Title VII of the Civil Rights Act of 1964, as amended, rather than processing under E.O. 11246 and the regulations in this chapter. Upon referring complaints to the EEOC, OFCCP shall promptly notify complainant(s) and the contractor of such referral.

(b) *Complaint investigations.* In conducting complaint investigations, OFCCP shall, as a minimum, conduct a thorough evaluation of the allegations of the complaint and shall be responsible for developing a complete case record. The case record should contain the name, address, and telephone number of each person interviewed, the interview statements, copies, transcripts, or summaries (where appropriate) of pertinent documents, a reference to at least one covered contract, and a narrative report of the investigation with references to exhibits and other evidence which relate to the alleged violations.

(c) (1) [Reserved]

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the Director shall proceed in accordance with §60-1.26.

(4) When a prime contractor or subcontractor without a hearing, shall have complied with the recommendations or orders of the Director and believes such recommendations or orders to be erroneous, he shall upon filing a request therefor within ten days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action.

(5) For reasonable cause shown, the Director may reconsider or cause to be

reconsidered any matter on his/her own motion or pursuant to a request.

(d) *Reports to the Director.* (1) With the exception of complaints which have been referred to EEOC, within 60 days from receipt of a complaint or within such additional time as may be allowed by the Director for good cause shown, the complaint shall be processed and the case record developed containing the following information:

(i) Name and address of the complainant;

(ii) Brief summary of findings, including a statement regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause

(iii) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

(2) A written report of every preaward compliance review required by this regulation or otherwise required by the Director, shall be developed and maintained.

(3) A written report of every other compliance review or any other matter processed involving an apparent violation of the equal opportunity clause shall be made. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

**Sec. 60-1.25. Assumption of Jurisdiction by or Referrals to the Director**

The Director may inquire into the status of any matter pending before an agency. Where he considers it necessary or appropriate to the achievement of the purposes of the order, he may assume jurisdiction over the matter and proceed as provided herein. Whenever the Director assumes jurisdiction over any matter,

or an agency refers any matter he may conduct, or have conducted, such investigations, hold such hearings, make such findings, issue such recommendations and directives, order such sanctions and penalties, and take such other action as may be necessary or appropriate to achieve the purposes of the order. The Director shall promptly notify the agency of any corrective action to be taken or any sanctions to be taken or any sanction to be imposed by the agency. The agency shall take such action, and report the results thereof to the Director within the time specified.

### Sec. 60-1.26. Enforcement Proceedings

(a) *General.* (1) Violations of the Order, equal opportunity clause, the regulations in this chapter, or of applicable construction industry equal employment opportunity requirements, may result in the institution of administrative or judicial enforcement proceedings to enforce the Order and to seek appropriate relief. Violations may be found based upon, inter alia, any of the following: (i) The results of a complaint investigation; (ii) analysis of an affirmative action program; (iii) the results of an on-site review of the contractor's compliance with the order and its implementing regulations; (iv) a contractor's refusal to submit an affirmative action program; (v) a contractor's refusal to allow an on-site compliance review to be conducted; (vi) a contractor's refusal to supply records or other information as required by these regulations or applicable construction industry requirements; or (vii) any substantial or material violation or the threat of a substantial or material violation of contractual provisions of the order, or of the rules or regulations issued pursuant thereto.

(2) If the investigation of a complaint, or a compliance review, results in a determination that the order, equal opportunity clause or regulations issued pursuant thereto, have been violated, and the violations have not been corrected in accordance with the conciliation procedures in this chapter, OFCCP may insti-

tute an administrative enforcement proceeding to enjoin the violations, to seek appropriate relief (which may include affected class and back pay relief), and to impose appropriate sanctions, or any of the above. However, if the contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow the compliance agency access to its premises for an on-site review; and if conciliation efforts under this chapter are unsuccessful, OFCCP, notwithstanding the requirements of this chapter, may go directly to administrative enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above. Whenever the Director has reason to believe that there is substantial or material violation or the threat of substantial or material violation of the contractual provisions of the order or of the rules, regulations or orders issued pursuant thereto, he/she may refer the matter to the Solicitor of Labor to institute administrative enforcement proceedings as set forth in this section or refer the matter to the Department of Justice to enforce the contractual provisions of the order, to seek injunctive relief (including relief against noncontractors, including labor unions, who seek to thwart implementation of the order and regulations) and to seek such additional relief, including back pay, as may be appropriate. There are no procedural prerequisites to a referral to the Department of Justice by the Director, and such referrals may be accomplished without proceeding through the conciliation procedures in this chapter, and a referral may be made at any stage in the procedures under this chapter: *Provided*, That no order for debarment from further contracts or subcontracts pursuant to section 209(a)(6) of the order shall be made without affording the contractor an opportunity for a hearing, either administrative or judicial. (As amended at 45 FR 9271, eff. Feb. 12, 1980)

(b) [Reserved]

(c) *Administrative enforcement proceedings.* Administrative enforcement

proceedings shall be conducted under the control and supervision of the Solicitor of Labor and under the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in Part 60-30 of this chapter.

(d) *Decision following administrative proceeding.* If it is determined after a hearing (or after the contractor waives a hearing) that the contractor is violating the order or the regulations issued thereunder, the Administrative Review Board, United States Department of Labor, (in accordance with 41 CFR 60-30.30) shall issue an Administrative order enjoining the violations and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative order shall result in the imposition of the sanctions contained in section 209 (a)(5) or (a)(6) of the Executive Order. (As amended at 61 FR 19982, eff. May 3, 1996)

(e) *Referrals to the Department of Justice* (1) Whenever a matter has been referred to the Department of Justice for consideration of judicial proceedings pursuant to §60-1.26(a)(2) of these regulations, the Attorney General may bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the order, or any of the above.

(2) The Attorney General is authorized to conduct such investigation of the facts as he may deem necessary or appropriate to carry out his responsibilities under these regulations.

(3) Prior to the institution of any judicial proceedings, the Attorney General, on behalf of the Director, is authorized to make reasonable efforts to secure compliance with the contract provisions of the order. He may do so by providing the contractor and any other respondent with reasonable notice of his findings, his in-

tent to file suit, and the actions he believes necessary to obtain compliance with the contract provisions of the order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation, in an effort to obtain such compliance without contested litigation.

(4) As defined in these regulations the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person authorized by regulations or practice to act for the Attorney General with respect to the enforcement of equal employment opportunity laws, order and regulations generally, or in a particular matter or case.

(5) The Director or his/her designee, and representatives of the Attorney General may consult from time to time to determine what investigations should be conducted to determine whether contractors or groups of contractors or other persons may be engaged in patterns or practices in violation of the Executive order or these regulations, or of resistance to or interference with the full enjoyment of any of the rights secured by them, warranting judicial proceedings.

(f) *Initiation of lawsuits by the Attorney General without referral from the Director.* In addition to initiating lawsuits upon referral under 41 CFR 60-1.26, the Attorney General may, subject to approval by the Director, initiate independent investigations of contractors which he/she has reason to believe may be in violation of the order or the rules and regulations issued pursuant thereto. If, upon completion of such an investigation, the Attorney General determines that the contractor has in fact violated the order or the rules and regulations issued thereunder, he shall make reasonable efforts to secure compliance with the contract provisions of the order. He may do so by providing the contractor and any other respondent with reasonable notice of the Department's findings, its intent to file suit, and the actions that the Attorney General believes are necessary to obtain compliance with the contract provisions

of the order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation in an effort to obtain such compliance without contested litigation. If these efforts are unsuccessful, the Attorney General may, upon approval by the Director, bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the order or any of the above.

(g) To the extent applicable, this section and Part 60-30 of this chapter shall govern proceedings resulting from the Director's determination under §60-2.2(b) that there are substantial issues of law or fact as to the contractor/bidder's responsibility.

#### **Sec. 60-1.27. Sanctions and Penalties**

The sanctions described in subsections (1), (5), and (6) of section 209(a) of the order may be exercised only by or with the approval of the Director. Referral of any matter arising under the order to the Department of Justice or to the Equal Employment Opportunity Commission shall be made by the Director.

#### **Sec. 60-1.28. Show Cause Notices**

When the director has reasonable cause to believe that a contractor has violated the equal opportunity clause he may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted.

#### **Sec. 60-1.29. Preward Notices**

(a) *Preward compliance reviews.* Upon request of the Director, agencies shall not enter into contracts or approve the entry into contracts or subcontracts with any bidder, prospective prime contractor, or proposed subcontractor named by the Director until a preaward compliance review has been conducted

and the Director or his designee has approved a determination that the bidder, prospective prime contractor or proposed subcontractor will be able to comply with the provisions of the equal opportunity clause.

(b) *Other special preaward procedures.* Upon the request of the Director, agencies shall not enter into contracts or approve the entry into subcontracts with any bidder; prospective prime contractor or proposed subcontractor specified by the Director until the agency has complied with the directions contained in the request.

#### **Sec. 60-1.30. Contract Ineligibility List**

The Director shall distribute periodically a list to all executive departments and agencies giving the names of prime contractors and subcontractors who have been declared ineligible under the regulations in this part and the order.

#### **Sec. 60-1.31. Reinstatement of Ineligible Prime Contractors and Subcontractors**

Any prime contractor or subcontractor declared ineligible for further contracts or subcontracts under the order may request reinstatement in a letter directed to the Director. In connection with the reinstatement proceedings, the prime contractor or subcontractor shall be required to show that it has established and will carry out employment policies and practices in compliance with the equal opportunity clause.

#### **Sec. 60-1.32. Intimidation and Interference**

The sanctions and penalties contained in Subpart D of the order may be exercised by the Director against any prime contractor, subcontractor or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or

any other activity related to the administration of the order or any other Federal, State, or local laws requiring equal employment opportunity.

#### Sec. 60-1.33. Conciliation

##### Agreements

(a) If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and (1) if the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and (2) if OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(b) The term "conciliation agreement" does not include "letters of commitment" which are appropriate for resolving minor technical deficiencies.

#### Sec. 60-1.34. Violation of a Conciliation Agreement or Letter of Commitment

(a) When a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violations alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(3) If the contractor is unable to demonstrate that it has not violated its commitments, or if the complaint alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice

or proceeding through any other requirement contained in this chapter.

(b) If the contractor has violated a letter of commitment, the matter shall be handled, where appropriate, pursuant to 41 CFR 60-2.2(c) or 60-4.8. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated.

#### Subpart C — Ancillary Matters

#### Sec. 60-1.40. Affirmative Action Compliance Programs

(a) *Requirements of programs.* Each contractor who has 50 or more employees and (1) has a contract of \$50,000 or more; or (2) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (3) serves as a depository of Government funds in any amount; or (4) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount shall develop a written affirmative action compliance program for each of its establishments. Each contractor and subcontractor shall require each subcontractor who has 50 or more employees and (i) has a subcontract of \$50,000 or more; or (ii) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (iii) serves as a depository of Government funds in any amount; or (iv) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, to develop a written affirmative action compliance program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of spe-

cific goals and time tables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in its affirmative action compliance program a table of job classifications. This table should include but need not be limited to job titles, principal duties (and auxiliary duties, if any), rates of pay, and where more than one rate of pay applied (because of length of time in the job or other factors), the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.

(b) *Utilization evaluation.* The evaluation of utilization of minority group personnel shall include the following:

(1) An analysis of minority group representation in all job categories.

(2) An analysis of hiring practices for the past year, including recruitment sources and testing, to determine whether equal employment opportunity is being afforded in all job categories.

(3) An analysis of upgrading, transfer and promotion for the past year to determine whether equal employment opportunity is being afforded.

(c) *Maintenance of programs.* Within 120 days from the commencement of the contract, each contractor shall maintain a copy of separate affirmative action compliance programs for each establishment, including evaluations of utilization of minority group personnel and the job classification tables, at each local office responsible for the personnel matters of such establishment. An affirmative action compliance program shall be part of the manpower and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to representatives of the Director upon request and the contractor's affirmative action program and the result it produces shall be evaluated as part of compliance review activities.

#### Sec. 60-1.41. Solicitations or Advertisements for Employees

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

#### Sec. 60-1.42. Notices to be Posted

(a) Unless alternative notices are prescribed by the Director, the notices which prime contractors and subcontractors are required to post by paragraphs (1) and (3) of the equal opportunity clause will contain the following language and will be provided by the contracting or administering agencies:

**Equal Employment Opportunity Is the Law — Discrimination Is Prohibited by the Civil Rights Act of 1964 and by Executive Order No. 11246**

Title VII of the Civil Rights Act of 1964  
— Administered by:

**The Equal Employment Opportunity Commission**

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 75 or more employees, by Labor Organizations with



a hiring hall of 75 or more members, by Employment Agencies, and by Joint Labor-Management Committees for Apprenticeship or Training. After July 1, 1967, employers and labor organizations with 50 or more employees or members will be covered; after July 1, 1968, those with 25 or more will be covered.

**Any Person**

Who believes he or she has been discriminated against

Should Contact

**The Equal Employment Opportunity Commission**

2401 E Street NW, Washington, D.C. 20506

Executive Order No. 11246 —

*Administered by:*

**The Office of Federal Contract Compliance Programs**

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment

By all Federal Government Contractors and Subcontractors, and by Contractors Performing Work Under a Federal Assisted Construction Contract, regardless of the number of employees in either case.

**Any Person**

Who believes he or she has been discriminated against

Should Contact

**The Office of Federal Contract Compliance Programs**

U.S. Department of Labor Washington, D.C. 20210

(b) The requirements of paragraph (3) of the equal opportunity clause will be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment, and representatives of each labor union or other organization representing his employees with which he has a collective-bargaining agreement or other contract or understanding.

**Sec. 60-1.43. Access to Records and Site of Employment**

Each prime contractor and subcontractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews and inspecting and copying such books, records, accounts, and other material as may be relevant to the matter under investigation and pertinent to compliance with the order, and the rules and regulations promulgated pursuant thereto by the agency, or the Director. Information obtained in this manner shall be used only in connection with the administration of the order, the administration of the Civil Rights Act of 1964 (as amended) and in furtherance of the purposes of the order and that Act. (See 41 CFR Part 60-60, Contractor Evaluation Procedures for Nonconstruction Contractors; 41 CFR Part 60-40. Examination and Copying of OFCCP Documents.)

**Sec. 60-1.44. Rulings and Interpretations**

Rulings under or interpretations of the order or the regulations contained in this part shall be made by the Secretary or his designee.

**Sec. 60-1.45. Existing Contracts and Subcontracts**

All contracts and subcontracts in effect prior to October 24, 1965, which are not subsequently modified shall be administered in accordance with the nondiscrimination provisions of any prior applicable Executive orders. Any contract or subcontract modified on or after October 24, 1965, shall be subject to Executive Order 11246. Complaints received by and violations coming to the attention of agencies regarding contracts and subcontracts which were subject to Executive Orders 10925 and 11114 shall be processed as if they were complaints regarding violations of this order.

**Sec. 60-1.46. Delegation of Authority by the Director**

The Director is authorized to redelegate the authority given to him by the regulations in this part. The authority

re delegated by the Director pursuant to the regulations in this part shall be exercised under his general direction and control.

**Sec. 60-1.47. Effective Date**

The regulations contained in this part shall become effective July 1, 1966, for all contracts, the solicitations, invitations for bids, or requests for proposals which were sent by the Government or an applicant on or after said effective date, and for all negotiated contracts which have not been executed as of said effective date. Notwithstanding the foregoing, the regulations in this part shall become effective as to all contracts executed on and

after the 120th day following said effective date. Subject to any prior approval of the Secretary, any agency may defer the effective date of the regulations in this part, for such period of time as the Secretary finds to be reasonably necessary. Contracts executed prior to the effective date of the regulations in this part shall be governed by the regulations promulgated by the former President's Committee on Equal Employment Opportunity which appear at 28 FR 9812, September 2, 1963, and at 28 FR 11305, October 23, 1963, the temporary regulations which appear at 30 FR 13441, October 22, 1965, and the orders at 31 FR 6881, May 10, 1966, and 32 FR 7439, May 19, 1967.

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**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 4**

**41 CFR 60-4 Affirmative Action in Construction and 41 CFR  
60-2, Revised Order No. 4, Nonconstruction**

## OFCCP: Affirmative Action in Construction

*Following is the text of OFCCP Guidelines establishing specific affirmative action standards for minorities and women in construction. The rules consolidate and standardize requirements for construction contractors and subcontractors subject to Executive Order 11246. Codified as 41 CFR 60-4, the guidelines read as amended by 45 FR 65976, effective November 3, 1980.*

### PART 60-4 CONSTRUCTION CONTRACTORS— AFFIRMATIVE ACTION REQUIREMENTS

#### Table of Contents

Section.	
60-4.1	Scope and Application.
60-4.2	Solicitations.
60-4.3	Equal Opportunity Clauses.
60-4.4	Affirmative Action Requirements.
60-4.5	Hometown Plans.
60-4.6	Goals and Timetables.
60-4.7	Effect on Other Regulations.
60-4.8	Show Cause Notice.
60-4.9	Incorporation by Operation of the Order.

AUTHORITY: Secs. 201, 202, 205, 211, 301, 302, and 303 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303, as amended by E.O. 12086.

SOURCE: 43 FR 49254, Oct. 20, 1978, unless otherwise noted.

#### Sec. 60-4.1. Scope and Application

This part applies to all contractors and subcontractors which hold any Federal or federally assisted construction contract in excess of \$10,000. The regulations in this part are applicable to all of a construction contractor's or subcontractor's construction employees who are engaged in on site construction including those construction employees who work on a non-Federal or nonfederally assisted construction site. This part also establishes procedures which all Federal contracting officers and all applicants, as applicable, shall follow in soliciting for and awarding Federal or federally assisted construction contracts. Procedures

also are established which administering agencies shall follow in making any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of Executive Order 11246, as amended.

In addition, this part applies to construction work performed by construction contractors and subcontractors for Federal nonconstruction contractors and subcontractors if the construction work is necessary in whole or in part to the performance of a nonconstruction contract or subcontract.

#### Sec. 60-4.2. Solicitations

(a) All Federal contracting officers and all applicants shall include the notice set forth in paragraph (d) of this section and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in §60-4.3 of this part in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts to be performed in geographical areas designated by the Director pursuant to §60-4.6 of the part. Administering agencies shall require the inclusion of the notice set forth in paragraph (d) of this section and the specifications set forth in §60-4.3 of this part as a condition of any grant, contract, subcontract, loan insurance or guarantee involving federally assisted construction covered by this part 60-4.

(b) All nonconstruction contractors covered by Executive Order 11246 and the implementing regulations shall include the notice in paragraph (d) of this section in all construction agreements which are necessary in whole or in part to the performance of the covered nonconstruction contract.

(c) Contracting officers, applicants and nonconstruction contractors shall give written notice to the Director within 10

working days of award of a contract subject to these provisions. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

(d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.6 of this part (see 41 CFR 60-4.2(a)):

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
	Insert goals for each year	Insert goals for each year

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the

covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the con-

tract is to be performed giving the state, county and city, if any).

**Sec. 60-4.3. Equal Opportunity  
Clauses**

(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive order.

**STANDARD FEDERAL  
EQUAL EMPLOYMENT  
OPPORTUNITY  
CONSTRUCTION CONTRACT  
SPECIFICATIONS  
(EXECUTIVE ORDER 11246)**

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors

toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availabil-

ity of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. 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, where possible, will assign two or more women to each construction project. 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 or female individuals working at such sites or in such facilities.

b. 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 unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the

reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construc-

tion 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.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, 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 such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least 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.

m. Ensure that seniority 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.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be

a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements

of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

**Sec. 60-4.4. Affirmative Action Requirements**

(a) To implement the affirmative action requirements of Executive Order

11246 in the construction industry, the Office of Federal Contract Compliance Programs previously has approved affirmative action programs commonly referred to as "Hometown Plans," has promulgated affirmative action plans referred to as "Imposed Plans" and has approved "Special Bid Conditions" for high impact projects constructed in areas not covered by a Hometown or an Imposed Plan. All solicitations for construction contracts made after the effective date of the regulations in this part shall include the notice specified in §60-4.2 of this part and the specifications in §60-4.3 of this part in lieu of the Hometown and Imposed Plans including the Philadelphia Plan and Special Bid Conditions. Until the Director has issued an order pursuant to §60-4.6 of this part establishing goals and timetables for minorities in the appropriate geographical areas or for a project covered by Special Bid Conditions, the goals and timetables for minorities to be inserted in the Notice required by 41 CFR 60-4.2 shall be the goals and timetables contained in the Hometown Plan, Imposed Plan or Special Bid Conditions presently covering the respective geographical area or project involved.

(b) Signatories to a Hometown Plan (including heavy highway affirmative action plans) shall have 45 days from the effective date of the regulations in this part to submit under such a Plan (for the director's approval) goals and timetables for women and to include female representation on the Hometown Plan Administrative Committee. Such goals for female representation shall be at least as high as the goals established for female representation in the notice issued pursuant to 41 CFR 60-4.6. Failure of the signatories, within the 45-day period, to include female representation and to submit goals for women or a new plan, as appropriate, shall result in an automatic termination of the Officer of Federal Contract Compliance Program's approval of the Hometown Plan. At any time

the Office of Federal Contract Compliance Programs terminates or withdraws its approval of a Hometown Plan, or when the plan expires and another plan is not approved, the contractors signatory to the plan shall be covered automatically by the specifications set forth in §60-4.3 of this part and by the goals and timetables established for that geographical area pursuant to §60-4.6 of this part.

**Sec. 60-4.5. Hometown Plans**

(a) A contractor participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the plan: *Provided*, That each contractor or subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables. If a contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in §60-4.3 of this part and with the goals and timetables for the appropriate area as listed in the notice required by 41 CFR 60-4.2 with regard to that trade. For the purposes of this part 60-4, a contractor is not participating in a Hometown Plan for a particular trade if it:

- (1) Ceases to be signatory to a Hometown Plan covering that trade;
- (2) Is signatory to a Hometown Plan for that trade but is not party to a collective bargaining agreement for that trade;
- (3) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organi-

zations which are not or cease to be signatories to the same Hometown Plan for that trade;

(4) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan for that trade;

(5) Is participating in a Hometown Plan for that trade which is no longer acceptable to the Office of Federal Contract Compliance Programs;

(6) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organization for that trade and the labor organization and the contractor have failed to make a good faith effort to comply with their obligations under the Hometown Plan for that trade.

(b) Contractors participating in Hometown Plans must be able to demonstrate their participation and document their compliance with the provision of the Hometown Plan.

**Sec. 60-4.6. Goals and Timetables**

The Director, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data and which shall cover construction projects, or construction contracts performed in specific geographical areas. The goals, which shall be applicable to each construction trade in a covered contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be published as notices in the FEDERAL REGISTER, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction con-

tract shall apply the minority and female goals established for the geographical area where the work is being performed. (As amended eff. Nov. 3, 1980, 45 FR 65976, Oct. 3, 1980)

**Sec. 60-4.7. Effective on Other Regulations**

The regulations in this part are in addition to the regulations contained in this chapter which apply to construction contractors and subcontractors generally. See particularly, 41 CFR 60-1.4(a),(b),(c),(d), and (e); 60-1.5; 60-1.7; 60-1.8; 60-1.26; 60-1.29; 60-1.30; 60-1.32; 60-1.41; 60-1.42; 60-1.43; and 41 CFR Part 60-3; Part 60-20; Part 60-30; Part 60-40; and Part 60-50.

**Sec. 60-4.8. Show Cause Notice**

If an investigation or compliance review reveals that a construction contractor or subcontractor has violated the Executive order, any contract clause, specifications or the regulations in this chapter and if administrative enforcement is contemplated, the Director shall issue to the contractor or subcontractor a notice to show cause which shall contain the items specified in paragraphs (i) through (iv) of 41 CFR 60-2.2(c)(1). If the contractor does not show good cause within 30 days, or in the alternative, fails to enter an acceptable conciliation agreement which includes where appro-

priate, make up goals and timetables, back pay, and seniority relief for affected class members, the OFCCP shall follow the procedure in 41 CFR 60-1.26(b): *Provided*, That where a conciliation agreement has been violated, no show cause notice is required prior to the initiation of enforcement proceedings.

**Sec. 60-4.9. Incorporation by Operation of the Order**

By operation of the order, the equal opportunity clause contained in §60-1.4, the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) contained in §60-4.2, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) contained in §60-4.3 shall be deemed to be a part of every solicitation or of every contract and subcontract, as appropriate, required by the order and the regulations in this chapter to include such clauses whether or not they are physically incorporated in such solicitation or contract and whether or not the contract is written.

*[Editor's note: OFCCP's nationwide employment goals and timetables for women in construction and local and regional goals for minorities. Appendices A and B-80, appear at 403:4125.]*

## OFCCP: Affirmative Action Guidelines — Revised Order No. 4

*Following is the text of the Office of Federal Contract Compliance Programs' Revised Order No. 4, Affirmative Action Guidelines, which covers federal nonconstruction contractors and subcontractors. Codified as 41 CFR 60-2, the order reads as amended by 44 FR 77000, effective January 28, 1980.*

### PART 60-2—AFFIRMATIVE ACTION PROGRAMS

#### Table of Contents

##### Subpart A—General

Section.

- 60-2.1 Title, Purpose and Scope.  
60-2.2 Agency Action.

##### Subpart B—Required Contents of Affirmative Action Programs

- 60-2.10 Purpose of Affirmative Action Program.  
60-2.11 Required Utilization Analysis.  
60-2.12 Establishment of Goals and Timetables.  
60-2.13 Additional Required Ingredients of  
Affirmative Action Programs.  
60-2.14 Program Summary.  
60-2.15 Compliance Status.

##### Subpart C—Methods of Implementing the Requirements of Subpart B

- 60-2.20 Development or Reaffirmation of the  
Equal Employment Opportunity Policy.  
60-2.21 Dissemination of the Policy.  
60-2.22 Responsibility for Implementation.  
60-2.23 Identification of Problem Areas by  
Organizational Units and Job Groups.  
60-2.24 Development and Execution of Programs.  
60-2.25 Internal Audit and Reporting Systems.  
60-2.26 Support of Action Programs.

##### Subpart D—Miscellaneous

- 60-2.30 Use of Goals.  
60-2.31 Preemption.  
60-2.32 Supersedure.

AUTHORITY: 5 U.S.C 553(a)(3)(B); 29 CFR 2.7; Section 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086.

#### Subpart A—General

##### Sec. 60-2.1. Title, Purpose and Scope

(a) This part shall also be known as "Revised Order No. 4" and shall cover nonconstruction contractors. Section 60-1.40 of this chapter, affirmative action

compliance programs, requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and (1) a contract of \$50,000 or more; or (2) Government bills of lading which, in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (3) who serves as a depository of Government funds in any amount; or (4) who is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, develop a written affirmative action compliance program for each of its establishments. A review of compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then sets forth detailed guidelines to be used by the contractors and Government in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity. Subparts B and C of this part are concerned with affirmative action plans only.

(b) Relief, including back pay where appropriate, for members of an affected class who by virtue of past discrimination continue to suffer the present effects of that discrimination, shall be provided in the conciliation agreement entered into pursuant to §60-60.6 of this title. An "affected class" problem must be remedied in order for a contractor to be considered in compliance. Section 60-2.2 herein pertaining to an acceptable affirmative action program is also applicable to the failure to remedy discrimination against members of an "affected class."

**Sec. 60-2.2. Agency Action**

(a) Any contractor required by §60-1.40 of this chapter to develop an affirmative action program at each of its establishments who has not complied fully with that section is not in compliance with Executive Order 11246, as amended (30 FR 12319). Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§60-2.10 through 60-2.32, the contractor is unable to comply with the equal employment opportunity clause. An affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate OFCCP field, area, regional, or national office has accepted such plan unless within 45 days thereafter the Director has disapproved such plan.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his agency or through the Office of Federal Contract Compliance Programs or other Government agencies, that the contractor has no affirmative action program at each of its establishments, or has substantially deviated from such an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the regulations in this chapter, the contracting officer shall declare the contractor/bidder nonresponsible and so notify the contractor, and the Director, unless he can otherwise affirmatively determine that the contractor is able to comply with its equal employment obligations. Any contractor/bidder which has been declared nonresponsible in accordance with the provisions of this section may request the Director to determine that the responsibility of the contractor/bidder raises substantial issues of law or fact to the extent that a hearing is required. Such request shall set forth the basis upon which the contractor/bidder seeks such a determina-

tion. If the Director, in his/her sole discretion, determines that substantial issues of law or fact exist, an administrative or judicial proceeding may be commenced in accordance with the regulations contained in §60-1.26; or the Director may require the investigation or compliance review be developed further or additional conciliation be conducted: *Provided*, That during any pre-award conferences, every effort shall be made through the processes of conciliation, mediation and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§60-2.10 through 60-2.32 so that, in the performance of its contract, the contractor is able to meet its equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: *Provided further*, That a contractor/bidder may not be declared nonresponsible more than twice due to past noncompliance with the equal opportunity clause at a particular establishment or facility without receiving prior notice and an opportunity for a hearing.

(c)(1) Immediately upon finding that a contractor has no affirmative action program, or has deviated substantially from an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the requirements of the regulations in this chapter, that fact shall be recorded in the investigation file. Whenever administrative enforcement is contemplated, the notice to the contractor shall be issued giving him 30 days to show cause why enforcement proceedings under section 209(a) of Executive Order 11246, as amended, should not be instituted. The notice to show cause should contain:

(i) An itemization of the sections of the Executive order and of the regulations with which the contractor has been found in apparent violation, and a summary of the conditions, practices, facts

or circumstances which give rise to each apparent violation;

(ii) The corrective actions necessary to achieve compliance or, as may be appropriate, the concepts and principles of an acceptable remedy and/or the corrective action results anticipated;

(iii) A request for a written response to the findings, including commitments to corrective action or the presentation or opposing facts and evidence; and

(iv) A suggested date for the conciliation conference.

(2) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the case file shall be processed for enforcement proceedings pursuant to §60-1.26 of this chapter. If an administrative complaint is filed, the contractor shall have 20 days to request a hearing. If a request for hearing has not been received within 20 days from the filing of the administrative complaint, the matter shall proceed in accordance with Part 60-30 of this chapter.

(3) During the "show cause" period of 30 days, every effort will be made through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the case shall be processed for enforcement proceedings pursuant to §60-1.26 of this chapter.

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

#### **Subpart B—Required Contents of Affirmative Action Programs**

#### **Sec. 60-2.10. Purpose of Affirmative Action Program**

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of its work force where deficiencies exist.

#### **Sec. 60-2.11. Required Utilization Analysis**

Based upon the Government's experience with compliance reviews under the Executive order program and the contractor reporting system, minority groups are most likely to be underutilized in departments and jobs within departments that fall within the following Employer's Information Report (EEO-1) designations: Officials and managers, professionals, technicians, sales workers, office and clerical and craftsmen (skilled). As categorized by the EEO-1 designations, women are likely to be underutilized in departments and jobs within departments as follows: Officials and managers, professionals, technicians, sales workers (except over-the-counter sales in certain retail establishments), craftsmen (skilled and semi-skilled). Therefore, the contractor shall direct special attention to such jobs in its analysis and goal setting for minorities and women. Affirmative action programs must contain the following information:

(a) Workforce analysis which is defined as a listing of each job title as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job families, or disciplines, in order of wage rates or salary ranges. For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

(b) An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups ("job groups" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In making the utilization analysis, the contractor shall conduct such analysis separately for minorities and women.

(1) In determining whether minorities are being underutilized in any job group, the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job group, the contractor will consider at least all of the following factors:

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

(vi) The availability of promotable and transferable female employees within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.



**Sec. 60-2.12. Establishment of Goals and Timetables**

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of its deficiencies and its entire affirmative action program. Thus, in establishing the size of its goals and the length of its timetables, the contractor should consider the results which could reasonably be expected from its putting forth every good faith effort to make its overall affirmative action program work. In determining levels of goals, the contractor should consider at least the factors listed in §60-2.11.

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal setting process.

(c) Goals should be significant, measurable, and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

(f) In establishing timetables to meet goals and commitments, the contractor will consider the anticipated expansion, contraction, and turnover of and in the work force.

(g) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies.

(h) Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

(i) Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor.

(j) A contractor or subcontractor extending a publicly announced preference for Indians as authorized in 41 CFR 60-1.5(a)(6) may reflect in its goals and timetables the permissive employment preference for Indians living on or near an Indian reservation.

(k) Where a contractor has not established a goal, his written affirmative action program must specifically analyze each of the factors listed in 60-2.11 and must detail its reason for a lack of a goal.

(l) In the event it comes to the attention of the Office of Federal Contract Compliance Programs that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, OFCCP may require separate goals and timetables for such minority group and may further require, where appropriate, such goals and timetables by sex for such group for such job classifications and organizational units specified by the OFCCP.

(m) Support data for the required analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data will include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

(n) Copies of affirmative action programs and/or copies of support data shall be made available to the Office of Federal Contract Compliance Programs, upon request, for such purposes as may be appropriate to the fulfillment of its responsibilities under Executive Order 11246, as amended.

**Sec. 60-2.13. Additional Required Ingredients of Affirmative Action Programs**

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development of reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job group.

(e) Establishment of goals and objectives by organizational units and job groups, including timetables for completion.

(f) Development and execution of action oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Compliance or personnel policies and practices with the Sex Discrimination Guidelines (41 CFR Part 60-20).

(i) Active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.

(j) Consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

#### **Sec. 60-2.14. Program Summary**

The affirmative action program shall be summarized and updated annually. The program summary shall be prepared in a format which shall be prescribed by the Director and published in the FEDERAL REGISTER as a notice before becoming effective. Contractors and subcontractors shall submit the program summary to OFCCP each year on the anniversary date of the affirmative action program. (Added, eff. Jan. 28, 1980)

#### **Sec. 60-2.15. Compliance Status**

No contractor's compliance status shall be judged alone by whether or not it reaches its goals and meets its timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of its program, the extent of its adherence to this program, and its good faith efforts to make its program work toward the realization of the program's goals within the timetable set for completion. There follows an outline of examples of procedures that contractors and Federal agencies should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program. (Sec. 60-2.15 was renumbered from old Sec. 60-2.14, eff. Jan. 28, 1980)

#### **Subpart C—Methods of Implementing the Requirements of Subpart B**

#### **Sec. 60-2.20. Development or Reaffirmation of the Equal Employment Opportunity Policy**

(a) The contractor's policy statement should indicate the chief executive officer's attitude on the subject matter, assign overall responsibility and provide for a reporting and monitoring procedure. Specific items to be mentioned should include, but are not limited to:

(1) Recruit, hire, train, and promote persons in all job titles, without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. (The term "bona fide occupational qualification" has been construed very narrowly under the Civil Rights Act of 1964. Under Executive Order 11246 as amended and this part, this term will be construed in the same manner.)

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only

valid requirements for promotional opportunities.

(4) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin.

**Sec. 60-2.21. Dissemination of the Policy**

(a) The contractor should disseminate his policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report, and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions, etc., of minority and female employees, in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, employee handbooks or similar publications, both minority and nonminority men and women should be pictured.

(11) Communicate to employees the existence of the contractor's affirmative action program and make available such elements of its program as will enable such employees to know of and avail themselves of its benefits.

(b) The contractor should disseminate its policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

(2) Incorporate the equal opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority and women's organizations, community agencies, community leaders, secondary schools and colleges, of company policy, preferably in writing.

(4) Communicate to prospective employees the existence of the contractor's affirmative action program and make available such elements of its program as will enable such prospective employees to know of and avail themselves of its benefits.

(5) When employees are pictured in consumer or help wanted advertising, both minority and nonminority men and women should be shown.

(6) Send written notification of company policy to all subcontractors, vendors and suppliers requesting appropriate action on their part.

**Sec. 60-2.22. Responsibility For Implementation**

(a) An executive of the contractor should be appointed as director or manager of company equal opportunity programs. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. He or she should be given the necessary top management support and staffing to execute the assignment. His or her identity should appear on all internal and external communications on the company's

equal opportunity programs. His or her responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies.

(6) Serve as liaison between the contractor and minority organizations, women's organizations and community action groups concerned with employment opportunities of minorities and women.

(7) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations, women's organizations, community action groups and community service programs.

(3) Periodic audit of training programs, hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure that minorities and women are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in areas such as:

(i) Posters are properly displayed.

(ii) All facilities, including company housing, which the contractor maintains for the use and benefit of his employees, are in fact desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms and rest rooms, they must be comparable for both sexes.

(iii) Minority and female employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational and social activities.

(8) Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

(9) It shall be a responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

**Sec. 60-2.23. Identification of Problem Areas By Organizational Units and Job Groups**

(a) An in-depth analysis of the following should be made, paying particular attention to trainees and those categories listed in §60-2.11(b).

(1) Composition of the work force by minority group status and sex.

(2) Composition of applicant flow by minority group status and sex.

(3) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities or women in specific job groups.

(2) Lateral and/or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities or men.

(4) Application and related preemployment forms not in compliance with Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Formal or scored selection procedures not validated as required by the OFCCP Uniform Guidelines on Employee Selection procedures.

(7) Test forms not validated by location, work performance and inclusion of minorities and women in sample.

(8) Referral ratio of minorities or women to the hiring supervisor or manager indicates a significantly higher percentage are being rejected as compared to nonminority and male applicants.

(9) Minorities or women are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a disparity by minority group status or sex exists between length of service and types of job held.

(12) Nonsupport of company policy by managers, supervisors or employees.

(13) Minorities or women underutilized or significantly underrepresented in training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities.

(16) Lack of suitable transportation (public or private) to the work place inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

### **Sec. 60-2.24. Development and Execution of Programs**

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate worker specifications by division, department, location or other organizational unit and by job title using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job title in all locations and should be free from bias as regards to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women, such requirements should be professionally validated to job performance.

(c) Approved position descriptions and worker specifications, when used by the contractor, should be made available to all members of management involved in

the recruiting, screening, selection, and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor shall observe the requirements of the OFCCP Uniform Guidelines on Employee Selection Procedures. (See 403:349.)

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include but are not restricted to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where there exist data suggesting that such unfair discrimination or exclusion of minorities or women exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority or female applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights organizations, Women's Equity

Action League, Talent Bank from Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro Women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish Women's Groups, Catholic Women's Groups, and Protestant Women's Groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, followup with sources, and feedback on disposition of applicants.

(3) Minority and female employees, using procedures similar to subparagraph (2) of this paragraph, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities and women on the Personnel Relations staff.

(5) Minority and female employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

(8) Recruiting efforts at all schools should incorporate special efforts to reach minorities and women.

(9) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical coop programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and female.

(iii) Summer jobs for underprivileged youth, male and female.

(iv) Summer work-study programs for male and female faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hard-core unemployed, male and female.

(10) When recruiting brochures pictorially present work situations, the minority and female members of the work force should be included, especially when such brochures are used in school and career programs.

(11) Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

(f) The contractor should insure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) Post or otherwise announce promotional opportunities.

(2) Make an inventory of current minority and female employees to determine academic, skill and experience level of individual employees.

(3) Initiate necessary remedial, job training and workstudy programs.

(4) Develop and implement formal employee evaluation programs.

(5) Make certain "worker specifications" have been validated on job performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.)

(6) When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

(7) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system and similar programs.

(8) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

(h) Encourage child care, housing and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

#### **Sec. 60-2.25. Internal Audit and Reporting Systems**

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a scheduled basis as to degree to which corporate or unit goals are attained and timetables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

#### **Sec. 60-2.26. Support of Action Programs**

(a) The contractor should appoint key members of management to serve on merit employment councils, community relations boards and similar organizations.

(b) The contractor should encourage minority and female employees to participate actively in National Alliance of

Businessmen programs for youth motivation.

(c) The contractor should support vocational guidance institutes, vestibule training programs and similar activities.

(d) The contractor should assist secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority and female employees in local and minority news media.

(f) The contractor should support programs developed by such organizations as National Alliance of Business, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

#### **Subpart D—Miscellaneous**

##### **Sec. 60-2.30. Use of Goals**

The purpose of a contractor's establishment and use of goals is to insure that it meet its affirmative action obliga-

tion. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

##### **Sec. 60-2.31. Preemption**

To the extent that any State or local laws, regulations or ordinances, including those which grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with requirements of this part, we will regard them as preempted under the Executive order.

##### **Sec. 60-2.32. Supersedure**

All orders, instructions, regulations, and memoranda of the Secretary of Labor, other officials of the Department of Labor and contracting agencies are hereby superseded to the extent that they are inconsistent herewith, including a previous "Order No. 4" from this office dated January 30, 1970. Nothing in this part is intended to amend 41 CFR 60-3 or 41 CFR 60-20.

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(Title 41, Chapter 60, Part 60-3, The Uniform Guidelines on Employee Selection Procedures (1978) are reprinted at 403:349.)

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**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 5**

**23U.S.C. 140 (a) –(d)**

**§ 140. Nondiscrimination**

(a) Prior to approving any programs for projects as provided for in subsection (a) of section 105 of this title, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. He shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary shall, where he considers it necessary to assure equal employment opportunity, require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. The Secretary shall periodically obtain from the Secretary of Labor and the respective State highway departments information which will enable him to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as he shall deem necessary to carry out the equal employment opportunity program required hereunder.

## LIBRARY REFERENCES

## Encyclopedias

Mode and plan of construction or improvement, see C.J.S. Highways § 180.

## § 140. Nondiscrimination

*[See main volume for text of (a)]*

(b) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer highway construction training, including skill improvement programs. Whenever apportionments are made under section 104(b) of this title, the Secretary shall deduct such sums as he may deem necessary, not to exceed \$2,500,000 for the transition quarter ending September 30, 1976, and not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be not be applicable to contracts and agreements made under the authority herein granted to the Secretary. Notwithstanding any other provision of law, not to exceed  $\frac{1}{2}$  of 1 percent of funds apportioned to a State for the surface transportation program under section 104(b) and the bridge program under section 144 may be available to carry out this subsection upon request of the State highway department to the Secretary.

(c) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or nonprofit), or any other organization or person, is authorized to develop, conduct, and administer training programs and assistance programs in connection with any program under this title in order that minority businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts. Whenever apportionments are made under subsection 104(a) of this title, the Secretary shall deduct such sums as he may deem necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements

made under the authority herein granted to the Secretary notwithstanding the provisions of section 302(e) of the Federal Property and Administrative Services Act of 1949 (41-U.S.C. 252(e)).

(d) **Indian employment and contracting.**—Consistent with section 708(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.

(As amended Pub.L. 102-240, Title I, § 1026, Dec. 18, 1991, 105 Stat. 1986; Pub.L. 102-388, Title IV, § 412, Oct. 6, 1992, 106 Stat. 1565.)

#### HISTORICAL AND STATUTORY NOTES

##### Revision Notes and Legislative Reports

1991 Act. House Report No. 102-171 (I & II) and House Conference Report No. 102-404, see 1991 U.S. Code Cong. and Adm. News, p. 1528.

##### Amendments

1992 Amendments. Subsec. (b). Pub.L. 102-388, § 412, increased the availability of funds to carry out highway construction training programs to  $\frac{1}{2}$  of 1 percent from  $\frac{1}{3}$  of 1 percent of the funds apportioned to a State for surface transportation and bridge programs.

1991 Amendments. Subsec. (b). Pub.L. 102-240, § 1026(a), added provisions making available not more than  $\frac{1}{2}$  of 1% of funds apportioned to State for surface transportation program under section 104(b) and bridge program under section 144 to carry out this subsec., upon request of State highway department to Secretary.

Pub.L. 102-240, § 1026(b), inserted provisions relating to Indian tribal government.

Subsec. (a). Pub.L. 102-240, § 1026(b), inserted provisions relating to Indian tribal government.

Subsec. (d). Pub.L. 102-240, § 1026(c), added provisions authorizing States to implement preference for employment of Indians on projects carried out under this title near reservations.

##### Effective Dates

1991 Act. Amendment by Pub.L. 102-240 effective on December 18, 1991, to be applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, except as otherwise provided, see section 1100(a), (b) of Pub.L. 102-240, set out as a note under section 104 of this title.

#### LIBRARY REFERENCES

##### Encyclopedias

Discrimination in federally assisted programs, see C.J.S. Civil Rights § 46 et seq.

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 6**

**State EEO Assurances**

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
WASHINGTON, D.C. 20591

OFFICE OF THE ADMINISTRATOR

August 30, 1968

**Subject: State Assurances with regard to the Equal Opportunity Program**

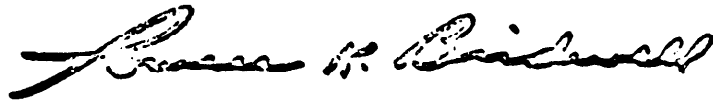
The Federal-Aid Highway Act of 1968 provides in section 22(a), that prior to approving any program for projects as provided for in subsection (a) of section 105, title 23, United States Code, the Secretary of Transportation shall require assurances from any State desiring to avail itself of the benefits of Chapter 1, title 23, United States Code, that employment in connection with all projects approved on or after August 23, 1968, will be provided without regard to race, color, creed or national origin. Pursuant to section 22(a), the enclosed interim assurances have been prepared for execution by the head of the State Highway Department.

Under the provisions of section 22(a), no projects as provided for in 23 U.S.C. 105(a) can be approved by the Federal Highway Administration until the enclosed assurance has been executed and returned to this office, through the Division Engineer, Bureau of Public Roads.

The State Equal Opportunity Program to be established pursuant to these assurances does not replace the on-going federal Equal Opportunity Program but will bring State resources to bear in the overall opportunity effort.

Your cooperation in this matter of mutual concern will be appreciated to the end that the Federal-Aid Highway Program in your State may proceed in accordance with the equal employment opportunity policy set forth in the Federal-Aid Highway Act of 1968.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lowell K. Bridwell".

Lowell K. Bridwell  
Federal Highway Administrator

Enclosure

INTERIM  
STATE ASSURANCE WITH REGARD TO EQUAL EMPLOYMENT  
OPPORTUNITY AS REQUIRED BY THE FEDERAL-AID HIGHWAY  
ACT OF 1968

Pursuant to the requirements of Section 22(a) of the Federal-Aid Highway Act of 1968, the State of \_\_\_\_\_ desiring to avail itself of the benefits of Chapter 1, Title 23, United States Code, and as a condition to obtaining the approval of the Secretary of Transportation of any programs for projects as provided for in Title 23, United States Code, Section 105(a), hereby gives its assurance that employment in connection with all proposed projects approved on or after August 23, 1968, will be provided without regard to race, color, creed or national origin.

More specifically, and without limiting the above general assurance, the State highway department hereby gives the following specific assurances:

1. The State highway department will establish an Equal Opportunity Program in furtherance of the above General Assurance, which shall include a system to ascertain whether contractors and subcontractors are complying with their equal employment opportunity contract obligations and the degree to which such compliance is producing substantial progress on the various project sites in terms of minority group employment. The State highway department will furnish such information and reports regarding contractor and subcontractor compliance as may be requested by the Federal Highway Administration.
2. The State highway department program shall include effective procedures to assure that discrimination in employment on the grounds of race, color, creed or national origin will not be permitted on any projects and if discrimination exists at the time this assurance is made it will be corrected promptly.
3. The State highway department has appointed, or will appoint, an Equal Opportunity Coordinator whose primary duty shall be to administer the State's Equal Employment Opportunity Program as established pursuant to these assurances.
4. The State highway department will, on its own initiative, take affirmative action, including the imposition of contract sanctions and the initiation of appropriate legal proceedings under any applicable State or Federal law to achieve equal employment opportunity on Federal-aid highway projects and will actively cooperate with the Federal Highway Administration in all investigations and enforcement actions undertaken by the Federal Highway Administration.



5. The State highway department will establish and maintain effective liaison with public and private agencies and organizations which are, or should be, involved in equal opportunity programs. Such agencies and organizations include, but are not limited to labor unions, contractor associations, minority group organizations, the U. S. and State Employment Services, the U. S. and State Department of Labor.

6. The State highway department hereby agrees that it will seek the cooperation of unions, contractors, appropriate State agencies and other related organizations in the establishment of skill training programs, and will assure that all persons will have an opportunity to participate in such programs without regard to race, creed, color or national origin.

7. The State highway department hereby agrees that its own employment policies and practices with regard to State highway department employees any part of whose compensation is reimbursed from Federal funds will be without regard to race, color, creed or national origin.

8. The State highway department shall include in the advertised specifications notification of the specific equal employment opportunity responsibilities of the successful bidder as those responsibilities are currently defined and required by the Federal Highway Administration. No requirement or obligation shall be imposed as a condition precedent to the award of a contract for a project unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications. Procedures for the prequalification of Federal-aid contractors and subcontractors to determine their capability to comply with their equal employment opportunity contract obligations will be issued as a supplement to this interim assurance for implementation by December 1, 1968.

9. The State highway department will obtain and furnish to the Federal Highway Administration such information and reports as may be requested to enable the Federal Highway Administration to determine compliance by the State highway department with this assurance.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 7**

**23 CFR 230, Subpart A**

**PART 230—EXTERNAL PROGRAMS**

**Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)**

- Sec.
- 230.101 Purpose.
- 230.103 Definitions.
- 230.105 Applicability.
- 230.107 Policy.
- 230.109 Implementation of specific Equal Employment Opportunity requirements.
- 230.111 Implementation of special requirements for the provision of on-the-job training.
- 230.113 Implementation of supportive services.
- 230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas.
- 230.117 Reimbursement procedures (Federal-aid highway construction projects only).
- 230.119 Monitoring of supportive services.
- 230.121 Reports.

**APPENDICES TO SUBPART A**

- APPENDIX A—SPECIAL PROVISIONS**
- APPENDIX B—TRAINING SPECIAL PROVISIONS**
- APPENDIX C—FEDERAL-AID HIGHWAY CONTRACTORS ANNUAL EEO REPORT (FORM PR-1391)**
- APPENDIX D—FEDERAL-AID HIGHWAY CONSTRUCTION SUMMARY OF EMPLOYMENT DATA (FORM PR-1392)**
- APPENDIX E—FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTOR'S SEMIANNUAL TRAINING REPORT (FORM FHWA-1409)**
- APPENDIX F—FEDERAL-AID HIGHWAY CONSTRUCTION SEMIANNUAL TRAINING REPORT (FORM FHWA-1410)**
- APPENDIX G—SPECIAL REPORTING REQUIREMENTS FOR "HOMETOWN" OR "IMPOSED" PLAN AREAS**

**Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises**

- 230.201 Purpose.
- 230.202 Definitions.
- 230.203 Policy.

- 230.204 Implementation of supportive services.
- 230.205 Supportive services funds obligation.
- 230.306 Monitoring supportive services.
- 230.307 Sources of assistance.

**Subpart C—State Highway Agency Equal Employment Opportunity Programs**

- 230.301 Purpose.
- 230.308 Applicability.
- 230.305 Definitions.
- 230.307 Policy.
- 230.309 Program format.
- 230.311 State responsibilities.
- 230.313 Approval procedure.

**APPENDIX A TO SUBPART C—STATE HIGHWAY AGENCY EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS**

**Subpart D—Construction Contract Equal Opportunity Compliance Procedures**

- 230.401 Purpose.
- 230.408 Applicability.
- 230.405 Administrative responsibilities.
- 230.407 Definitions.
- 230.409 Contract compliance review procedures.
- 230.411 Guidance for conducting reviews.
- 230.413 Review reports.
- 230.415 Consolidated compliance reviews.

**APPENDICES TO SUBPART D**

- APPENDIX A—SAMPLE SHOW CAUSE NOTICE
- APPENDIX B—SAMPLE CORRECTIVE ACTION PLAN
- APPENDIX C—SAMPLE SHOW CAUSE RESCIS-SION
- APPENDIX D—EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART

**AUTHORITY:** 23 U.S.C. 140 and 315; E.O. 11246; 49 CFR 1.48(b)24, unless otherwise noted.

**SOURCE:** 40 FR 28068, July 3, 1975, unless otherwise noted.

**Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)**

**§ 230.101 Purpose.**

The purpose of the regulations in this subpart is to prescribe the policies, procedures, and guides relative to the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts, except for those contracts awarded under 23 U.S.C. 117, and to the

preparation and submission of reports pursuant thereto.

**§ 230.103 Definitions.**

For purposes of this subpart—

*Administrator* means the Federal Highway Administrator.

*Areawide Plan* means an affirmative action plan to increase minority utilization of crafts in a specified geographical area pursuant to Executive Order 11246, and taking the form of either a "Hometown" or an "Imposed" plan.

*Bid conditions* means contract requirements which have been issued by OFCC for purposes of implementing a Hometown Plan.

*Division Administrator* means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

*Division Equal Opportunity Officer* means an individual with staff level responsibilities and necessary authority by which to operate as an Equal Opportunity Officer in a Division office. Normally the Equal Opportunity Officer will be a full-time civil rights specialist serving as staff assistant to the Division Administrator.

*Hometown Plan* means a voluntary areawide plan which was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

*Imposed Plan* means an affirmative action requirement for a specified geographical area made mandatory by OFCC and, in some areas, by the courts.

*Journeyman* means a person who is capable of performing all the duties within a given job classification or craft.

*State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be

considered equivalent to *State highway agency*.

*Suggested minimum annual training goals* means goals which have been assigned to each State highway agency annually for the purpose of specifying training positions on selected Federal-aid highway construction projects.

*Supportive services* means those services provided in connection with approved on-the-job training programs for highway construction workers and highway contractors which are designed to increase the overall effectiveness of training programs through the performance of functions determined to be necessary in connection with such programs, but which are not generally considered as comprising part of actual on-the-job craft training.

*Trainee* means a person who received on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

[40 FR 28063, July 3, 1975, as amended at 41 FR 3060, Jan. 21, 1976]

#### § 230.105 Applicability.

(a) *Federal-aid highway construction projects*. This subpart applies to all Federal-aid highway construction projects and to Appalachian highway construction projects and other State supervised cooperative highway construction projects except:

- (1) Federal-aided highway construction projects being constructed pursuant to 23 U.S.C. 117; and
- (2) Those projects located in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or a "Hometown" Plan, except for those requirements pertaining to specific provisions involving on-the-job training and those provisions pertaining to supportive services and reporting requirements.

(b) *Direct Federal highway construction projects*. This subpart applies to all direct Federal highway construction projects except:

- (1) For those provisions relating to the special requirements for the provision of supportive services; and
- (2) For those provisions relating to implementation of specific equal employment opportunity requirements in areas where the Office of Federal Con-

tract Compliance has implemented an "Imposed" or "Hometown" plan.

#### § 230.107 Policy.

(a) *Direct Federal and Federal-aid highway construction projects*. It is the policy of the FHWA to require that all direct Federal and Federal-aid highway construction contracts include the same specific equal employment opportunity requirements. It is also the policy to require that all direct Federal and Federal-aid highway construction subcontracts of \$10,000 or more (not including contracts for supplying materials) include these same requirements.

(b) *Federal-aid highway construction projects*. It is the policy of the FHWA to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry. Moreover, it is the policy of the Federal Highway Administration to encourage the provision of supportive services which will increase the effectiveness of approved on-the-job training programs conducted in connection with Federal-aid highway construction projects.

#### § 230.109 Implementation of specific Equal Employment Opportunity requirements.

(a) *Federal-aid highway construction projects*. The special provisions set forth in appendix A shall be included in the advertised bidding proposal and made part of the contract for each contract and each covered Federal-aid highway construction subcontract.

(b) *Direct Federal highway construction projects*. Advertising, award and contract administration procedures for direct Federal highway construction contracts shall be as set forth in Federal Acquisition Regulations (48 CFR, chapter 1, section 22.803(c)). In order to obtain information required by 48 CFR, chapter 1, § 22.804-2(c), the following requirement shall be included at the end of the bid schedule in the proposal and contract assembly:

I expect to employ the following firms as subcontractors on this project: (Naming subcontractors at this time does not constitute a binding commitment on the bidder to re-

tain such subcontractors, nor will failure to enter names affect the contract award):

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_

[40 FR 28063, July 3, 1975, as amended at 51 FR 22300, June 23, 1986]

**§ 230.111 Implementation of special requirements for the provision of on-the-job training.**

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (appendix B) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in § 230.111(c). The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual; and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered

to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

- (1) Availability of minorities, women, and disadvantaged for training.
- (2) The potential for effective training.
- (3) Duration of the contract.
- (4) Dollar value of the contract.
- (5) Total normal work force that the average bidder could be expected to use.
- (6) Geographic location.
- (7) Type of work.
- (8) The need for additional journeymen in the area.
- (9) Recognition of the suggested minimum goal for the State.

(10) A satisfactory ratio of trainees to journeymen expected to be on the contractor's work force during normal operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in appendix B with regard to:

- (1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.
- (2) The development of full journeymen.
- (3) The minimum length and type of training.
- (4) The minimum wages of trainees.
- (5) Trainees certifications.
- (6) Keeping records and furnishing reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of title 23 U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

(2) Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.

(ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.

(iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

(g) The State highway agencies have the option of permitting Federal-aid highway construction contractors to bid on training to be given under this directive. The following procedures are to be utilized by those State highway agencies that elect to provide a bid item for training:

(1) The number of training positions shall continue to be specified in the Special Training Provisions. Furthermore, this number should be converted into an estimated number of hours of training which is to be used in arriving at the total bid price for the training item. Increases and decreases from the estimated amounts would be handled as overruns or underruns;

(2) A section concerning the method of payment should be included in the Special Training Provisions. Some off-site training is permissible as long as the training is an integral part of an

approved training program and does not comprise a substantial part of the overall training. Furthermore, the trainee must be concurrently employed on a federally aided highway construction project subject to the Special Training Provisions attached to this directive. Reimbursement for offsite training may only be made to the contractor where he does one or more of the following: Contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period;

(3) A State highway agency may modify the special provisions to specify the numbers to be trained in specific job classifications;

(4) A State highway agency can specify training standards provided any prospective bidder can use them, the training standards are made known in the advertised specifications, and such standards are found acceptable by FHWA.

[40 FR 29069, July 3, 1975; 40 FR 57368, Dec. 9, 1975, as amended at 41 FR 3060, Jan. 21, 1976]

#### § 230.113 Implementation of supportive services.

(a) The State highway agency shall establish procedures, subject to the availability of funds under 23 U.S.C. 140(b), for the provision of supportive services in support of training programs approved under this directive. Funds made available to implement this paragraph shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section.

(b) In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs, State highway agencies shall give preference to the following types of services in the order listed:

(1) Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women;

(2) Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and women's groups;

(3) Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training;

(4) Services in connection with providing a continuation of training during periods of seasonal shutdown;

(5) Followup services to ascertain outcome of training being provided.

(c) State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices shall be submitted to the Administrator for appropriate action.

(d) When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.

(e) In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or women organizations, or minority or women business enterprises.

(f) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for mi-

norities, women, and the disadvantaged on Federal-aid highway projects;

(2) A clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors, and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tools, special equipment and transportation, follow-up procedures, etc.;

(3) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-1273, and a statement of nondiscrimination in employment because of race, color, religion, national origin or sex;

(4) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(5) Reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems;

(6) A requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to conduct a 6 month followup review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to contractor and subcontractor records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract;

(12) A termination clause.

(g) The State highway agency is to furnish copies of the reports received



under paragraph (b)(5) of this section, to the division office.

[40 FR 29063, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

**§ 230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas.**

Direct Federal and Federal-aid contracts to be performed in "Hometown" or "Imposed" Plan areas will incorporate the special provision set forth in appendix G.

**§ 230.117 Reimbursement procedures (Federal-aid highway construction projects only).**

(a) *On-the-job special training provisions.* State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.

(b) *Supportive services.* (1) The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.

(2) Where a State highway agency does not obligate all its funds within the time specified in the particular year's allocation directive, the funds shall revert to the FHWA Headquarters Office to be made available for use by other State highway agencies, taking into consideration each State's need for and ability to use such funds.

**§ 230.119 Monitoring of supportive services.**

Supportive services procured by a State highway agency shall be monitored by both the State highway agency and the division office.

**§ 230.121 Reports.**

(a) Employment reports on Federal-aid highway construction contracts not subject to "Hometown" or "Imposed" plan requirements.

(1) Paragraph 10c of the special provisions (appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (appendix C) and FHWA Form PR

1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, 19—, (appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to "Hometown" or "Imposed" plan requirements. Forms PR 1391 (appendix C) and PR 1392 (appendix D) shall be used for reporting purposes as prescribed in § 230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to "Hometown" or "Imposed" plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where "Hometown" or "Imposed" plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works' request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts

exceeding \$10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) On-the-job training reports for Federal-aid highway construction projects pursuant to the training special provision (appendix B).

(1) State highway agencies are to require contractors subject to the training special provision to maintain records of training on each trainee. In addition, the contractor is to complete a semi-annual report (see appendix E, Form FHWA 1409, Federal-Aid Highway Construction Contractor's Semi-annual Training Report) for each trainee receiving training under the special provision. The contractor is to submit reports for any training under the training special provision which is provided by any of his subcontractors. The contractor is to submit the semi-annual reports by the 20th of each July and January. The original of the report will be furnished to the trainee and two copies forwarded to the State highway department. The State highway agency is to review the report for accuracy and completeness and transmit one copy of it to the FHWA division office.

(2) The State highway agencies are to complete a semi-annual report (see appendix F, Form FHWA 1410, Federal-Aid Highway Construction Semi-annual Training Report) summarizing the individual training reports (Form FHWA 1409) submitted by the contractors. Three copies of the completed report are to be transmitted to the FHWA division office by the 30th of the month following the end of the reporting period.

(e) Reports on supportive services contracts. The State highway agency is to furnish copies of the reports received from supportive services contractors to the FHWA division office which will furnish a copy to the regional office.

[40 FR 28068, July 3, 1975, as amended at 43 FR 19386, May 5, 1978]

## APPENDICES TO SUBPART A

### APPENDIX A OF SUBPART A OF PART 230—SPECIAL PROVISIONS

#### SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

1. *General.* a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract, Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which 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. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, chapter 4, section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

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, or national origin. 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, preapprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.* a. 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 equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity 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:

(1) 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 equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to im-

plement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. *Recruitment.* a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. 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 minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. *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, or national origin. The following procedures shall be followed:

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

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

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.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his 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 his avenues of appeal.

7. *Training and Promotion.* a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

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

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

8. *Unions.* If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group em-

ployees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

9. *Subcontracting.* a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.* a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and nonminority group members and women employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force),

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway 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 PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

(40 FR 28063, July 3, 1975, as amended at 43 FR 19398, May 3, 1978. Correctly redesignated at 46 FR 21158, Apr. 9, 1981)

#### APPENDIX B OF SUBPART A OF PART 230—TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be \_\_\_\_\_ (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability

of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training

shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the

contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

[40 FR 28063, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

APPENDIX C OF SUBPART A OF PART 230

**FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT**

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

FORM AND INSTRUCTIONS  
REPORT FOR  
JULY 19 19

1. CHECK APPROPRIATE BLOCK <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> SUBCONTRACTOR	2. NAME AND ADDRESS OF FIRM	3. FEDERAL AID PROJECT NUMBER	4. TYPE OF CONSTRUCTION
5. COUNTY AND STATE	6. PERCENT COMPLETE	7. BEGINNING CONSTR DATE	8. DOLLAR AMOUNT OF CONTRACT
		9. ESTIMATED PEAK EMPLOYMENT MONTH AND YEAR NUMBER OF EMPLOYEES ON	

JOB CATEGORIES	10. EMPLOYMENT DATA										11. APPRENTICES AND TRAINEES			
	Table A					Table B					Table C		Table D	
	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK	HISPANIC	AMERICAN INDIAN OR ALASKA NATIVE	ASIAN OR PACIFIC ISLANDER	WHITE	ON THE JOB		TRAINEES		
M	F	M	F	M	F	M	F	M	F	M	F	M	F	
OFFICIALS (Management)														
SUPERVISORS														
FOREMEN/WOMEN														
CLERICAL														
EQUIPMENT OPERATORS														
Mechanics														
TRUCK DRIVERS														
IRONWORKERS														
CARPENTERS														
CEMENT MASONS														
ELECTRICIANS														
PIPEFITTERS, PLUMBERS														
PAINTERS														
LABORERS, SEMI SKILLED														
LABORERS, UNSKILLED														
TOTAL														

11. PREPARED BY: (Signature and Title of Construction Representative)	DATE
12. REVIEWED BY: (Signature and Title of State Highway Official)	DATE

This report is required by Federal regulations (23 U.S.C. 144 and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation.

PREVIOUS EDITIONS ARE OBSOLETE

Form FH-1281

APPENDIX D OF SUBPART A OF PART 230

JOB CATEGORIES		TOTAL EMPLOYERS		TOTAL MINORITIES		BLACK Pop of Hispanic Origin		HISPANIC Pop of Hispanic Origin		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN PACIFIC OR ISLANDER		WHITE Pop of Hispanic Origin		APPREN TICES		ON THE JOB TRAINERS	
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
<p>NOTE: See Instructions on REVERSE</p> <p>STATE REGION (M-F)</p> <p>NUMBER OF PROJECTS (M-F)</p> <p>TOTAL DOLLAR VALUE (M-F)</p>																			
<p>EMPLOYMENT DATA</p> <p>Table A</p>																			
<p>08 OFFICIALS (MANAGERS)</p> <p>09 SUPERVISORS</p> <p>10 FOREMEN/WOMEN</p> <p>11 CLERICAL</p> <p>12 EQUIPMENT OPERATORS</p> <p>13 MECHANICS</p> <p>14 TRUCK DRIVERS</p> <p>15 IRONWORKERS</p> <p>16 CARPENTERS</p> <p>17 CEMENT MASONRY</p> <p>18 ELECTRICIANS</p> <p>19 PIPEFITTERS, PLUMBERS</p> <p>20 PAINTERS</p> <p>21 LABORERS, SEMI-SKILLED</p> <p>22 LABORERS, UNSKILLED</p> <p>23 TOTAL</p>																			
<p>Table B</p>																			
<p>24 APPRENTICES</p> <p>25 ON THE JOB TRAINERS</p> <p>PROGRAMS BY (M-F)</p>																			
DATE										DATE									
REVIEWED BY (Signature & Title of State Hwy. Official)										DATE									
<p>This report is required by law and regulation (23 U.S.C. 1 required 23 CFR Part 2.30). Failure to report will result in noncompliance with this regulation.</p>																			

Form 945.1 (Rev. 3/78)

PREVIOUS EDITIONS ARE OBSOLETE



## GENERAL INFORMATION AND INSTRUCTIONS

This form is to be developed from the "Contractor's Annual EEO Report." This data is to be compiled by the State and submitted annually. It should reflect the total employment on all Federal-Aid Highway Projects in the State as of July 31st. The staffing figures to be reported should represent the project work force on board in all or any part of the last payroll period preceding the end of July. The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on-the-job trainees. Staffing figures to be reported in Table B should include only apprentices and on-the-job trainees as indicated.

Entries made for "Job Categories" are to be confined to the listing shown. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on projects should thus be accounted for.

This information will be useful in complying with the U.S. Senate Committee on Public Works request that the Federal Highway Administration submit a report annually on the status of the Equal Employment Opportunity Program, its effectiveness, and progress made by the States and the Administration in carrying out section 22(A) of the Federal-Aid Highway Act of 1968. In addition, the form should be used as a valuable tool for States to evaluate their own programs for ensuring equal opportunity.

It is requested that States submit this information annually to the FHWA Divisions no later than September 25.

Line 01—State & Region Code. Enter the 4-digit code from the list below.

Alabama .....	01-04	Montana .....	30-08
Alaska .....	02-10	Nebraska .....	31-07
Arizona .....	04-08	Nevada .....	32-08
Arkansas .....	05-08	New Hampshire .....	33-01
California .....	06-09	New Jersey .....	34-01
Colorado .....	08-08	New Mexico .....	35-08
Delaware .....	10-03	North Carolina .....	37-04
District of Columbia .....	11-03	North Dakota .....	38-08
Florida .....	12-04	Ohio .....	39-08
Georgia .....	13-04	Oklahoma .....	40-08
Hawaii .....	15-09	Oregon .....	41-10
Idaho .....	16-10	Pennsylvania .....	42-03
Illinois .....	17-05	Puerto Rico .....	43-01
Iowa .....	19-07	South Carolina .....	46-04
Kansas .....	20-07	South Dakota .....	46-08
Kentucky .....	21-04	Tennessee .....	47-04
Louisiana .....	22-08	Texas .....	48-08
Maine .....	23-01	Utah .....	48-08
Maryland .....	24-03	Vermont .....	50-01
Massachusetts .....	25-01	Virginia .....	51-03
Michigan .....	26-05	Washington .....	53-10
Minnesota .....	27-05	West Virginia .....	54-03
Mississippi .....	28-04	Wisconsin .....	55-05
Missouri .....	29-07	Wyoming .....	56-08

(23 U.S.C. sec. 140(a), 315, 49 CFR 1.48(b))

(44 FR 46832, Aug. 8, 1979. Correctly redesignated at 46 FR 21156, Apr. 9, 1981, and amended at 56 FR 4721, Feb. 6, 1991)

APPENDIX E OF SUBPART A OF PART 230

FORM APPROVED  
OMB NO. 04-R2434

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION  FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTOR'S SEMIANNUAL TRAINING REPORT					REPORTS CONTROL SYMBOL HHO-30-16 FEDERAL-AID PROJECT NO.				
INSTRUCTIONS: This report is to be completed by the contractor semiannually for each individual employed on this contract (including any subcontracts under it who has received training during the reporting period under the training special provision (attachment 2 FHWA 6-4-1.2)). The report is to be submitted by the 20th of the month following the reporting period, (July 20, and January 20). The original of this report is to be furnished to the trainee and two copies submitted to the State Highway Department.									
1. NAME OF CONTRACTOR					1A. ADDRESS				
2. NAME OF TRAINEE				2A. SEX <input type="checkbox"/> M <input type="checkbox"/> F		2B. ADDRESS			
3. AGE OF TRAINEE		4. SOCIAL SECURITY NUMBER			5. EMPLOYEE STATUS (CHECK ONE) <input type="checkbox"/> NEW HIRE <input type="checkbox"/> UP-GRADE				
6. ETHNIC GROUP DESIGNATION (CHECK ONE) <input type="checkbox"/> NEGRO <input type="checkbox"/> ORIENTAL <input type="checkbox"/> AMERICAN INDIAN <input type="checkbox"/> SPANISH AMERICAN <input type="checkbox"/> OTHER									
7. SUMMARY OF PREVIOUS TRAINING. (ENTER AMOUNT AND TYPE OF TRAINING RECEIVED BY TRAINEE ON OTHER CONTRACTS UNDER APPROVED TRAINING PROGRAMS)									
8. JOB CLASSIFICATION OF TRAINEE				9. DATE TRAINING STARTED ON THIS CONTRACT			10. TYPE OF ON THE JOB TRAINING (CHECK ONE) <input type="checkbox"/> APPRENTICESHIP <input type="checkbox"/> OTHER		
REPORTING PERIODS									
INSTRUCTIONS: One vertical column is to be completed for each succeeding reporting period and the form submitted. Enter June 30, Dec. 30, as applicable in columns A thru H below.									
	HOURS OF TRAINING DATA	A	B	C	D	E	F	G	H
11.	PROVIDED DURING REPORT PERIOD	19__	19__	19__	19__	19__	19__	19__	19__
	PROVIDED TO DATE								
13.	REMAINING TO COMPLETE THE APPROVED PROGRAM								
14. TERMINATION (IF TRAINING WAS TERMINATED PRIOR TO COMPLETION OF APPROVED PROGRAM EXPLAIN REASON FOR TERMINATION)									
15. REPORT PREPARED BY (SIGNATURE AND TITLE OF CONTRACTOR'S REPRESENTATIVE)								16. DATE	
16. REPORT REVIEWED BY (SIGNATURE AND TITLE OF STATE HIGHWAY OFFICIAL)								17. DATE	

Form FHWA-140B  
(Rev. 1-78)

PREVIOUS EDITIONS ARE OBSOLETE

[43 FR 19988, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

APPENDIX F OF SUBPART A OF PART 230

FORM APPROVED  
1485-107-01 08-81-16

**FEDERAL - AID HIGHWAY CONSTRUCTION SEMIANNUAL TRAINING REPORT**

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

REPORTS (UNITED STATES) HHS 30-16

STATE: \_\_\_\_\_ PERIOD ENDING: \_\_\_\_\_

NOTE: TO BE COMPLETED BY STATE HIGHWAY DEPARTMENT (SEE INSTRUCTIONS ON REVERSE SIDE)

LINE NO.	TRAINING CLASSIFICATION	NUMBER RECEIVING TRAINING DURING REPORT PERIOD												NUMBER STARTING TRAINING DURING REPORT PERIOD												NUMBER COMPLETING TRAINING DURING REPORT PERIOD												TOTAL HOURS OF TRAINING DURING REPORT PERIOD
		A				B				C				D				E				F				G												
		TOTAL	N	O	R	TOTAL	N	O	R	TOTAL	N	O	R	TOTAL	N	O	R	TOTAL	N	O	R	TOTAL	N	O	R	TOTAL												
03	EQUIPMENT OPERATORS																																					
04	MECHANICS																																					
05	TRUCK DRIVERS																																					
06	IRON WORKERS																																					
07	CARPENTERS																																					
08	CEMENT MASONS																																					
09	ELECTRICIANS																																					
10	PRESIDENTS PLUMBERS																																					
11	PAINTERS																																					
12	OTHER SKILLS																																					
13	TOTAL																																					
14	NUMBER OF FEMALES RECEIVING TRAINING	14-1												14-2												14-3												14-4
NUMBER OF MEN-HOURS RECEIVING TRAINING		15-1												15-2												15-3												15-4
NUMBER OF UP-GRADES RECEIVING TRAINING		16-1												16-2												16-3												16-4
COMMENTS																																						
REPORT PREPARED BY (SIGNATURE) AND TITLE OF STATE OFFICIAL																																						
DATE																																						

FORM FHW-1418 (Rev. 1-78)

PREVIOUS EDITIONS ARE OBSOLETE

Page 1

[43 FR 19898, May 8, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

**APPENDIX G—SPECIAL REPORTING RE-  
QUIREMENTS FOR "HOMETOWN" OR  
"IMPOSED" PLAN AREAS**

In addition to the reporting requirements set forth elsewhere in this contract the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form FR-1301 (appendix C to 23 CFR part 230) and in accordance with the instructions included thereon.

[40 FR 28063, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 8**

**23 CFR 230, Subpart C**

policy and FHWA and State responsibilities relative to a State highway agency's internal equal employment opportunity program and for assuring compliance with the equal employment opportunity requirements of federally-assisted highway construction contracts.

**§ 230.303 Applicability.**

The provisions of this subpart are applicable to all States that receive Federal financial assistance in connection with the Federal-aid highway program.

**§ 230.305 Definitions.**

As used in this subpart, the following definitions apply:

(a) *Affirmative Action Plan* means:

(1) With regard to State highway agency work forces, a written document detailing the positive action steps the State highway agency will take to assure internal equal employment opportunity (internal plan).

(2) With regard to Federal-aid construction contract work forces, the Federal equal employment opportunity bid conditions, to be enforced by a State highway agency in the plan areas established by the Secretary of Labor and FHWA special provisions in nonplan areas (external plan).

(b) *Equal employment opportunity program* means the total State highway agency program, including the affirmative action plans, for ensuring compliance with Federal requirements both in State highway agency internal employment and in employment on Federal-aid construction projects.

(c) *Minority groups.* An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging. As defined by U.S. Federal agencies for employment purposes, minority group persons in the U.S. are identified as Blacks (not of Hispanic origin), Hispanics, Asian or Pacific Islanders, and American Indians or Alaskan Natives.

(d) *Racial/ethnic identification.* For the purpose of this regulation and any accompanying report requirements, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no

**Subpart C—State Highway Agency Equal Employment Opportunity Programs**

**AUTHORITY:** 23 U.S.C. 140(a), 315; E.O. 11246; 41 CFR 60-1; 49 CFR 1.48.

**SOURCE:** 41 FR 28270, July 9, 1976, unless otherwise noted.

**§ 230.301 Purpose.**

The purpose of the regulations in this subpart is to set forth Federal Highway Administration (FHWA) Federal-aid

person should be counted in more than one racial/ethnic category. The following group categories will be used:

(1) The category *White (not of Hispanic origin)*: All persons having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian Subcontinent.

(2) The category *Black (not of Hispanic origin)*: All persons having origins in any of the Black racial groups.

(3) The category *Hispanic*: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(4) The category *Asian or Pacific Islanders*: All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(5) The category *American Indian or Alaskan Native*: All persons having origins in any of the original peoples of North America.

(e) *State* means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(f) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency* if the context so implies.

[41 FR 28270, July 9, 1976, as amended at 41 FR 46293, Oct. 20, 1976]

#### § 230.307 Policy.

Every employee and representative of State highway agencies shall perform all official equal employment opportunity actions in an affirmative manner, and in full accord with applicable statutes, executive orders, regulations, and policies enunciated thereunder, to assure the equality of employment opportunity, without regard to race, color, religion, sex, or national origin both in its own work force and in the work forces of contractors, subcontractors, and material suppliers engaged in

the performance of Federal-aid highway construction contracts.

#### § 230.309 Program format.

It is essential that a standardized Federal approach be taken in assisting the States in development and implementation of EEO programs. The format set forth in appendix A provides that standardized approach. State equal employment opportunity programs that meet or exceed the prescribed standards will comply with basic FHWA requirements.

#### § 230.311 State responsibilities.

(a) Each State highway agency shall prepare and submit an updated equal employment opportunity program, one year from the date of approval of the preceding program by the Federal Highway Administrator, over the signature of the head of the State highway agency, to the Federal Highway Administrator through the FHWA Division Administrator. The program shall consist of the following elements:

(1) The collection and analysis of internal employment data for its entire work force in the manner prescribed in part II, paragraph III of appendix A; and

(2) The equal employment opportunity program, including the internal affirmative action plan, in the format and manner set forth in appendix A.

(b) In preparation of the program required by § 230.311(a), the State highway agency shall consider and respond to written comments from FHWA regarding the preceding program.

#### § 230.313 Approval procedure.

After reviewing the State highway agency equal employment opportunity program and the summary analysis and recommendations from the FHWA regional office, the Washington Headquarters Office of Civil Rights staff will recommend approval or disapproval of the program to the Federal Highway Administrator. The State highway agency will be advised of the Administrator's decision. Each program approval is effective for a period of one year from date of approval.

APPENDIX A TO SUBPART C—STATE  
HIGHWAY AGENCY EQUAL EMPLOYMENT  
OPPORTUNITY PROGRAMS

Each State highway agency's (SHA) equal employment opportunity (EEO) program shall be in the format set forth herein and shall address Contractor Compliance (part I) and SHA Internal Employment (part II), including the organizational structure of the SHA total EEO Program (internal and external).

PART I—CONTRACTOR COMPLIANCE

I. *Organization and structure.* A. *Statehighway agency EEO Coordinator (External) and staff support.* 1. Describe the organizational location and responsibilities of the State highway agency EEO Coordinator. (Provided organization charts of the State highway agency and of the EEO staff.)

2. Indicate whether full or part-time; if part-time, indicate percentage of time devoted to EEO.

3. Indicate length of time in position, civil rights experience and training, and supervision.

4. Indicate whether compliance program is centralized or decentralized.

5. Identify EEO Coordinator's staff support (full- and part-time) by job title and indicate areas of their responsibilities.

6. Identify any other individuals in the central office having a responsibility for the implementation of this program and describe their respective roles and training received in program area.

B. *District or division personnel.* 1. Describe the responsibilities and duties of any district EEO personnel. Identify to whom they report.

2. Explain whether district EEO personnel are full-time or have other responsibilities such as labor compliance or engineering.

3. Describe training provided for personnel having EEO compliance responsibility.

C. *Project personnel.* Describe the EEO role of project personnel.

II. *Compliance procedures.* A. *Applicable directives.* 1. FHWA Contract Compliance Procedures.

2. EEO Special Provisions (FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 2, Attachment 1)<sup>1</sup>

3. Training Special Provisions (FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 2, Attachment 2)<sup>1</sup>

4. FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 6 (Con-

<sup>1</sup>The Federal-Aid Highway Program Manual is available for inspection and copying at the Federal Highway Administration (FHWA), 400 7th St., SW., Washington, DC 20590, or at FHWA offices listed in 49 CFR part 7, appendix D.

tract Procedures), and subsec. 8 (Minority Business Enterprise).<sup>1</sup>

B. *Implementation.* 1. Describe process (methods) of incorporating the above FHWA directives into the SHA compliance program.

2. Describe the methods used by the State to familiarize State compliance personnel with all FHWA contract compliance directives. Indicate frequency of work shops, training sessions, etc.

3. Describe the procedure for advising the contractor of the EEO contract requirements at any preconstruction conference held in connection with a Federal-aid contract.

III. *Accomplishments.* Describe accomplishments in the construction EEO compliance program during the past fiscal year.

A. *Regular project compliance review program.* This number should include at least all of the following items:

1. Number of compliance reviews conducted.

2. Number of contractors reviewed.

3. Number of contractors found in compliance.

4. Number of contractors found in non-compliance.

5. Number of show cause notices issued.

6. Number of show cause notices rescinded.

7. Number of show cause actions still under conciliation and unresolved.

8. Number of followup reviews conducted.

(NOTE: In addition to information requested in items 4-8 above, include a brief summary of total show cause and followup activities—findings and achievements.)

B. *Consolidated compliance reviews.* 1. Identify the target areas that have been reviewed since the inception of the consolidated compliance program. Briefly summarize total findings.

2. Identify any significant impact or effect of this program on contractor compliance.

C. *Home office reviews.* If the State conducts home office reviews, describe briefly the procedures followed by State.

D. *Major problems encountered.* Describe major problems encountered in connection with any review activities during the past fiscal year.

E. *Major breakthroughs.* Comment briefly on any major breakthrough or other accomplishment significant to the compliance review program.

IV. *Areawide plans/Hometown and Imposed (if applicable).* A. Provide overall analysis of the effectiveness of each areawide plan in the State.

B. Indicate by job titles the number of State personnel involved in the collection, consolidation, preparation, copying, reviewing, analysis, and transmittal of area plan reports (Contracting Activity and Post Contract Implementation). Estimate the amount of time (number of hours) spent collectively on this activity each month. How does the State use the plan report data?



C. Identify Office of Federal Contract Compliance Programs (OFCCP) area plan audits or compliance checks in which State personnel participated during the last fiscal year. On the average, how many hours have been spent on these audits and/or checks during the past fiscal year?

D. Describe the working relationship of State EEO compliance personnel with representatives of plan administrative committee(s).

E. Provide recommendations for improving the areawide plan program and the reporting system.

V. *Contract sanctions.* A. Describe the procedures used by the State to impose contract sanctions or institute legal proceedings.

B. Indicate the State or Federal laws which are applicable.

C. Does the State withhold a contractor's progress payments for failure to comply with EEO requirements? If so, identify contractors involved in such actions during the past fiscal year. If not, identify other actions taken.

VI. *Complaints.* A. Describe the State's procedures for handling discrimination complaints against contractors.

B. If complaints are referred to a State fair employment agency or similar agency, describe the referral procedure.

C. Identify the Federal-aid highway contractors that have had discrimination complaints filed against them during the past fiscal year and provide current status.

VII. *External training programs, including supportive services.* A. Describe the State's process for reviewing the work classifications of trainees to determine that there is a proper and reasonable distribution among appropriate craft.

B. Describe the State's procedures for identifying the number of minorities and women who have completed training programs.

C. Describe the extent of participation by women in construction training programs.

D. Describe the efforts made by the State to locate and use the services of qualified minority and female supportive service consultants. Indicate if the State's supportive service contractor is a minority or female owned enterprise.

E. Describe the extent to which reports from the supportive service contractors provide sufficient data to evaluate the status of training programs, with particular reference to minorities and women.

VIII. *Minority business enterprise program.* FHPM 6-4-1-8 sets forth the FHWA policy regarding the minority business enterprise program. The implementation of this program should be explained by responding to the following:

A. Describe the method used for listing of minority contractors capable of, or interested in, highway construction contracting or subcontracting. Describe the process used

to circulate names of appropriate minority firms and associations to contractors obtaining contract proposals.

B. Describe the State's procedure for insuring that contractors take action to affirmatively solicit the interest, capability, and prices of potential minority subcontractors.

C. Describe the State's procedure for insuring that contractors have designated liaison officers to administer the minority business enterprise program in an effective manner. Specify resource material, including contracts, which the State provides to liaison officers.

D. Describe the action the State has taken to meet its goals for prequalification or licensing of minority business. Include dollar goals established for the year, and describe what criteria or formula the State has adopted for setting such goals. If it is different from the previous year, describe in detail.

E. Outline the State's procedure for evaluating its prequalification/licensing requirements.

F. Identify instances where the State has waived prequalification for subcontractors on Federal-aid construction work or for prime contractors on Federal-aid contracts with an estimated dollar value lower than \$100,000.

G. Describe the State's methods of monitoring the progress and results of its minority business enterprise efforts.

IX. *Liaison.* Describe the liaison established by the State between public (State, county, and municipal) agencies and private organizations involved in EEO programs. How is the liaison maintained on a continuing basis?

X. *Innovative programs.* Identify any innovative EEO programs or management procedures initiated by the State and not previously covered.

#### PART II—STATE HIGHWAY AGENCY EMPLOYMENT

I. *General.* The State highway agency's (SHA) internal program is an integral part of the agency's total activities. It should include the involvement, commitment and support of executives, managers, supervisors and all other employees. For effective administration and implementation of the EEO Program, an affirmative action plan (AAP) is required. The scope of an EEO program and an AAP must be comprehensive, covering all elements of the agency's personnel management policies and practices. The major part of an AAP must be recognition and removal of any barriers to equal employment opportunity, identification of problem areas and of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis. An effective AAP not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which often has

overlooked, screened out or underutilized the great reservoir of untapped human resources and skills, especially among women and minority groups.

Set forth are general guidelines designed to assist the State highway agencies in implementing internal programs, including the development and implementation of AAP's to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin in all employment practices.

**II. Administration and implementation.** The head of each State highway agency is responsible for the overall administration of the internal EEO program, including the total integration of equal opportunity into all facets of personnel management. However, specific program responsibilities should be assigned for carrying out the program at all management levels.

To ensure effectiveness in the implementation of the internal EEO program, a specific and realistic AAP should be developed. It should include both short and long-range objectives, with priorities and target dates for achieving goals and measuring progress, according to the agency's individual need to overcome existing problems.

**A. State Highway Agency Affirmative Action Officer (internal).** 1. *Appointment of Affirmative Action Officer.* The head of the SHA should appoint a qualified Affirmative Action (AA) Officer (Internal EEO Officer) with responsibility and authority to implement the internal EEO program. In making the selection, the following factors should be considered:

a. The person appointed should have proven ability to accomplish major program goals.

b. Managing the internal EEO program requires a major time commitment; it cannot be added on to an existing full-time job.

c. Appointing qualified minority and/or female employees to head or staff the program may offer good role models for present and potential employees and add credibility to the programs involved. However, the most essential requirements for such position(s) are sensitivity to varied ways in which discrimination limits job opportunities, commitment to program goals and sufficient status and ability to work with others in the agency to achieve them.

2. *Responsibilities of the Affirmative Action Officer.* The responsibilities of the AA Officer should include, but not necessarily be limited to:

a. Developing the written AAP.

b. Publicizing its content internally and externally.

c. Assisting managers and supervisors in collecting and analyzing employment data, identifying problem areas, setting goals and timetables and developing programs to achieve goals. Programs should include spe-

cific remedies to eliminate any discriminatory practices discovered in the employment system.

d. Handling and processing formal discrimination complaints.

e. Designing, implementing and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed.

f. Reporting, at least quarterly, to the head of the SHA on progress and deficiencies of each unit in relation to agency goals.

g. In addition, consider the creation of:

(1) An EEO Advisory Committee, whose membership would include top management officials,

(2) An EEO Employee Committee, whose membership would include rank and file employees, with minority and female representatives from various job levels and departments to meet regularly with the AA officer, and

(3) An EEO Counseling Program to attempt informal resolution of discrimination complaints.

**B. Contents of an affirmative action plan.** The Affirmative Action Plan (AAP) is an integral part of the SHA's EEO program. Although the style and format of AAP's may vary from one SHA to another, the basic substance will generally be the same. The essence of the AAP should include, but not necessarily be limited to:

1. Inclusion of a strong agency policy statement of commitment to EEO.

2. Assignment of responsibility and authority for program to a qualified individual.

3. A survey of the labor market area in terms of population makeup, skills, and availability for employment.

4. Analyzing the present work force to identify jobs, departments and units where minorities and females are underutilized.

5. Setting specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization.

6. Making every manager and supervisor responsible and accountable for meeting these goals.

7. Reevaluating job descriptions and hiring criteria to assure that they reflect actual job needs.

8. Finding minorities and females who are qualified or qualifiable to fill jobs.

9. Getting minorities and females into upward mobility and relevant training programs where they have not had previous access.

10. Developing systems to monitor and measure progress regularly. If results are not satisfactory to meet goals, determine the reasons and make necessary changes.

11. Developing a procedure whereby employees and applicants may process allegations of discrimination to an impartial body without fear of reprisal.

C. *Implementation of an affirmative action plan.* The written AAP is the framework and management tool to be used at all organizational levels to actively implement, measure and evaluate program progress on the specific action items which represent EEO program problems or deficiencies. The presence of a written plan alone does not constitute an EEO program, nor is it, in itself, evidence of an ongoing program. As a minimum, the following specific actions should be taken.

1. *Issue written equal employment opportunity policy statement and affirmative action commitment.* To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy. The head of the SHA (1) should issue a firm statement of personal commitment, legal obligation and the importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager and supervisor.

The statement should include, but not necessarily be limited to, the following elements:

- a. EEO for all persons, regardless of race, color, religion, sex or national origin as a fundamental agency policy.
- b. Personal commitment to and support of EEO by the head of the SHA.
- c. The requirement that special affirmative action be taken throughout the agency to overcome the effects of past discrimination.
- d. The requirement that the EEO program be a goal setting program with measurement and evaluation factors similar to other major agency programs.
- e. Equal opportunity in all employment practices, including (but not limited to) recruiting, hiring, transfers, promotions, training, compensation, benefits, recognition (awards), layoffs, and other terminations.
- f. Responsibility for positive affirmative action in the discharge of EEO programs, including performance evaluations of managers and supervisors in such functions, will be expected of and shared by all management personnel.
- g. Accountability for action or inaction in the area of EEO by management personnel.

2. *Publicize the affirmative action plan.* e. *Internally:* (1) Distribute written communications from the head of the SHA.

(2) Include the AAP and the EEO policy statement in agency operations manual.

(3) Hold individual meetings with managers and supervisors to discuss the program, their individual responsibilities and to review progress.

(4) Place Federal and State EEO posters on bulletin boards, near time clocks and in personnel offices.

(5) Publicize the AAP in the agency newsletters and other publications.

(6) Present and discuss the AAP as a part of employee orientation and all training programs.

(7) Invite employee organization representatives to cooperate and assist in developing and implementing the AAP.

b. *Externally:* Distribute the AAP to minority groups and women's organizations, community action groups, appropriate State agencies, professional organizations, etc.

3. *Develop and implement specific programs to eliminate discriminatory barriers and achieve goals.* a. *Job structuring and upward mobility:* The AAP should include specific provisions for:

(1) Periodic classification plan reviews to correct inaccurate position descriptions and to ensure that positions are allocated to the appropriate classification.

(2) Plans to ensure that all qualification requirements are closely job related.

(3) Efforts to restructure jobs and establish entry level and trainee positions to facilitate progression within occupational areas.

(4) Career counseling and guidance to employees.

(5) Creating career development plans for lower grade employees who are underutilized or who demonstrate potential for advancement.

(6) Widely publicizing upward mobility programs and opportunities within each work unit and within the total organizational structure.

b. *Recruitment and placement.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Active recruitment efforts to support and supplement those of the central personnel agency or department, reaching all appropriate sources to obtain qualified employees on a nondiscriminatory basis.

(2) Maintaining contracts with organizations representing minority groups, women, professional societies, and other sources of candidates for technical, professional and management level positions.

(3) Ensuring that recruitment literature is relevant to all employees, including minority groups and women.

(4) Reviewing and monitoring recruitment and placement procedures so as to assure that no discriminatory practices exist.

(5) Cooperating with management and the central personnel agency on the review and validation of written tests and other selection devices.

(6) Analyzing the flow of applicants through the selection and appointment process, including an analytical review of reasons for rejections.

(7) Monitoring the placement of employees to ensure the assignment of work and workplace on a nondiscriminatory basis.

c. *Promotions.* The AAP should include specific provisions for, but not necessarily limited to:

1. Establishing an agency-wide merit promotion program, including a merit promotion plan, to provide equal opportunity for all persons based on merit and without regard to race, color, religion, sex or national origin.

2. Monitoring the operation of the merit promotion program, including a review of promotion actions, to assure that requirements procedures and practices support EEO program objectives and do not have a discriminatory impact in actual operation.

3. Establishing skills banks to match employee skills with available job advancement opportunities.

4. Evaluating promotion criteria (supervisory evaluations, oral interviews, written tests, qualification standards, etc.) and their use by selecting officials to identify and eliminate factors which may lead to improper "selection out" of employees or applicants, particularly minorities and women, who traditionally have not had access to better jobs. It may be appropriate to require selecting officials to submit a written justification when well qualified persons are passed over for upgrading or promotion.

5. Assuring that all job vacancies are posted conspicuously and that all employees are encouraged to bid on all jobs for which they feel they are qualified.

6. Publicizing the agency merit promotion program by highlighting breakthrough promotions, i.e. advancement of minorities and women to key jobs, new career heights, etc.

d. *Training.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Requiring managers and supervisors to participate in EEO seminars covering the AAP, the overall EEO program and the administration of the policies and procedures incorporated therein, and on Federal, State and local laws relating to EEO.

(2) Training in proper interviewing techniques of employees who conduct employment selection interviews.

(3) Training and education programs designed to provide opportunities for employees to advance in relation to the present and projected manpower needs of the agency and the employees' career goals.

(4) The review of profiles of training course participants to ensure that training opportunities are being offered to all eligible employees on an equal basis and to correct any inequities discovered.

e. *Layoffs, recalls, discharges, demotions, and disciplinary actions.* The standards for deciding when a person shall be terminated, demoted, disciplined, laid off or recalled should be the same for all employees, including minorities and females. Seemingly neutral practices should be reexamined to see if they have a disparate effect on such groups. For example, if more minorities and females are being laid off because they were the last

hired, then, adjustments should be made to assure that the minority and female ratios do not decrease because of these actions.

(1) When employees, particularly minorities and females, are disciplined, laid off, discharged or downgraded, it is advisable that the actions be reviewed by the AA Officer before they become final.

(2) Any punitive action (i.e. harassment, terminations, demotions), taken as a result of employees filing discrimination complaints, is illegal.

(3) The following records should be kept to monitor this area of the internal EEO program:

On all terminations, including layoffs and discharges: indicate total number, name, (home address and phone number), employment date, termination date, recall rights, sex, racial/ethnic identification (by job category), type of termination and reason for termination.

On all demotions: indicate total number, name, (home address and phone number), demotion date, sex, racial/ethnic identification (by job category), and reason for demotion.

On all recalls: indicate total number, name, (home address and phone number) recall date, sex, and racial/ethnic identification (by job category).

Exit interviews should be conducted with employees who leave the employment of the SHA.

f. *Other personnel actions.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Assuring that information on EEO counseling and grievance procedures is easily available to all employees.

(2) A system for processing complaints alleging discrimination because of race, color, religion, sex or national origin to an impartial body.

(3) A system for processing grievances and appeals (i.e. disciplinary actions, adverse actions, adverse action appeals, etc).

(4) Including in the performance appraisal system a factor to rate manager's and supervisors' performance in discharging the EEO program responsibilities assigned to them.

(5) Reviewing and monitoring the performance appraisal program periodically to determine its objectivity and effectiveness.

(6) Ensuring the equal availability of employee benefits to all employees.

4. *Program evaluation.* An internal reporting system to continually audit, monitor and evaluate programs is essential for a successful AAP. Therefore, a system providing for EEO goals, timetables, and periodic evaluations needs to be established and implemented. Consideration should be given to the following actions:

a. Defining the major objectives of EEO program evaluation.

b. The evaluation should be directed toward results accomplished, not only at efforts made.

c. The evaluation should focus attention on assessing the adequacy of problem identification in the AAP and the extent to which the specific action steps in the plan provide solutions.

d. The AAP should be reviewed and evaluated at least annually. The review and evaluation procedures should include, but not be limited to, the following:

(1) Each bureau, division or other major component of the agency should make annual and such other periodic reports as are needed to provide an accurate review of the operations of the AAP in that component.

(2) The AA Officer should make an annual report to the head of the SHA, containing the overall status of the program, results achieved toward established objectives, identity of any particular problems encountered

and recommendations for corrective actions needed.

e. Specific, numerical goals and objectives should be established for the ensuing year. Goals should be developed for the SHA as a whole, as well as for each unit and each job category.

III. *Employment statistical data.* A. As a minimum, furnish the most recent data on the following:

1. The total population in the State,
2. The total labor market in State, with a breakdown by racial/ethnic identification and sex, and
3. An analysis of (1) and (2) above, in connection with the availability of personnel and jobs within SHA's.

B. State highway agencies shall use the EEO-4 Form in providing current work force data. This data shall reflect only State department of transportation/State highway department employment.

**D. EMPLOYMENT DATA AS OF JUNE 30**  
 (Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL TIME EMPLOYEES (Temporary employees not included)

JOB CATEGORIES	ANNUAL SALARY (In Thousands 000)	TOTAL (COLUMNS B-E)	MALE					FEMALE				
			NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
			WHITE	BLACK				WHITE	BLACK			
		A	B	C	D	E	F	G	H	I	J	K
OFFICIALS/ ADMINISTRATORS	1. 0-1.39											
	2. 4.0-5.9											
	3. 6.0-7.9											
	4. 8.0-9.9											
	5. 10.0-12.9											
	6. 13.0-15.9											
	7. 16.0-24.9											
	8. 25.0 PLUS											
PROFESSIONALS	9. 0-1.39											
	10. 4.0-5.9											
	11. 6.0-7.9											
	12. 8.0-9.9											
	13. 10.0-12.9											
	14. 13.0-15.9											
	15. 16.0-24.9											
	16. 25.0 PLUS											
TECHNICIANS	17. 0-1.39											
	18. 4.0-5.9											
	19. 6.0-7.9											
	20. 8.0-9.9											
	21. 10.0-12.9											
	22. 13.0-15.9											
	23. 16.0-24.9											
	24. 25.0 PLUS											
PROTECTIVE SERVICE	25. 0-1.39											
	26. 4.0-5.9											
	27. 6.0-7.9											
	28. 8.0-9.9											
	29. 10.0-12.9											
	30. 13.0-15.9											
	31. 16.0-24.9											
	32. 25.0 PLUS											
PARA- PROFESSIONALS	33. 0-1.39											
	34. 4.0-5.9											
	35. 6.0-7.9											
	36. 8.0-9.9											
	37. 10.0-12.9											
	38. 13.0-15.9											
	39. 16.0-24.9											
	40. 25.0 PLUS											
OFFICE/ CLERICAL	41. 0-1.39											
	42. 4.0-5.9											
	43. 6.0-7.9											
	44. 8.0-9.9											
	45. 10.0-12.9											
	46. 13.0-15.9											
	47. 16.0-24.9											
	48. 25.0 PLUS											

DOC FORM 504 APR 76

D. EMPLOYMENT DATA AS OF JUNE 30 (Cont.)												
(Do not include elected/appointed officials. Blanks will be counted as zero)												
1. FULL TIME EMPLOYEES (Temporary employees not included)												
JOB CATEGORIES	ANNUAL SALARY in thousands 000	TOTAL (COLUMN B-K)	MALE					FEMALE				
			NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
			WHITE	BLACK				WHITE	BLACK			
		A	B	C	D	E	F	G	H	I	J	K
SKILLED CRAFT	49 \$ 0.1-3.9											
	50 4.0-5.9											
	51 6.0-7.9											
	52 8.0-9.9											
	53 10.0-12.9											
	54 13.0-15.9											
	55 16.0-24.9											
56 25.0 PLUS												
SERVICE/MAINTENANCE	57 0.1-3.9											
	58 4.0-5.9											
	59 6.0-7.9											
	60 8.0-9.9											
	61 10.0-12.9											
	62 13.0-15.9											
	63 16.0-24.9											
64 \$ 25.0 PLUS												
65 TOTAL FULL TIME												
66-73												
2. OTHER THAN FULL TIME EMPLOYEES (Include temporary employees)												
66. OFFICIALS / ADMIN.												
67. PROFESSIONALS												
68. TECHNICIANS												
69. PROTECTIVE SERV.												
70. PARA-PROFESSIONAL												
71. OFFICE / CLERICAL												
72. SKILLED CRAFT												
73. SERV. / MAINT.												
74. TOTAL OTHER THAN FULL TIME												
66-73												
3. NEW HIRES DURING FISCAL YEAR Permanent full time only JULY 1 - JUNE 30												
75. OFFICIALS / ADMIN.												
76. PROFESSIONALS												
77. TECHNICIANS												
78. PROTECTIVE SERV.												
79. PARA-PROFESSIONAL												
80. OFFICE / CLERICAL												
81. SKILLED CRAFT												
82. SERV. / MAINT.												
83. TOTAL NEW HIRES												
66-73												

[41 FR 28270, July 9, 1976, as amended at 41 FR 46294, Oct. 20, 1976]

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 9**

**23 CFR 230, Subpart D**



**Subpart D—Construction Contract Equal Opportunity Compliance Procedures**

**AUTHORITY:** 23 U.S.C. 140(a), 315; E.O. 11246; 41 CFR 60-1; 49 CFR 1.48.

**SOURCE:** 41 FR 34239, Aug. 13, 1976, unless otherwise noted.

**§ 230.401 Purpose.**

The purpose of the regulations in this subpart is to prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans.

**§ 230.403 Applicability.**

The procedures set forth hereinafter apply to all nonexempt direct Federal and Federal-aid highway construction contracts and subcontracts, unless otherwise specified.

**§ 230.405 Administrative responsibilities.**

(a) *Federal Highway Administration (FHWA) responsibilities.* (1) The FHWA has the responsibility to ensure that contractors meet contractual equal opportunity requirements under E.O. 11246, as amended, and title 23 U.S.C., and to provide guidance and direction to States in the development and implementation of a program to assure compliance with equal opportunity requirements.

(2) The Federal Highway Administrator or a designee may inquire into the status of any matter affecting the FHWA equal opportunity program and, when considered necessary, assume jurisdiction over the matter, proceeding in coordination with the State concerned. This is without derogation of the authority of the Secretary of Transportation, Department of Transportation (DOT), the Director, DOT Departmental Office of Civil Rights (OCR) or the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor.

(3) Failure of the State highway agency (SHA) to discharge the responsibilities stated in §230.405(b)(1) may result in DOT's taking any or all of the following actions (see appendix A to 23

CFR part 630, subpart C "Federal-aid project agreement"):

(1) Cancel, terminate, or suspend the Federal-aid project agreement in whole or in part;

(ii) Refrain from extending any further assistance to the SHA under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the SHA; and

(iii) Refer the case to an appropriate Federal agency for legal proceedings.

(4) Action by the DOT, with respect to noncompliant contractors, shall not relieve a SHA of its responsibilities in connection with these same matters; nor is such action by DOT a substitute for corrective action utilized by a State under applicable State laws or regulations.

(b) *State responsibilities.* (1) The SHA's, as contracting agencies, have a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.

(2) The corrective action procedures outlined herein do not preclude normal contract administration procedures by the States to ensure the contractor's completion of specific contract equal opportunity requirements, as long as such procedures support, and sustain the objectives of E.O. 11246, as amended. The State shall inform FHWA of any actions taken against a contractor under normal State contract administration procedures, if that action is precipitated in whole or in part by non-compliance with equal opportunity contract requirements.

**§ 230.407 Definitions.**

For the purpose of this subpart, the following definitions shall apply, unless the context requires otherwise:

(a) *Actions*, identified by letter and number, shall refer to those items identified in the process flow chart. (Appendix D);

(b) *Affirmative Action Plan* means a written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate

and measure equal opportunity program progress and effectiveness. (The Special Provisions [23 CFR part 230 A, appendix A] and areawide plans are Affirmative Action Plans.);

(c) *Affirmative Actions* means the efforts exerted towards achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects 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;

(d) *Areawide Plan* means an Affirmative Action Plan approved by the Department of Labor to increase minority and female utilization in crafts of the construction industry in a specified geographical area pursuant to E.O. 11246, as amended, and taking the form of either a "Hometown" or an "Imposed" Plan.

(1) *Hometown Plan* means a voluntary areawide agreement usually developed by representatives of labor unions, minority organizations, and contractors, and approved by the OFCCP for the purpose of implementing the equal employment opportunity requirements pursuant to E.O. 11246, as amended;

(2) *Imposed Plan* means mandatory affirmative action requirements for a specified geographical area issued by OFCCP and, in some areas, by the courts;

(e) *Compliance Specialist* means a Federal or State employee regularly employed and experienced in civil rights policies, practices, procedures, and equal opportunity compliance review and evaluation functions;

(f) *Consolidated Compliance Review* means a review and evaluation of all significant construction employment in a specific geographical (target) area;

(g) *Construction* shall have the meanings set forth in 41 CFR 60-1.3(e) and 23 U.S.C. 101(a). References in both definitions to expenses or functions incidental to construction shall include preliminary engineering work in project development or engineering services performed by or for a SHA;

(h) *Corrective Action Plan* means a contractor's unequivocal written and

signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (Sometimes called a conciliation agreement or a letter of commitment.);

(i) *Contractor* means, any person, corporation, partnership, or unincorporated association that holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier;

(j) *Days* shall mean calendar days;

(k) *Discrimination* means a distinction in treatment based on race, color, religion, sex, or national origin;

(l) *Equal Employment Opportunity* means the absence of partiality or distinction in employment treatment, so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained;

(m) *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 work force—employees at the physical location of the construction activity;

(2) Area work force—employees at all Federal-aid, Federal, and non-Federal projects in a specific geographical area as determined under § 230.409 (b)(9); or

(3) Home office work force—employees at the physical location of the corporate, company, or other ownership headquarters or regional managerial, offices, including "white collar" personnel (managers, professionals, technicians, and clericals) and any maintenance or service personnel connected thereto;

(n) *Equal Opportunity Requirements* is a general term used throughout this document to mean all contract provisions relative to equal employment opportunity (EEO), subcontracting, and training;

(o) *Good Faith Effort* means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan;

(p) *Show Cause Notice* means a written notification to a contractor based

on the determination of the reviewer (or in appropriate cases by higher level authority) to be in noncompliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed;

(q) *State highway agency (SHA)* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency*. With regard to direct Federal contracts, references herein to SHA's shall be considered to refer to FHWA regional offices, as appropriate.

**§ 230.409 Contract compliance review procedures.**

(a) *General.* A compliance review consists of the following elements:

- (1) Review Scheduling (Actions R-1 and R-2).
- (2) Contractor Notification (Action R-3).
- (3) Preliminary Analysis (Phase I) (Action R-4).
- (4) Onsite Verification and Interviews (Phase II) (Action R-5).
- (5) Exit Conference (Action R-6).
- (6) Compliance Determination and Formal Notification (Actions R-8, R-9, R-10, R-11, R-12).

The compliance review procedure, as described herein and in appendix D provides for continual monitoring of the employment process. Monitoring officials at all levels shall analyze submissions from field offices to ensure proper completion of procedural requirements and to ascertain the effectiveness of program implementation.

(b) *Review scheduling.* (Actions R-1 and R-2). Because construction work forces are not constant, particular attention should be 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 work forces:

- (1) Which hold the greatest potential for employment and promotion of mi-

norities and women (particularly in higher skilled crafts or occupations);

(2) Working in areas which have significant minority and female labor forces within a reasonable recruitment area;

(3) Working on projects that include special training provisions; and

(4) 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).

In addition, the following considerations shall apply:

(5) Reviews specifically requested by the Washington Headquarters shall receive priority scheduling;

(6) Compliance Reviews in geographical areas covered by areawide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in § 230.415.

(7) Reviews shall be conducted prior to or during peak employment periods.

(8) 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 Washington Headquarters; and

(9) For compliance reviews based on an area work force (outside of areawide plan coverage), the Compliance Specialist shall define the applicable geographical area by considering:

- (i) Union geographical boundaries;
- (ii) The geographical area from which the contractor recruits employees, i.e. reasonable recruitment area;
- (iii) Standard Metropolitan Statistical Area (SMSA) or census tracts; and
- (iv) The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

(c) *Contractor notification* (Action R-3).

(1) The Compliance Specialist should usually provide written notification to the contractor of the pending compliance review at least 2 weeks prior to the onsite verification and interviews. This notification shall include the scheduled date(s), an outline of the mechanics and basis of the review, requisite interviews, and documents required.

- (2) The contractor shall be requested to provide a meeting place on the day

of the visit either at the local office of the contractor or at the jobsite.

(3) The contractor shall be requested to supply all of the following information to the Compliance Specialist prior to the onsite verification and interviews.

(i) Current Form PR-1391 developed from the most recent payroll;

(ii) Copies of all current bargaining agreements;

(iii) Copies of purchase orders and subcontracts containing the EEO clause;

(iv) A list of recruitment sources available and utilized;

(v) A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC) or other Federal, State, or local agency regarding the contractor or any source of employees;

(vi) A list of promotions made during the past 6 months, to include race, national origin, and sex of employee, previous job held, job promoted into; and corresponding wage rates;

(vii) An annotated payroll to show job classification, race, national origin and sex;

(viii) A list of minority- or female-owned companies contacted as possible subcontractors, vendors, material suppliers, etc.; and

(ix) Any other necessary documents or statements requested by the Compliance Specialist for review prior to the actual onsite visit.

(4) For a project review, the prime contractor shall be held responsible for ensuring that all active subcontractors are present at the meeting and have supplied the documentation listed in § 230.409(c)(3).

(d) *Preliminary analysis (Phase I) (Action R-4)*. Before the onsite verification and interviews, the Compliance Specialist shall analyze the employment patterns, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to:

(1) The contractor's current work force;

(2) The contractor's relationship with referral sources, e.g., unions, employment agencies, community action

agencies, minority and female organizations, etc.;

(3) The minority and female representation of sources;

(4) The availability of minorities and females with requisite skills in a reasonable recruitment area;

(5) Any pending EEOC or Department of Justice cases or local or State Fair Employment Agency cases which are relevant to the contractor and/or the referral sources; and

(6) 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 project(s), 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.

(e) *Onsite verification and interviews (Phase II) (Action R-5)*. (1) 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:

(1) Objectives of the visit;

(ii) The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and

(iii) Arrangements for the site tour(s) and employee interviews.

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

(i) EEO posters are displayed in conspicuous places in a legible fashion;

(ii) Facilities are provided on a non-segregated basis (e.g. work areas, wash-room, timeclocks, locker rooms, storage areas, parking lots, and drinking fountains);

(iii) Supervisory personnel have been oriented to the contractor's EEO commitments;

(iv) The employee referral source system is being implemented;

(v) Reported employment data is accurate;

(vi) Meetings have been held with employees to discuss EEO policy, particularly new employees; and

(vii) Employees are aware of their right to file complaints of discrimination.

(3) The Compliance Specialist should interview at least one minority, one nonminority, and one woman in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.

(4) The Compliance Specialist shall, on a sample basis, determine the union membership status of union employees on the site (e.g. whether they have permits, membership cards, or books, and in what category they are classified [e.g., A, B, or C]).

(5) The Compliance Specialist shall also determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

(6) The Compliance Specialist shall determine, and the report shall indicate the following:

(i) Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?

(ii) What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

(iii) Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?

(iv) Is there impartiality in treatment of minorities and women?

(v) Are affirmative action measures of an isolated nature or are they continuing?

(vi) Have the contractor's efforts produced results?

(f) *Exit conference (Action R-6).* (1) During the exit conference with the contractor, the following topics shall be discussed:

(i) Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

(ii) The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews); and

(iii) Any other matters that would best be resolved before concluding the onsite portion of the review.

(2) Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the Compliance Specialist shall prepare the review report and make a determination of either:

(i) Compliance, and so notify the contractor; or

(ii) Noncompliance, 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 not addressed by the plan are uncovered during the final analysis and report writing. (Action R-7) A voluntary corrective action plan should be accepted with the understanding that it only address those problems uncovered prior to the exit conference.

(g) *Compliance determinations (Action R-8).* (1) The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the Compliance Specialist conducting the review of the contractor's compliance or noncompliance with contractual provisions pursuant to E.O. 11246, as amended, and FHWA EEO Special Provisions implementing the Federal-Aid Highway Act of 1968, where applicable.

(2) Compliance determinations on contractors working in a Hometown Plan Area shall reflect the status of those crafts covered by part II of the plan bid conditions. Findings regarding part I crafts shall be transmitted through channels to the Washington Headquarters, Office of Civil Rights.

(3) The compliance status of the contractor will usually be reflected by positive efforts in the following areas:

(i) The contractor's equal employment opportunity (EEO) policy;

(ii) Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;

(iii) The authority and responsibilities of the EEO officer;

(iv) The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;

(v) The extent of participation and minority and female utilization in FHWA training programs;

(vi) The contractor's review of personnel actions to ensure equal opportunities;

(vii) The contractor's participation in apprenticeship or other training;

(viii) The contractor's relationship (if any) with unions and minority and female union membership;

(ix) Effective measures to assure non-segregated facilities, as required by contract provisions;

(x) The contractor's procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and

(xi) The adequacy of the contractor's records and reports.

(4) A contractor shall be considered to be in compliance (Action R-9) when 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 in good faith, and emphasized as any other vital management function.

(5) A contractor shall be considered to be in noncompliance (Action R-10) when:

(1) The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment; or

(ii) The contractor fails to provide evidence of every good faith effort to provide equal opportunity.

(h) *Show cause procedures*—(1) *General*. Once the onsite verification and exit conference (Action R-5) have been completed and a compliance determination made, (Action R-8), the contractor shall be notified in writing of the compliance determination. (Action R-11 or R-12) This written notification shall be sent to the contractor within 15 days following the completion of the onsite

verification and exit conference. If a contractor is found in noncompliance (Action R-10), action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice (Action R-12). The notice shall advise the contractor to show cause within 30 days why sanctions should not be imposed.

(2) *When a show cause notice is required*. A show cause notice shall be issued when a determination of non-compliance is made based upon:

(1) The findings of a compliance review;

(ii) The results of an investigation which verifies the existence of discrimination; or

(iii) Areawide plan reports that show an underutilization of minorities (based on criteria of U.S. Department of Labor's Optional Form 68 "Manpower Utilization Report") throughout the contractor's work force covered by part II of the plan bid conditions.

(3) *Responsibility for issuance*. (i) Show cause notices will normally be issued by SHA's 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.

(ii) When circumstances warrant, the Regional Federal Highway Administrator or a designee may exercise primary compliance responsibility by issuing the notice directly to the contractor.

(iii) The Regional Federal Highway Administrators in Regions 8, 10, and the Regional Engineer in Region 15, shall issue show cause notices to direct Federal contractors found in non-compliance.

(4) *Content of show cause notice*. The show cause notice must: (See sample—appendix A of this subpart)

(1) Notify the contractor of the determination of noncompliance;

(ii) Provide the basis for the determination of noncompliance;

(iii) Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;

(iv) Schedule (date, time, and place) a compliance conference to be held ap-

proximately 15 days from the contractor's receipt of the notice;

(v) Advise the contractor that the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies; and

(vi) Advise the contractor of the availability and willingness of the Compliance Specialist to conciliate within the time limits of the show cause notice.

(5) *Preparing and processing the show cause notice.* (i) The State 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 head of the SHA or the Regional Federal Highway Administrator, as appropriate.

(ii) The recommendation, background data, and final draft notice shall be reviewed by appropriate State or FHWA legal counsel.

(iii) Show cause notices issued by the SHA shall be issued by the head of that agency or a designee.

(iv) 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.

(v) The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause period. (Action R-13).

(vi) The 30-day show cause notice shall be issued directly to the non-compliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.

(6) *Conciliation efforts during show cause period.* (i) The Compliance Specialist 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 reactions of the contractor, a brief synopsis of any meetings with the contractor, notes on

verbal communication and written correspondence, requests for assistance or interpretations, and other relevant matters.

(ii) In instances where a 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 (Action R-17). The FHWA Washington Headquarters, Office of Civil Rights, shall immediately be notified of any change in status.

(7) *Corrective action plans.* (i) 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. (See Sample Corrective Action Plan—appendix B of this subpart)

(ii) When a contractor submits an acceptable written corrective action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports. (Action R-15 and R-17).

(iii) When an acceptable corrective action plan 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 compliance specialist immediately upon expiration of the 30-day show cause period. (Action R-16, R-18, R-19)

(iv) 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.

(v) 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.

(vi) 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 in the situations referred to in paragraphs (h) (7) (iv) and (v) of this section, i.e., failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

(1) *Followup reviews.* (1) A followup 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, followup 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.

(2) Followup reviews shall be reported as a narrative summary referencing the initial review report.

(j) *Hearing process.* (1) 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 (or other appropriate level) shall immediately recommend, through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing (Action R-19). The Contractor should be notified of this action.

(2) Recommendations to the Federal Highway Administrator for hearing approval shall be accompanied by full reports of findings and case files containing any related correspondence. The following items shall be included with the recommendation:

- (i) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;
- (ii) Copies of any contractor or sub-contractor certifications;
- (iii) Copy of show cause notice;
- (iv) Copies of any corrective action plans; and
- (v) Copies of all pertinent Manpower Utilization Reports, if applicable.

(3) SHA's 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.

(k) *Responsibility determinations.* (1) 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.

(2) SHA's 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.

#### § 230.411 Guidance for conducting reviews.

(a) *Extensions of time.* Reasonable extensions of time limits set forth in these instructions may be authorized by the SHA's or the FHWA regional office, as appropriate. However, all extensions are subject to Washington Headquarters approval and should only be granted with this understanding. The Federal Highway Administrator shall be notified of all time extensions granted and the justification therefor. In sensitive or special interest cases, simultaneous transmittal of reports and other pertinent documents is authorized.

(b) *Contract completion.* Completion of a contract or seasonal shutdown shall not preclude completion of the administrative procedures outlined herein or the possible imposition of sanctions or debarment.

(c) *Home office reviews outside regions.* When contractor's home offices are located outside the FHWA region in which the particular contract is being performed, and it is determined that the contractors' home offices should be reviewed, requests for such reviews with accompanying justification shall be forwarded through appropriate channels to the Washington Headquarters, Office of Civil Rights. After approval, the Washington Headquarters, Office of Civil Rights, (OCR)



shall request the appropriate region to conduct the home office review.

(d) *Employment of women.* Executive Order 11246, as amended, implementing rules and regulations regarding sex discrimination are outlined in 41 CFR part 60-20. It is the responsibility of the Compliance Specialist to ensure that contractors provide women full participation in their work forces.

(e) *Effect of exclusive referral agreements.* (1) The OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved;

(i) It shall be no excuse that the union, with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority or female employees.

(ii) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.

(iii) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

(2) If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and:

(i) The contractor will be formally directed to comply with the equal opportunity requirements.

(ii) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.

(iii) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be informed of the criteria outlined in § 230.411(e)(1) of this section. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with

full documentary evidence to support the discriminatory pattern indicated.

(iv) In the event the union referral practices prevent the contractor from meeting the equal opportunity requirements pursuant to the E.O. 11246, as amended, such contractor shall immediately notify the SHA.

#### § 230.413 Review reports.

(a) *General.* (1) The Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

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

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

(4) The compliance review report shall contain at least the following information.<sup>1</sup> (Action R-20)

(i) Complete name and address of contractor.

(ii) Project(s) identification.

(iii) Basis for the review, i.e. area work force, project work force, home office work force, and target area work force.

(iv) Identification of Federal or Federal-aid contract(s).

(v) Date of review.

(vi) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above. This shall be the data verified during the onsite.

(vii) Identification of local unions involved with contractor, when applicable.

(viii) Determination of compliance status: compliance or noncompliance.

(ix) Copy of show cause notice or compliance notification sent to contractor.

(x) Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist.

<sup>1</sup>The Federal Highway Administration will accept completed Form FHWA-86 for the purpose. The form is available at the offices listed in 49 CFR part 7, appendix D.

(xi) Concurrences at appropriate levels.

(5) 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.

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

(7) When a project review is conducted, the project work force shall be reported. When an areawide review is conducted (all Federal-aid, Federal, and non-Federal projects in an area), then areawide 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, OCR.

(8) The Washington Headquarters, OCR, shall be provided all of the following:

(i) The compliance review report required by § 230.413(a)(4).

(ii) Corrective action plans.

(iii) Show cause notices or compliance notifications.

(iv) Show cause recissions.

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, OCR.

(b) *Administrative requirements*—(1) *State conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference, the State Compliance Specialist will:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Notify the contractor of the compliance determination, i.e., send the contractor either notification of compliance or show cause notice; and

(D) Forward three copies of the compliance review report, and the compliance notification or show cause notice to the FHWA division EEO Specialist.

(ii) Within 10 days of receipt, the FHWA division EEO Specialist shall:

(A) Analyze the State's report, ensure that it is complete and accurate;

(B) Resolve nonconcurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward two copies of the compliance review report, and the compliance notification or show cause notice to the Regional Civil Rights Director.

(iii) Within 15 days of receipt, the FHWA Regional Civil Rights Director shall:

(A) Analyze the report, ensure that it is complete and accurate;

(B) Resolve nonconcurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(2) *FHWA division conducted reviews.*

(i) Within 15 days from the completion of the onsite verification and exit conference, the division EEO Specialist shall:

(A) Prepare compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Notify the State to send the contractor the compliance determination, i.e. either notification of compliance or show cause notice; and

(D) Forward two copies of the compliance review report and the compliance notification or show cause notice to the Regional Civil Rights Director.

(ii) Within 15 days of receipt, the FHWA Regional Civil Rights Director will take the steps outlined in § 230.413(b)(1)(iii).

(3) *FHWA region conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference the regional EEO Specialist shall:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Inform the appropriate division to notify the State to send the contractor the compliance determination i.e. either notification of compliance or show cause notice; and

(D) Forward one copy of the compliance review report, and the compliance

notification or show cause notice to the Washington Headquarters, OCR.

(4) Upon receipt of compliance review reports, the Washington Headquarters, OCR, shall review, resolve any non-concurrences, and record them for the purpose of:

(i) Providing ongoing technical assistance to FHWA regional and division offices and SHA's;

(ii) Gathering a sufficient data base for program evaluation;

(iii) Ensuring uniform standards are being applied in the compliance review process;

(iv) Initiating appropriate changes in FHWA policy and implementing regulations; and

(v) Responding to requests from the General Accounting Office, Office of Management and Budget, Senate Subcommittee on Public Roads, and other agencies and organizations.

**§ 230.415 Consolidated compliance reviews.**

(a) *General.* Consolidated compliance reviews shall be implemented to determine employment opportunities on an areawide rather than an individual project basis. The consolidated compliance review approach shall be adopted and directed by either Headquarters, region, division, or SHA, however, consolidated reviews shall at all times remain a cooperative effort.

(b) OFCCP policy requires contracting agencies to ensure compliance, in hometown an imposed plan areas, on an areawide rather than a project basis. The consolidated compliance review approach facilitates implementation of this policy.

(c) *Methodology*—(1) *Selection of a target area.* In identifying the target area of a consolidated compliance review (e.g. SMSA, hometown or imposed plan area, a multicounty area, or an entire State), consideration shall at least be given to the following facts:

(i) Minority and female work force concentrations;

(ii) Suspected or alleged discrimination in union membership or referral practices by local unions involved in highway construction;

(iii) Present or potential problem areas;

(iv) The number of highway projects in the target area; and

(v) Hometown or imposed plan reports that indicate underutilization of minorities or females.

(2) *Determine the review period.* After the target area has been selected, the dates for the actual onsite reviews shall be established.

(3) *Obtain background information.* EEO-3's Local Union Reports, should be obtained from regional offices of the EEOC. Target area civilian labor force statistics providing percent minorities and percent females in the target area shall be obtained from State employment security agencies or similar State agencies.

(4) *Identify contractors.* Every non-exempt federally assisted or direct Federal contractor and subcontractor in the target area shall be identified. In order to establish areawide employment patterns in the target area, employment data is needed for all contractors and subcontractors in the area. However, only those contractors with significant work forces (working prior to peak and not recently reviewed) may need to be actually reviewed onsite. Accordingly, once all contractors are identified, those contractors which will actually be reviewed onsite shall be determined. Compliance determinations shall only reflect the status of crafts covered by part II of plan bid conditions. Employment data of crafts covered by part I of plan bid conditions shall be gathered and identified as such in the composite report, however, OFCCP has reserved the responsibility for compliance determinations on crafts covered by part I of the plan bid conditions.

(5) *Contractor notification.* Those contractors selected for onsite review shall be sent a notification letter as outlined in § 230.409(c) along with a request for current workforce data<sup>2</sup> for completion and submission at the onsite review. Those contractors in the target area not selected for onsite review shall also be requested to supply current

<sup>2</sup>The Consolidated Workforce Questionnaire is convenient for the purpose and appears as attachment 4 to volume 2, chapter 2, section 3 of the Federal-Aid Highway Program Manual, which is available at the offices listed in 49 CFR part 7, appendix D.

workforce data as of the onsite review period, and shall return the data within 15 days following the onsite review period.

(6) *Onsite reviews.* Compliance reviews shall then be conducted in accordance with the requirements set forth in § 230.409. Reviewers may use Form FHWA-86, Compliance Data Report, if appropriate. It is of particular importance during the onsite reviews that the review team provide for adequate coordination of activities at every stage of the review process.

(7) *Completion determinations.* Upon completion of the consolidated reviews, compliance determinations shall be made on each review by the reviewer. Individual show cause notices or compliance notifications shall be sent (as appropriate) to each reviewed contractor.

The compliance determination shall be based on the contractor's target area work force (Federal, Federal-aid and non-Federal), except when the target area is coincidental with hometown plan area, compliance determinations must not be based on that part of a contractor's work force covered by part I of the plan bid conditions, as previously set forth in this regulation. For example: ABC Contracting, Inc. employs carpenters, operating engineers, and cement masons. Carpenters and operating engineers are covered by part II of the plan bid conditions, however, cement masons are covered by part I of the plan bid conditions. The compliance determination must be based only on the contractor's utilization of carpenters and operating engineers.

(d) *Reporting*—(1) *Composite report.* A final composite report shall be submitted as a complete package to the Washington Headquarters, OCR, within 45 days after the review period and shall consist of the following:

(i) Compliance review report, for each contractor and subcontractor with accompanying show cause notice or compliance notification.

(ii) Work force data to show the aggregate employment of all contractors in the target area.

(iii) A narrative summary of findings and recommendations to include the following:

(A) A summary of highway construction employment in the target area by craft, race, and sex. This summary should explore possible patterns of discrimination or underutilization and possible causes, and should compare the utilization of minorities and females on contractor's work forces to the civilian labor force percent for minorities and females in the target area.

(B) If the target area is a plan area, a narrative summary of the plan's effectiveness with an identification of part I and part II crafts. This summary shall discuss possible differences in minority and female utilization between part I and part II crafts, documenting any inferences drawn from such comparisons.

(C) If applicable, discuss local labor unions' membership and/or referral practices that impact on the utilization of minorities and females in the target area. Complete and current copies of all collective bargaining agreements and copies of EEO-3, Local Union Reports, for all appropriate unions shall accompany the composite report.

(D) Any other appropriate data, analyses, or information deemed necessary for a complete picture of the areawide employment.

(E) Considering the information compiled from the summaries listed above, make concrete recommendations on possible avenues for correcting problems uncovered by the analyses.

(2) *Annual planning report.* The proper execution of consolidated compliance reviews necessitates scheduling, along with other fiscal program planning. The Washington Headquarters, OCR, shall be notified of all planned consolidated reviews by August 10 of each year and of any changes in the target area or review periods, as they become known. The annual consolidated planning report shall indicate:

(i) Selected target areas:

(ii) The basis for selection of each area; and

(iii) The anticipated review period (dates) for each target area.

## APPENDICES TO SUBPART D

APPENDIX A—SAMPLE SHOW CAUSE  
NOTICE

Certified Mail, Return Receipt Requested  
Date  
Contractor's Name  
Address  
City, State, and Zip Code.

DEAR CONTRACTOR: As a result of the review of your (Project Number) project located at (Project Location) conducted on (Date) by (Reviewing Agency), it is our determination that you are not in compliance with your equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

## List of Deficiencies

- 1.
- 2.
- 3.

Your failure to take the contractually required affirmative action has contributed to the unacceptable level of minority and female employment in your operations, particularly in the semiskilled and skilled categories of employees.

The Department of Labor regulations (41 CFR 60) implementing Executive Order 11246, as amended, are applicable to your Federal-aid highway construction contract and are controlling in this matter (see Required Contract Provisions, Form PR-1273, Clause II). Section 60-1.20(b) of these regulations provides that when equal opportunity deficiencies exist, it is necessary that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must include the specific action which you propose to take to correct each deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. In accordance with instructions issued by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, your written commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and a list of minority employees.

You are specifically advised that making the commitment discussed above will not preclude a further determination of non-compliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at \_\_\_\_\_(Address) at \_\_\_\_\_(Time) on \_\_\_\_\_(Date) for you to submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to

achieve compliance, you will be found in compliance during the effective implementation of that commitment. You are cautioned, however, that our determination is subject to review by the Federal Highway Administration, the Department of Transportation, and OFCCP and may be disapproved if your written commitment is not considered sufficient to achieve compliance.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this agency will commence enforcement proceedings under Executive Order 11246, as amended.

If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any Federal-aid highway construction contracts or subcontracts which you hold may be canceled, terminated, or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as are authorized by Executive Order 11246, as amended, may also be imposed.

We encourage you to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. Any questions concerning this notice should be addressed to (Name, Address, and Phone).

Sincerely yours,

[41 FR 34245, Aug. 13, 1976]

APPENDIX B—SAMPLE CORRECTIVE  
ACTION PLAN

Deficiency 1: Sources likely to yield minority employees have not been contacted for recruitment purposes.

Commitment: We have developed a system of written job applications at our home office which readily identifies minority applicants. In addition to this, as a minimum, we will contact the National Association for the Advancement of Colored People (NAACP), League of Latin American Citizens (LULAC), Urban League, and the Employment Security Office within 20 days to establish a referral system for minority group applicants and expand our recruitment base. We are in the process of identifying other community organizations and associations that may be able to provide minority applicants and will submit an updated listing of recruitment sources and evidence of contact by \_\_\_\_\_(Date).

Deficiency 2: There have been inadequate efforts to locate, qualify, and increase skills of minority and female employees and applicants for employment.

Commitment: We will set up an individual file for each apprentice or trainee by (Date) in order to carefully screen the progress, ensure that they are receiving the necessary training, and being promoted promptly upon completion of training requirements. We have established a goal of at least 50 percent of our apprentices and trainees will be minorities and 15 percent will be female. In addition to the commitment made to deficiency number 1, we will conduct a similar identification of organizations able to supply female applicants. Based on our projected personnel needs, we expect to have reached our 50 percent goal for apprentices and trainees by (Date).

Deficiency 3: Very little effort to assure subcontractors have meaningful minority group representation among their employees.

Commitment: In cooperation with the Regional Office of Minority Business Enterprise, Department of Commerce, and the local NAACP, we have identified seven minority-owned contractors that may be able to work on future contracts we may receive. These contractors (identified in the attached list) will be contacted prior to our bidding on all future contracts. In addition, we have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority representation. This meeting will be held on (Date) and we will summarize the discussions and current posture of each subcontractor for your review by (Date) Additionally, as requested, we will submit a PR-1391 on (Date), (Date).

(Date). Finally, we have committed ourselves to maintaining at least 20 percent minority and female representation in each trade during the time we are carrying out the above commitments. We plan to have completely implemented all the provisions of these commitments by (Date).

[41 FR 34245, Aug. 13, 1976]

APPENDIX C--SAMPLE SHOW CAUSE RESCISSION

Certified Mail, Return Receipt Requested  
Date  
Contractor  
Address  
City, State, and Zip Code

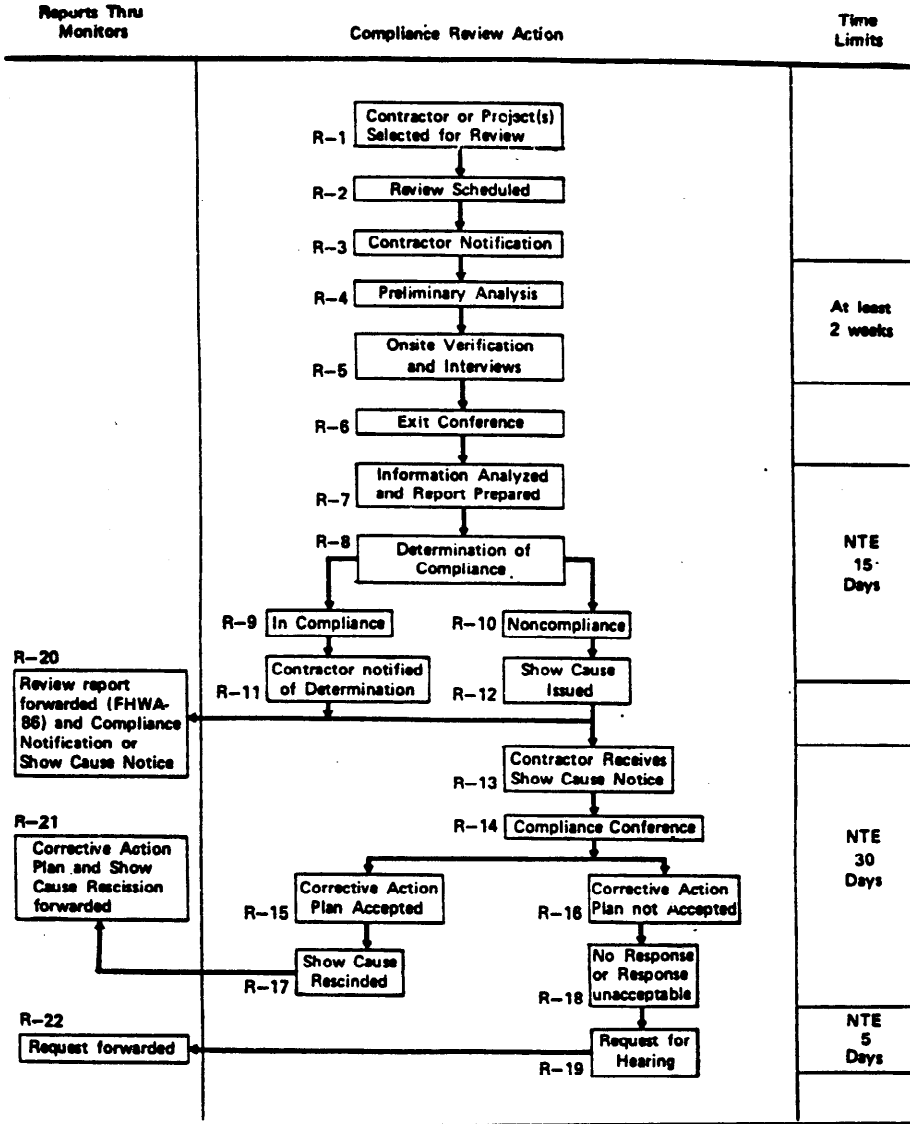
DEAR CONTRACTOR: On (Date) you received a 30-day show cause notice from this office for failing to implement the required contract requirements pertaining to equal employment opportunity.

Your corrective action plan, discussed and submitted at the compliance conference held on (Date), has been reviewed and determined to be acceptable. Your implementation of your corrective action plan shows that you are now taking the required affirmative action and can be considered in compliance with Executive Order 11246, as amended. If it should later be determined that your corrective action plan is not sufficient to achieve compliance, this Rescission shall not preclude a subsequent finding of noncompliance.

In view of the above, this letter is to inform you that the 30-day show cause notice of (Date) is hereby rescinded. You are further advised that if it is found that you have failed to comply with the provisions of your corrective action plan, formal sanction proceedings will be instituted immediately.

Sincerely,

**Appendix D**  
**EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART** 46



[41 FR 34245, Aug. 13, 1976]

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 10**

**FHWA Order 4710.8**



# Order



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Subject  
**CLARIFICATION OF FEDERAL HIGHWAY ADMINISTRATION  
(FHWA) AND STATE RESPONSIBILITIES UNDER EXECUTIVE  
ORDER 11246 AND DEPARTMENT OF LABOR (DOL)  
REGULATIONS IN 41 CFR CHAPTER 60**

Classification Code  
**4710.8**

Date  
**February 1, 1999**

Par. 1. Purpose

2. Background
3. Applicability
4. Authority and Responsibilities
5. Cancellation

1. **PURPOSE.** To define FHWA's authority and responsibility concerning Executive Order (EO) 11246, as amended, and DOL regulations, set forth in 41 CFR Chapter 60.
2. **BACKGROUND.** Under EO 11246, "Equal Employment Opportunity," the FHWA is required to include certain nondiscrimination and equal employment opportunity provisions in direct Federal contracts and federally assisted construction contracts. The provisions have been established by the DOL, Office of Federal Contract Compliance Programs (OFCCP) and are set forth in 41 CFR Part 60-1, "Obligations of Contractors and Subcontractors," and 41 CFR Part 60-4, "Construction Contractors Affirmative Action Requirements."
3. **APPLICABILITY.** This Order applies to all direct Federal contracts and federally assisted construction contracts and subcontracts.
4. **AUTHORITY AND RESPONSIBILITIES**
  - a. Department of Labor: Under Section 303 of EO 11246, only the DOL has the authority to determine compliance with EO 11246 and its implementing regulations. The FHWA and the State highway agency do not have independent authority to determine compliance with EO 11246, 41 CFR Chapter 60, or the minority and female participation goals established by OFCCP, pursuant to 41 CFR Chapter 60.
  - b. State highway agencies and FHWA:

(1) The State highway agency and FHWA have responsibility to ensure that recipients of Federal-aid funds include the required contractual language relating to equal employment opportunity, as set forth in 41 CFR Parts 60-1 and 60-4, either explicitly or by reference.

(2) The State highway agency and the FHWA have the authority and the responsibility to ensure compliance with 23 USC Section 140 and Title VI of the Civil Rights Act of 1964, as amended, and related regulations, including 49 CFR Parts 21 and 23, and 23 CFR Parts 200, 230, and 633. Pursuant to this authority, the State highway agency and the FHWA may conduct compliance reviews of contractors on federally funded highway projects to determine compliance with these laws and related regulations. State highway agencies shall prepare complete, written reports of findings of the compliance reviews. These reports, and the evidence on which they are based, shall be available for FHWA analysis.

(3) If the State highway agency or the FHWA becomes aware of any possible violations of EO 11246 or 41 CFR Chapter 60, each has the authority and the responsibility to notify the OFCCP.

(4) The FHWA and the State highway agency shall not make any determinations regarding compliance with EO 11246 or 41 CFR Chapter 60.

**5. CANCELLATION.** The FHWA Form 86, Compliance Data Report, is hereby canceled.

Original signed by:  
Kenneth R. Wykle  
Federal Highway Administrator

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United States Department of Transportation - **Federal Highway Administration**

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 11**

**Federal-Aid Project Agreement (PR-2)**

<b>TO BE COMPLETED BY FHWA</b>	 U.S. Department of Transportation <b>Federal Highway Administration</b>	STATE _____
	<b>FEDERAL-AID PROJECT AGREEMENT</b>	COUNTY _____
		PROJECT NO. _____

The State, through its Highway Agency, having complied, or hereby agreeing to comply, with the applicable terms and conditions set forth in (1) Title 23, U.S. Code, Highways, (2) the Regulations issued pursuant thereto and, (3) the policies and procedures promulgated by the Federal Highway Administrator relative to the above designated project, and the Federal Highway Administration having authorized certain work to proceed as evidenced by the date entered opposite the specific item of work, Federal funds are obligated for the project not to exceed the amount shown herein, the balance of the estimated total cost being an obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the Federal Highway Administration authorization to proceed with the project involving such costs.

PROJECT TERMINI \_\_\_\_\_

PROJECT CLASSIFICATION OR PHASE OF WORK	EFFECTIVE DATE OF AUTHORIZATION	APPROXIMATE LENGTH (Miles)
HIGHWAY PLANNING AND RESEARCH (HP & R)		
PRELIMINARY ENGINEERING		
RIGHTS-OF-WAY		
CONSTRUCTION		
OTHER (Specify) _____		

FUNDS	
ESTIMATED TOTAL COST OF PROJECT	FEDERAL FUNDS
\$ _____	\$ _____

The State further stipulates that as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions set forth on the following pages.

_____ <i>(Official name of Highway Agency)</i> By _____ _____ <i>(Title)</i> By _____ _____ <i>(Title)</i> By _____ _____ <i>(Title)</i>	<b>U.S. DEPARTMENT OF TRANSPORTATION</b> <b>FEDERAL HIGHWAY ADMINISTRATION</b>  By _____ <i>(Division Administrator)</i>  Date executed by Division Administrator _____
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## AGREEMENT PROVISIONS

### 1. RESPONSIBILITY FOR WORK

a. Except for projects constructed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in compliance with the approved plans and specifications or project proposal which, by reference, are made a part hereof.

b. With regard to projects performed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in accordance with the terms of its approved Certification, or exceptions thereto as may have been approved by the Federal Highway Administration.

**2. HIGHWAY PLANNING AND RESEARCH (HP&R) PROJECT.** The State highway agency will (a) conduct or cause to be conducted, under its direct control, engineering and economic investigations of projects for future construction, together with highway research necessary in connection therewith, pursuant to the work program approved by the Federal Highway Administration and (b) prepare reports suitable for publication of the result of such investigations and research, but no report will be published without the prior approval of the Federal Highway Administration.

### 3. PROJECT FOR ACQUISITION OF RIGHTS-OF-WAY.

In the event that actual construction of a road on this right-of-way is not undertaken by the close of the tenth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

**4. PRELIMINARY ENGINEERING PROJECTS.** In the event that right-of-way acquisition for, or actual construction of the road for which this preliminary engineering is undertaken is not started by the close of the fifth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

### 5. INTERSTATE SYSTEM PROJECT.

a. The State highway agency will not add or permit to be added, without the prior approval of the Federal Highway Administration any points of access to, or exit from, the project in addition to those approved in the plans and specifications for the project.

b. The State highway agency will not permit automotive service stations, or other commercial establishments for serving motor vehicle users, to be constructed or located on the right-of-way of the interstate system.

c. The State highway agency will not after June 30, 1968, permit the construction of any portion of the Interstate Route on which this project is located, including spurs and loops, as a toll road without the written concurrence of the Secretary of Transportation or his officially designated representative. The term 'toll road' does not include toll bridges or toll tunnels.

### 6. PROJECT FOR CONSTRUCTION IN ADVANCE OF APPORTIONMENT.

a. This project authorized pursuant to 23 U.S.C. 115 as amended, will be subject to all procedures and requirements, and conform to the standards applicable to projects on the system on which located, financed with the aid of Federal funds.

b. No present or immediate obligation of Federal funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway agency, and approval thereof by the Federal Highway Administration, any Federal-aid funds of the class designated by the project number prefix, apportioned or allocated to the State under 23 U.S.C. 103(e)(4), 104, or 144 subsequent to the date of this agreement, may be used to reimburse the State for the Federal share of the cost of work done on the project.

**7. STAGE CONSTRUCTION.** The State highway agency agrees that all stages of construction necessary to provide the initially planned complete facility, within the limits of this project, will conform to at least the minimum values set by approved AASHTO design standards applicable to this class of highways, even though such additional work is financed without Federal-aid participation..

**8. BOND ISSUE PROJECT.** Construction, inspection and maintenance of the project will be accomplished in the same manner as for regular Federal-aid projects. No present or immediate obligation is created by this Agreement against Federal funds, its purpose and intent being to provide aid to the State, as authorized by 23 U.S.C. 122, for retiring maturities of the principal indebtedness of the bonds referred to below. When the State requests Federal reimbursement to aid in the retirement of such bonds, the request will be supported by the appropriate certification required by 23 CFR Part 140, Subpart F, and Volume 1, Chapter 4, Section 8 of the Federal-Aid Highway Program Manual, and payment of the authorized Federal share will be made from appropriate funds available. If in any year there is no obligated balance of any apportioned Federal funds available from which payments hereunder may be made, there will be no obligation on the part of the Federal Government on account of bond maturities for that year. Funds available to the highway agency for this project are the proceeds of bonds issued by the governmental unit indicated on the attached tabulation, pursuant to the authority and in the amounts by date of issue and beginning date of maturities set forth therein.

**9. SPECIAL HIGHWAY PLANNING AND RESEARCH PROJECT.** The State highway agency hereby authorizes the Federal Highway Administration to charge the State's pro rata share of costs incurred against funds apportioned to the State under 23 U.S.C. 307 (c), as amended. In the event a project is financed with both Federal-aid funds and State matching funds, the State agrees to advance to The Federal Highway Administration the State matching funds for its share of the estimated cost. For a National Pooled Fund study, the State hereby assigns its responsibility for the work to the Federal Highway Administration. For an Intra-Regional Cooperative Study, the State hereby assigns its responsibility for the work to the lead State for the study.

**10. PARKING REGULATION AND TRAFFIC CONTROL.** The State highway agency will not permit any changes to be made in the provisions for parking regulations and traffic control as contained in the agreement between the State and the local unit of Government referred to in the paragraph on "Additional Provisions," without the prior approval of the Federal Highway Administration, unless the State determines, and the Division Administrator concurs, that the local unit of Government has a functioning traffic engineering unit with the demonstrated ability to apply and maintain sound traffic operations and control.

## AGREEMENT PROVISIONS (Continued)

**11. SIGNING AND MARKING.** The State highway agency will not install, or permit to be installed, any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administrator pursuant to 23 U.S.C. 109(d) or the State's Certificate as applicable.

**12. MAINTENANCE.** The State highway agency will maintain, or by formal agreement with appropriate officials of a county or municipal government cause to be maintained, the project covered by this agreement.

**13. LIQUIDATED DAMAGES.** The State highway agency agrees that on Federal-aid highway construction projects not under Certification Acceptance the provisions of 23 CFR Part 630, Subpart C and Volume 6, Chapter 3, Section 1 of the Federal-Aid Highway Program Manual, as supplemented, relative to the basis of Federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

**14. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (APPLICABLE TO CONTRACTS AND SUBCONTRACTS WHICH EXCEED \$100,000).**

a. The State highway agency stipulates that any facility to be utilized in performance under or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

b. The State highway agency agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

c. The State highway agency stipulates that as a condition of Federal aid pursuant to this agreement it shall notify the Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this agreement is under consideration to be listed on the EPA List of Violating Facilities.

d. The State highway department agrees that it will include or cause to be included in any Federal-aid to highways agreement with a political subdivision of the State which exceeds \$100,000 the criteria and requirements in these subparagraphs a. through d.

**15. EQUAL OPPORTUNITY.** The State highway agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

**"During the performance of this contract, the contractor agrees as follows:**

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway agency setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway agency advising the said labor union or workers' representative of the contractor's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of Section 202 of Executive Order 11246 of September 24, 1965, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway agency or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however,* that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Administration, the contractor may request the United States to enter in such litigation to protect the interests of the United States."

The State highway agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 12**

**Required Contract Provisions**

# REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

	Page
I. General .....	1
II. Nondiscrimination .....	1
III. Nonsegregated Facilities .....	3
IV. Payment of Predetermined Minimum Wage .....	3
V. Statements and Payrolls .....	6
VI. Record of Materials, Supplies, and Labor .....	7
VII. Subletting or Assigning the Contract .....	7
VIII. Safety: Accident Prevention .....	7
IX. False Statements Concerning Highway Projects .....	7
X. Implementation of Clean Air Act and Federal Water Pollution Control Act .....	8
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion .....	8
XII. Certification Regarding Use of Contract Funds for Lobbying .....	10

## ATTACHMENTS

### A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

#### II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his 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, preapprenticeship, and/or on-the-job training."*

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

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.

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.

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 minority group employees.

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.

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.

**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 minority groups in the area from which the project work force would normally be derived.

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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

**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 insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

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

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.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his 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 the avenues of appeal.

## **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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

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

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. 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.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. 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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

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

(1) The number 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;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA 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 PR-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conforming under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are

considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

## **2. Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers as defined in Section IV.4c, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour

Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

## **3. Payment of Fringe Benefits:**

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

### **a. Apprentices:**

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's

level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

**b. Trainees:**

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**c. Helpers:**

(1) A helper is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them

in order: cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

(2) Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper as defined above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

**Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible there-of shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor shall be liable to the United

States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory). Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

#### 9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

#### 1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

#### 2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially possible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under

approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reserve side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the con-

tract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

## **VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

## **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

## Notice to All Personnel Engaged on Federal-Aid Highway Projects

18 U.S.C. 1020 reads as follows:

*"Whoever being an officer, agent, or employee of the United States, of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used to be used, or the quantity of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

## X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et. al., as amended by Pub.L. 92-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

## XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions: (Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participation in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the

eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

### **2. Instructions for Certification—Lower Tier Covered Transactions: (Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more—49 CFR 29)**

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department of agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participation in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.



\* \* \* \* \*

### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

### **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more—49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

## **ATTACHMENT A—EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS (Applicable to Appalachian contracts only.)**

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1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of non-resident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job

order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 13**

**Consolidated EEO Poster” Equal Employment Opportunity Is the**

# Equal Employment Opportunity is **THE LAW**

## Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under the following Federal authorities:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### **INDIVIDUALS WITH DISABILITIES**

Section 503 of the Rehabilitation Act of 1973, as amended, prohibits job discrimination because of a disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

### **VIETNAM ERA AND SPECIAL DISABLED VETERANS**

38 U.S.C. 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans and qualified special disabled veterans.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor (DOL), 200 Constitution Avenue, N.W., Washington, D.C. 20210 or call (202) 219-9368 (DOL's toll-free TDD number for individuals with hearing impairments is (800) 326-2577), or an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

## Private Employment, State and Local Governments, Educational Institutions

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under the following Federal laws:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.

### **DISABILITY**

The Americans with Disabilities Act of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

### **AGE**

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

### **SEX (WAGES)**

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act (see above), the Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of these Federal laws.

If you believe that you have been discriminated against under any of the above laws, you immediately should contact:

The U.S. Equal Employment Opportunity Commission (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 or an EEOC field office by calling toll free (800) 669-4000. For individuals with hearing impairments, EEOC's toll free TDD number is (800) 800-3302.

## Programs or Activities Receiving Federal Financial Assistance

### **RACE, COLOR, NATIONAL ORIGIN, SEX**

In addition to the protection of Title VII of the Civil Rights Act of 1964, Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal assistance.

### **INDIVIDUALS WITH DISABILITIES**

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of a disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

If you believe you have been discriminated against in a program of any institution which receives Federal assistance, you should contact immediately the Federal agency providing such assistance.

# La Igualdad De Oportunidades De Empleo Es LA LEY

## Empleadores con Contratos o Subcontratos Federales

Solicitantes de empleo y empleados de compañías privadas que tienen un contrato o subcontrato federal son protegidos por las siguientes autoridades federales:

### **RAZA, COLOR, RELIGION, SEXO, ORIGEN NACIONAL**

La Orden del Poder Ejecutivo 11246, según enmendada, prohíbe la discriminación en el empleo por razón de raza, color, religión, sexo u origen nacional, y requiere programas de acción afirmativa para asegurar la igualdad de oportunidades en todos los aspectos de empleo.

### **INDIVIDUOS CON IMPEDIMENTOS**

La Sección 503 de la Ley de Rehabilitación de 1973, según enmendada, prohíbe la discriminación en el empleo por razón de impedimento y requiere programas de acción afirmativa en la contratación y ascenso de personas calificadas con impedimentos que, con comodidad razonable, pueden desempeñar las funciones esenciales del empleo.

### **VETERANOS DE VIETNAM Y VETERANOS CON IMPEDIMENTOS ESPECIALES**

38 U.S.C. 4212 de la Ley de Asistencia para la Readaptación de los Veteranos de Vietnam prohíbe la discriminación en el empleo y exige programas de acción afirmativa en la contratación y ascenso de veteranos calificados de Vietnam y de veteranos calificados con impedimentos especiales.

Cualquier persona que crea que un contratista no ha cumplido con sus obligaciones referentes a la no discriminación o los programas de acción afirmativa bajo las leyes anteriormente mencionadas debe comunicarse de inmediato con:

The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 o llamar al (202) 523-9368, o una oficina regional o de distrito del OFCCP, listado bajo el título U.S. Government, Department of Labor.

## Empleadores Privados, Gobiernos Estatales y Locales, Instituciones de Enseñanza

Las siguientes leyes federales protegen solicitantes de empleo y empleados de la mayoría de los empleadores privados, gobiernos estatales y locales, instituciones de enseñanza, agencias de empleo y organizaciones laborales:

### **RAZA, COLOR, RELIGION, SEXO, ORIGEN NACIONAL**

El Título VII de la Ley de Derechos Civiles de 1964, según enmendada, prohíbe la discriminación en el empleo por razón de raza, color, religión, sexo u origen nacional en la contratación, promoción, despido, pago, beneficios suplementarios, programas de adiestramiento, clasificación de empleo, reclutamiento y bajo cualquier otro término y condición de empleo.

### **IMPEDIMENTO**

La Ley para Personas con Impedimentos de 1990, según enmendada, protege solicitantes de empleo y empleados con impedimentos contra la discriminación en la contratación, promoción, despido, pago, programas de adiestramiento, beneficios suplementarios, clasificación, asignación, y otros aspectos de empleo por razón de impedimento. La ley también exige que toda entidad comprendida proporcione a solicitantes de empleo y empleados calificados con impedimentos comodidad razonable al menos que esto cause dificultad excesiva.

### **EDAD**

La Ley Contra la Discriminación en el Empleo por Razón de Edad de 1967, según enmendada, protege solicitantes de empleo y empleados de 40 años de edad o más de la discriminación en el empleo por razón de edad en la contratación, promoción, despido, pago, y bajo cualquier otro término, condición o privilegio de empleo.

### **SEXO (PAGO)**

Además del Título VII de la Ley de Derechos Civiles de 1964 (anteriormente descrita), la Ley de Igualdad en el Pago de 1963, según enmendada, prohíbe la discriminación por razón de sexo en el pago de salario a mujeres y hombres que realizan trabajos sustancialmente iguales en el mismo lugar de trabajo.

Tomar represalia contra una persona que haya presentado una denuncia de discriminación, participe en una investigación, o se oponga a una práctica ilegal de empleo es prohibido por todas estas leyes federales.

Si usted cree que ha sido discriminado bajo cualquiera de las leyes descritas, debe comunicarse de inmediato con:

La Comisión de Igualdad de Oportunidades de Empleo (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 o con una oficina local de la Comisión llamando gratuitamente al (800) 669-4000. Para personas con impedimentos auditivos, el número sin cargo de la Comisión por el sistema TDD es (800) 800-3302.

## Programas o Actividades que Reciben Subsidios Federales

### **RAZA, COLOR, ORIGEN NACIONAL, SEXO**

Además del amparo que brinda el Título VII de la Ley de Derechos Civiles de 1964, el Título VI de la ley prohíbe la discriminación por razón de raza, color, u origen nacional en programas o actividades que reciben subsidios federales. Discriminación en el empleo está comprendida bajo el Título VI si el objetivo primordial del subsidio es proporcionar empleos y en los casos en que la discriminación en el empleo causa o podría causar discriminación en la prestación de servicios de esos programas. El Título IX de las Enmiendas de Educación de 1972 prohíbe la discriminación en el empleo por razón de sexo en programas o actividades educacionales que reciben subsidios federales.

### **INDIVIDUOS CON IMPEDIMENTOS**

La Sección 504 de la Ley de Rehabilitación de 1973, según enmendada, prohíbe la discriminación en el empleo por razón de impedimentos en cualquier programa o actividad que recibe subsidios del gobierno federal. Se prohíbe la discriminación en todas las modalidades de empleo contra personas con impedimentos físicos y mentales que, con comodidad razonable, pueden desempeñar las funciones esenciales del empleo.

Si usted cree que ha sido discriminado en el empleo en un programa de cualquier institución que recibe subsidios federales, debe comunicarse de inmediato con la agencia federal que otorga el subsidio.

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 14**

**FHWA State Transportation Agency EEO Program  
Implementation Guide**

**FHWA**  
**State Transportation Agency**  
**Equal Employment Opportunity Program Guide**

**Issued on: February 2, 1983**

**Revised on: September 24, 1999**

## FHWA EEO PROGRAM GUIDE

	<u>PAGE</u>
Introduction	1
I. Program Document Development	2
A. Contractor Compliance	2
B. State Transportation Agency Employment Affirmative Action Plan	3
II. Accomplishment Reports	10
A. Contractor Compliance	10
B. Affirmative Action Plan	12
III. Internal State Transportation Agency Affirmative Action Plan Evaluation Guidelines	14
 <u>Attachments</u>	
A. Application of Four-Fifths Rule	
B. Internal STA AAP Reporting System	
C. Review Plan	
D. Evaluation Report	



## **FHWA STATE TRANSPORTATION AGENCY EEO PROGRAM IMPLEMENTATION GUIDE**

### Introduction

#### A. Background and Purpose

This Guide is designed to facilitate the development and update of the State Transportation Agency (STA) Equal Employment Opportunity Program. This program, required by 23 CFR 230, Subpart C, pursuant to 23 USC 140(a), covers both the STA's contract compliance and internal affirmative action programs. The Guide is designed to allow the STA maximum flexibility in the development and implementation of their program document while providing criteria sufficiently definitive to ensure compliance with regulatory requirements.

Program approval will be based on the submission of the EEO Program Document and Annual Accomplishment Reports. Implementation of the self-evaluation portion of the Guide will enable the STA to internally monitor its program, and identify and resolve problems.

#### B. Overview of Guide

The guide is comprised of three major sections: Program Document Development, Accomplishment Reports, and Program Self-Evaluation. The Program Document Development and Accomplishment sections are further subdivided into Contractor Compliance and the STA Affirmative Action Plan. The Self-Evaluation section applies to the STA Affirmative Action Plan.

#### Program Document Development

This part provides guidance on minimum program components. It is based on requirements contained in 23 CFR Part 230, Subpart C. It also provides a standardized approach and format for EEO Program documents.

#### Annual Accomplishment Report

Following FHWA's initial approval of the STA's EEO Program, an Annual Accomplishment Report along with one copy of the STA's currently approved program document is to be submitted to the FHWA. This part provides guidance on how to prepare the Annual Accomplishment Report.

#### Program Self-Evaluation

This part provides guidance to the STA for conducting on-site evaluations of its internal Affirmative Action Plan. This area of guidance is based on the experience accumulated by the FHWA Office from evaluations conducted since the inception of the program.

## I. Program Document Development

The following items must be addressed in the STA's EEO Program document in order to comply with 23 CFR 230, Subpart C. The information contained in this section should be policy, procedures, and organizational structure. For example, where organizational structure is mentioned, names of incumbents need not be included. This approach will decrease the need to change the actual program document.

### A. Contractor Compliance

#### 1. Organization and Structure

- a. Describe the organizational location of the contract compliance function. This should be done at all levels (Headquarters, District, Division, and Project).
- b. Describe the staffing for the contract compliance function at all organizational levels. Indicate which positions are full-time and which are part-time. List major duties and responsibilities of each position.
- c. Describe training which is provided to contract compliance personnel.

#### 2. Compliance Review Procedures

- a. Describe STA procedures followed in reviewing contractor compliance with EEO requirements.
- b. Describe how State contract compliance personnel are familiarized with FHWA requirements.
- c. Describe how contractors are informed of EEO contract requirements.

#### 3. Contract Sanctions

- a. Describe procedures used by the STA to impose sanctions on non-complying contractors. Where absent, such procedures should be developed and incorporated into the program document.
- b. Describe methods used by the STA in ensuring corrective action is taken when contractor deficiencies in EEO implementation are found.
- c. Identify applicable State and Federal laws.

4. Discrimination Complaints

Describe the STA's procedures for processing and resolving complaints of discrimination filed against contractors. The procedures should include time limits for complaint processing.

5. External Training Programs

- a. Describe on-the-job training program and supportive services programs used by the STA and contractors.
- b. Describe the State's procedures for monitoring the impact of these programs on the employment of minorities and women in highway construction.
- c. Describe the STA's system for assigning OJT trainee slots to Federal-aid highway construction contracts.

6. Disadvantaged Business Enterprise

Describe the STA's procedures for ensuring contractor compliance with DBE contract provisions through the contract compliance review process.

7. Liaison

Describe the methods used by the STA to communicate with the public on EEO contract compliance matters - particularly with minority, women, and contractor organizations and groups.

8. Innovative Programs

Describe any innovative programs not covered above which facilitate contractor compliance with EEO requirements.

B. State Transportation Agency Employment - Affirmative Action Plan (AAP)

1. EEO Policy

This part of the AAP should include the STA's EEO Policy Statement. The Policy Statement should include:

- a. The STA's commitment to equal employment opportunity, non-discrimination based on race, color, religion, sex, national origin, handicap and age; and affirmative action.
- b. Signature of the top STA official.

c. Assignment of responsibility for AAP implementation.

This part of the AAP should also describe how the AAP and STA's EEO policy is publicized internally and externally. Examples of publicizing methods are:

- o Distribution of the Policy Statement to STA employees and outside organizations.
- o Distribution of the AAP to employees.
- o Meetings on the AAP with employees and outside organizations.
- o Posting of the Policy Statement on STA bulletin boards.
- o Publicizing the AAP and accomplishments in STA newsletters.

2. AAP Organization and Resources

This part of the AAP should describe AAP organization and resources. At a minimum the following should be included:

a. Organizational Charts

- (1) The STA organizational chart which shows the location of the AAP function. It should indicate direct access of the Affirmative Action Officer to the top STA official.
- (2) The Civil Rights Unit organizational chart showing the AAP function.

b. Resources

(1) Staffing

- (a) The Affirmative Action Officer and support staff by position should be listed. Responsibilities should be described for each position.
- (b) All other positions with AAP responsibilities should be listed. Examples of these are recruiters, personnelists, EEO Counselors and Discrimination Complaint Investigators.
- (c) For each position listed indicate whether it is full time or part time. For part time positions indicate the percentage of time devoted to EEO.

(2) Budget

- (a) Describe the kinds of budgetary resources devoted to AAP implementation (salaries, travel funds, training funds, etc.).
- (b) Identify STA official(s) by position responsible for the AAP budget.

3. AAP Procedures

This part of the program document should describe ongoing STA procedures for implementing the AAP, assessing the impacts of personnel policies and practices on minorities and women, problem identification, problem resolution, and AAP monitoring and evaluation as outlined below.

a. AAP Awareness

Describe how STA employees, supervisory and nonsupervisory are kept informed of the AAP. This part should also indicate how supervisors are kept informed of their responsibilities under the AAP. Examples of methods to inform all employees include:

- (1) Employee meetings.
- (2) Newsletters.
- (3) AAP briefings of top management by the Affirmative Action Office.
- (4) Incorporation of AAP implementation into the performance evaluation of managers and supervisors.
- (5) Memoranda to employees.
- (6) Posting of information on bulletin boards.
- (7) EEO training.

b. Merit System Requirements

Indicate whether the STA's personnel policies and practices are governed by a State Civil Service System. If so, describe how the system affects the STA's AAP in the following areas:

(1) Recruitment

Is recruitment centralized in the State Merit Board or has all or parts of it been delegated to the STA? Describe which activities are retained by the State's Merit Board and which ones are delegated to the STA.

(2) Hiring Authority

Indicate whether the STA has direct hire authority or whether lists of eligibles must be requested from the State's Merit Board. List positions for which the STA has direct hire authority and those for which lists of eligibles must be obtained.

(3) Testing

Identify those STA positions which require testing by the State Merit Board or the STA itself.

(4) State Merit Board Affirmative Action Requirements

Indicate whether the STA must comply with such requirements. If so, describe.

c. Recruitment Procedures

Describe the STA's overall recruitment policies and practices and its programs for recruiting minorities and women. Outline activities and responsibilities related to recruitment.

d. New Hire Procedures

Describe the STA's procedures for hiring employees. This part should also describe the STA's procedures for assessing the impact of new hire procedures on the employment of minorities and women. Applicant flow data as well as new hire data should be maintained and analyzed through application of the "Four-Fifths Rule."

New hire selection rates should be determined and analyzed by both total new hires and new hires by occupational categories. Attachment A provides guidance for application of the "Four-Fifths Rule" to new hires.

e. Promotion Procedures

Describe the STA's procedures for promoting employees. Include information on advertisement and criteria used in making selections. This part should also describe procedures for assessing the impact of promotion procedures on the representation of minorities and women. Promotion data should be maintained and analyzed through the "Four-Fifths Rule."

Selection rates should be determined and analyzed by total promotions and promotions by occupational categories. Attachment A provides guidance for application of the "Four-Fifths Rule" to promotions.

f. Termination Procedures

Describe the STA's procedures for terminating employees through dismissal and lay-off actions. This part should also describe procedures for assessing the impact of termination procedures on the representation of minorities and women. Termination data should be analyzed through the "Four-Fifths Rule."

Termination rates should be determined and analyzed by total terminations and occupational categories. Attachment A provides guidance for application of the "Four-Fifths Rule" to terminations.

g. Employee Development Programs

This part of the AAP document should describe the STA's programs for developing its employees and furthering career advancement opportunities. It should also indicate how such programs are utilized to enhance the employment status of minorities and women. The AAP should describe how formal and on-the-job training programs, upward mobility and job restructuring techniques, and career counseling activities are utilized to facilitate the upward movement of minorities and women.

h. Job Validation Procedures

This part of the AAP should describe the STA's procedures for ensuring that job qualifications match traits, characteristics, skills and abilities necessary for successful job performance. It should also detail how such procedures are utilized to ensure nondiscrimination.

i. AAP Monitoring and Evaluation Procedures

This part of the AAP should describe the STA's process for monitoring and evaluating the implementation and effectiveness of the AAP. It should include the following components.

(1) Information/Feedback System

This should describe the STA's internal information maintenance and reporting procedures. It should cover:

- (a) Monitoring of AAP action items and goals and timetables.
- (b) Maintenance of statistics on overall employment, and employment of minorities and women by occupational categories. Statistics should be maintained by the five racial/gender groups.
- (c) Maintenance of statistics on applicants, new hires, promotions, and terminations by race, sex and occupational categories.
- (d) Maintenance of statistics on participants in State training programs by race, sex and occupational categories.
- (e) Methods followed in analyzing minority and female representation overall and by occupational category compared to availability in the Civilian Labor Force.

Attachment B provides examples of suggested formats for these areas.

(2) Problem Identification and Resolution

This part of the AAP should describe the STA's process for identifying problem areas, minority and female underrepresentation, prioritizing problems for corrective action, and developing solutions. It should provide for communication between EEO and management personnel on problem resolution. This process should result in establishment of minority and female goals and action items for addressing underrepresentation and other problems identified.



#### 4. Discrimination Complaint Procedures

The AAP document should include the STA's procedures for receiving, processing, and resolving discrimination complaints based on race, color, religion, sex, national origin, handicap and age from employees and applicants for employment. STA complaint procedures should include the following:

##### a. Responsibilities

Overall responsibility for the procedure should rest with the Affirmative Action Officer. Other persons with responsibilities, such as EEO counselors, investigators, attorneys, and management and supervisors should be identified.

##### b. Required Elements

- (1) The STA's process for resolution of informal complaints should be described along with time limits and responsibilities.
- (2) The STA's process for resolution of formal complaints. The formal procedure should provide for investigation, findings and conclusions on complaints, corrective measures whenever discrimination is found, and informing complainants of decisions reached on their complaints. Time limits for completion of formal procedures should be indicated.

A description of how the STA's complaint files are maintained and to whom they are made available should be included.

- (3) The STA's procedures for informing complainants of other avenues of appeal including the Equal Employment Opportunity Commission, U. S. Department of Justice, State Fair Employment Practices Agencies, U. S. Department of Transportation and FHWA.
- (4) The STA's methods for publicizing both informal and formal complaint procedures available to employees and applicants for employment should be included. Appropriate methods would include posting of procedures on bulletin boards, employee meetings, STA newsletters and memoranda.
- (5) Prohibition of retaliation or reprisals against complainants or STA employees involved in processing complaints, with appropriate disciplinary measures for officials found to have taken reprisal and/or retaliatory actions.

## II. Accomplishment Reports

State Transportation Agency EEO Program updates will be required annually. The annual update will include an Accomplishment Report covering both the Contractor Compliance and Affirmative Action Programs and the current EEO Program document. The accomplishment reports should include:

- o Program document revisions determined necessary because of changes in the STA's organization, staffing and/or procedures or because of changes in FHWA requirements.
- o A report of accomplishments since the last program update. The rest of this part of the Guide provides details on what is expected in this part of the update.
- o An assessment of the status of the program including problem areas requiring attention.
- o An annual work plan which will detail the STA's plans for activity during the coming year.

Program approval will be extended for a twelve month period upon receipt of an acceptable update.

The STA's will be given the discretion to establish the work plan for the twelve month period most workable for them. The specific due dates for submission of revised EEO Program documents or updates will be worked out on an individual basis with each STA.

### A. Contractor Compliance Program Accomplishment Report

#### 1. Accomplishments

##### (a) Contract Compliance Review Activity

Summarize the number of:

- (1) Reviews conducted.
- (2) Contractors reviewed.
- (3) Contractors found in compliance.
- (4) Contractors found in non-compliance.
- (5) Show cause notices issued.
- (6) Show cause notices rescinded.
- (7) Show cause actions still unresolved.

(b) Contract Sanctions

Describe sanction actions taken against contractors and their current status. Summarize the types of actions taken (withholding of payments, denial of prequalification, contract suspension or termination), the issues involved, and the names of the contractors.

(c) Complaints

Identify complaints filed against Federal-aid highway contractors and provide their current status. The basis for each complaint (race, color, religion, sex, national origin, handicap or age), the actions complained about, and STA actions should be summarized.

(d) External Training Programs, Including Supportive Services

Describe accomplishments and changes in these programs. Summarize the number of trainees enrolled, graduated, and terminated by race, national origin, sex, and trade.

2. Assessment

Describe the current status of minority and female representation in contractor workforces overall and by trade. This part should indicate increases and decreases in the employment of minorities and women overall and by trade since the previous program update. Describe major problems identified, solutions considered and major accomplishments.

3. Work Plan

The STA should describe planned contract compliance program activities for the coming year. The anticipated number of reviews should be indicated. Also, any action items or special emphasis activities resulting from the assessment should be listed in this part. Inclusion of target dates for completion of such items is encouraged.

## B. Affirmative Action Program Accomplishment Report

### 1. Accomplishments

This part should indicate which minority and female goals and action items have been accomplished and which have not been accomplished. Explanations should be provided for those goals and action items not accomplished. Other appropriate items would include significant breakthroughs in the employment of minorities and women and significant AAP accomplishments. Attachment B-1 provides a format for reporting accomplishments of goals and action items.

### 2. Assessment

The assessment should provide a basis for problem identification, prioritization and resolution. A current EEO-4 report along with an analysis of minority and female representation should be included. The analysis should compare minority and female representation to their availability in the Civilian Labor Force and describe changes in minority and female employment since the last program update. Areas of underrepresentation should be identified. Attachment B-2 provides a format for reporting net changes in employment of minorities and women since the last program update. Attachment B-3 provides a format on reporting current EEO-4 data. Attachment B-4 provides a format for reporting personnel actions including training provided since the last update. The participation rates for minorities and women in State sponsored training should be set forth and analyzed. Areas of low minority and female participation should be identified.

The results of the STA's application of the "Four-Fifths Rule" to applicant flow, new hire, promotions, and termination data should be summarized in this part (Attachment A). Areas where adverse impact has been identified should be described.

### 3. Work Plan

The STA's work plan should cover short and long term minority and female goals and action items to address underrepresentation and problem areas identified through the assessment. Target dates and assignment of responsibility for goals and action items should be indicated.

a. Goals

Short term goals should cover one year and long range goals five years or the ultimate goal of achieving parity. They should be expressed as numerical and percentage increases by the EEO-4 racial/ethnic gender and occupational categories.

The following criteria should be considered by the STA in developing goals:

- (1) Degree of minority and female underrepresentation compared to CLF availability.
- (2) Racial/gender groups most severely underrepresented.
- (3) Anticipated hiring opportunities and turnover.
- (4) Availability of minorities and women in the CLF.

Development of goals should be a joint effort by EEO personnel, personnelists and management officials.

b. Action Items

Action items should be aimed at correcting problem areas and making needed improvements identified through the assessment. They should be realistic yet ambitious enough to result in significant improvements. They should also be arrived at through joint efforts by EEO, personnel management and other management officials. Examples of action items are:

- o To develop an Upward Mobility program aimed at increasing female representation in non-clerical occupations.
- o To establish relationships with organizations capable of providing black applicants.
- o To provide first line supervisors training in race relations.
- o To evaluate selection procedures to determine the cause(s) of adverse impact on women and Blacks.

Target dates and STA officials responsible for accomplishment should be indicated for each action item.

### III. Internal State Transportation Agency Affirmative Action Plan Evaluation Guidelines

Affirmative Action Plan (AAP) on-site evaluations have in the past been conducted primarily by FHWA. In view of the STA's responsibilities under the State Assurance With Regard to Equal Employment Opportunity, major responsibility for on-site evaluations properly rests with the STA's. The requirement that STA Affirmative Action Plans include evaluation procedures is found at 23 CFR 230, Subpart C, Appendix A, Part II, Section II.C.4., Program Evaluation.

This change does not mean that the FHWA role in this area is being minimized. Instead, FHWA will concentrate on providing technical assistance, participating in selected STA conducted evaluations, and periodic reviews of the STA's on-site evaluations and the process itself. The purpose of this section of the Guide is to provide guidance to STA personnel in conducting internal self-evaluations.

Evaluations are normally comprised of four distinct phases; i.e., preparation, on-site visit, documentation and follow-up. These guidelines are structured accordingly.

#### A. Preparation

##### 1. Objective and Scope of the Evaluation

The first step in conducting an evaluation is to determine the objective and scope of the evaluation. The reviewer must decide whether the entire AAP will be evaluated or only parts of it. The reviewer must also decide which organizational unit should be reviewed. Finally the time period to be covered must be identified.

The following are factors to consider in deciding the objective and scope of an evaluation:

##### a. Minority and Female Representation

Organizational elements with the greatest underrepresentation should be targeted for review before those that are at or near parity.

##### b. EEO Problem Areas

Organizational elements with high discrimination complaint activity and/or decreases in minority and female representation should be targeted for review. Also, those elements whose selection procedures have resulted in adverse impact on minority groups and women should be targeted.

c. Previous Reviews

Reports on previous reviews should be researched to determine where problem areas have been identified previously. This information can be used in identifying organizational elements and/or AAP areas that should be reviewed.

d. Time Period Since Last Review

Those organizational elements not previously reviewed or not reviewed recently should be targeted.

The above are major suggested areas for STA personnel to consider in determining the scope and objective of an evaluation. It is likely that STA personnel may be aware of other reasons which would justify an evaluation. These should be given appropriate consideration.

The result of this step in the evaluation process should be the review objective and scope. Examples of review objectives and scopes are set forth below:

- o To evaluate implementation of the entire AAP Departmentwide from December 1987 to December 1988.
- o To evaluate a District/Section's implementation of the entire AAP from April 1987 to December 1988.
- o To evaluate a field District Construction Office's efforts to identify minority engineering candidates for employment during Fiscal Year 1988.
- o To evaluate the headquarters Design Section's provision of training opportunities for compliance with AAP requirements from January 1988 through December 1988.
- o To evaluate efforts of the Headquarters Planning Section to recruit black females for professional positions during May 1988.
- o To evaluate the effectiveness of the Department's sexual harassment policy.

2. Preliminary Analysis and Planning

Once the objective and scope of the evaluation have been established, the reviewer should prepare for it by researching pertinent information and making review plans.

a. Research

The type of preliminary research undertaken will vary depending on the scope and objective of the evaluation. For example, an evaluation of discrimination complaint procedures would cover different information than a review of minority recruitment efforts. The items listed below should be considered if they are relevant to the scope and objective of the evaluation.

(1) Employment Statistics

Minority and female representation compared to their availability in the civilian labor force should be analyzed. Personnel action data on new hires, promotions, dismissals, and layoffs should be analyzed using the "Four-Fifths Rule." Areas of underrepresentation and adverse impact should be identified.

(2) AAP Document

Those AAP items pertinent to the evaluation should be reviewed. For example, if the evaluation is covering efforts to recruit minorities the reviewer should determine which AAP procedures, goals, action items, and timetables are pertinent to the organization being evaluated.

(3) Training

Minority and female training participation rates related to the evaluation should be analyzed.

(4) Recruitment

Minority and female recruitment sources in the area where the organization is located should be identified and contacted prior to the review. The purpose for contacting them is to determine their capabilities as referral sources and whether they have been utilized by the organization being reviewed.

(5) Discrimination Complaints

The reviewer should analyze discrimination complaint activity in the organization being reviewed to determine patterns and to identify problem areas.



(6) Previous Reviews

Reports on previous evaluations covering the same or similar scope and objective should be reviewed to determine findings and problems which are relevant to the planned evaluation. Such reports can provide valuable background information to the reviewer on the organization to be reviewed.

(7) Past Accomplishments and Problem Areas

The reviewer should determine whether the organization being reviewed has had problem areas in the past and/or significant accomplishments which are related to the evaluation. Examples are breakthroughs in the employment of minorities, and EEO related problems caused by certain supervisors.

b. Review Plan

Upon completion of the research, the reviewer should contact key personnel to inform them of the objective and scope of the review, schedule review activities, and identify record information which should be available for the review. Once the arrangements have been made, the review plan and guidelines should be developed and provided in advance to the organization being reviewed.

The review plan should consist of the following:

- (1) An objective and scope statement.
- (2) Name(s) of the reviewer(s) and key management personnel who will be interviewed.
- (3) Background to the review. Why is the review being made?
- (4) The number and types of interviewees (job categories, racial/gender groups) if employee interviews will be conducted. Arrangements for private interview space should be made prior to the on-site visit.
- (5) The review schedule.

- (6) The guidelines and interview forms which will be followed in making the review.

Attachment C provides examples of a review plan, guidelines and interview forms.

## B. The On-Site Visit

Once the research and plans have been completed and the review plan has been transmitted to the organization being reviewed, the on-site visit can take place. This being the key part of the evaluation process, it is important that the reviewer keep certain things in mind and be governed accordingly.

- o The reviewer's manner is crucial to the success or failure of the evaluation. It should be one of professionalism and objectivity.
- o The reviewer should have thoroughly prepared himself/herself prior to the on-site visit on all aspects to be covered; i.e., employment statistics, problem areas, applicability of AAP procedures, background, etc.

The following are suggested steps for conducting the on-site evaluation:

### 1. Opening Conference

The reviewer should have an opening meeting with the top official and person assigned responsibility for AAP implementation in the District/Section being evaluated. The evaluation objective, scope, interview arrangements and schedule should be discussed fully to ensure that it proceeds as planned. Arrangements for a close out conference following the review should be confirmed.

### 2. Management Interviews

Following the opening conference, the reviewer should interview key management officials who have responsibility in the area covered by the evaluation. Such officials could include AAP personnel, personnel officials, managers, and supervisors depending on the nature of the review.

The review guidelines developed previously should be followed in carrying out this part of the evaluation. The reviewer should keep in mind that the guidelines are a tool for obtaining information related to the evaluation's objective and scope. It may be appropriate to deviate from the guidelines at times and improvise depending on how the review progresses.

Normally, the objective of this part of the evaluation is to determine how well management is carrying out AAP responsibilities assigned to them. The specific objective, however, will be governed by the evaluation's purpose.

3. Employee Interviews

To maximize the reliance and credibility of information received through interviews the reviewer(s) should select employees to be interviewed at random. Depending on the nature of the evaluation, a representative cross-section of interviews with minorities, nonminorities, and men and women in different occupational categories should be obtained. Interviews should be used to determine employee AAP awareness, identify problem areas and corroborate information provided by management officials. Confidentiality of the sources of information provided through these interviews should be strictly guarded unless the interviewee grants permission to reveal his/her identity. Normally, revealing the interviewees' identity is not necessary to correct problems identified by them unless individual problems are involved.

It is very important that the reviewer maintain an air of impartiality and objectivity in conducting employee interviews. The reviewer should strive to avoid even the appearance of bias and advocacy. This may be accomplished by the reviewer avoiding leading questions and not making judgmental statements during the interviews.

4. Review of Records

Documentation and records which are corroborative of information provided by management should be obtained. This would be necessary to substantiate that the AAP is being carried out. In addition, discrimination complaint files should be reviewed as a source of information regarding problem areas and to determine whether STA complaint procedures are being carried out.

Examples of documentation which should be obtained include:

- o Letters to minority and female recruitment sources soliciting applicants.
- o Instructions to key management officials on AAP responsibilities.
- o Organizational minority and female goals.
- o Dissemination of AAP related information to managers and employees.

- o Internal feedback documents such as progress reports.
- o Minutes of EEO/AAP Committee meetings where appropriate.

All records and documentation reviewed should be checked for accuracy.

5. Close Out Conference

Following the interviews and review of records, the reviewer should assess the information collected to determine whether it is sufficient to support findings, conclusions and recommendations related to the evaluation's objective and scope. If not, the reviewer should obtain the necessary information prior to holding the close out conference.

Before the close out conference, the reviewer should develop major findings, conclusions, and recommendations. These should then be presented to the top management official. If possible, deficiencies should be corrected on the spot. If not, timetables for implementation of recommendations should be discussed and agreed to before completion of the on-site visit.

The reviewer should also inform management official(s) of when the evaluation report can be expected and what action will be expected.

C. Documentation - The Evaluation Report

The evaluation report should be concise yet comprehensive enough to fully support review findings, conclusions, and recommendations. It should be provided to the organization reviewed as soon as possible following completion of the review. Normally this should not take longer than two weeks. The organization reviewed should be alerted to any delays in report finalization and transmittal.

A suggested evaluation report format is outlined below. Attachment D provides an example of a report.

1. Introduction

This part should state the scope and objective of the review, relevant background, identify the reviewer(s) and key management official(s) interviewed.

It should also describe the methods followed in making the review; i.e., interviews, records review, contacts with outside organizations, etc.

Key evaluation dates should be summarized - for example, the opening and close out conference dates, when the review was conducted, and the time period covered by the evaluation.

2. Findings

This part of the report should summarize all the facts collected during the review. For example, information collected relative to recruitment, new hires, terminations, complaints and other major areas evaluated should be summarized. Statistical data may be included in this part of the report. This part of the report should support the conclusions and recommendations sections.

3. Conclusions

This part of the report should state the reviewer's conclusions based on the findings. Conclusions should relate to the objective and scope of the evaluation. Both positive findings and areas needing corrective action or improvement should be stated.

4. Recommendations

All recommended actions, including those implemented prior to the report's preparation, should be stated. They should be fully supported by the findings and conclusions sections of the report.

Ideally, all recommendations should have been discussed at the close out conference. However, at times recommended actions may result from information obtained subsequent to the on-site visit. In those instances, the reviewer should discuss the additional deficiencies and recommended actions with the top official of the organization reviewed prior to transmittal of the review report.

5. Exhibits and Attachments

These can be used to provide employment statistics and other documentation supportive of review findings, conclusions, and recommendations. Their use is encouraged to the extent that they are related to the evaluation's findings, conclusions, and recommendations. The reviewer should avoid including unnecessary "paper" in the report.

Examples of attachments are employment data charts which show minority and female representation by occupational categories, personnel action data such as new hires, and sample copies of AAP policies.

## 6. Transmittal of the Evaluation Report

The report should be transmitted as soon as possible, preferably not more than two weeks after completion of the evaluation. The transmittal letter or memorandum should be directed to the top official of the organization reviewed. It should state clearly what action is expected. Normally the desired response to recommendations would be a written commitment specifying actions which will be taken. The transmittal document should request a response within a certain time period to avoid delaying the evaluation process.

It is strongly recommended that AAP reviewers discuss all major recommended actions, conclusions, and findings with the responsible official at the close out conference and prior to transmitting the report. This should minimize misunderstandings, enhance communication, and result in cooperative and productive relationships. Another effective technique would be to provide the evaluation report in draft form to the organization reviewed for their review and comment prior to finalizing the report.

### D. Follow-up

Once the evaluation report has been transmitted and commitments obtained to implement recommended actions, the follow-up phase of the evaluation process begins. This phase is crucial to ensuring that the evaluation actually results in positive changes in AAP implementation. The lack of effective follow-up will decrease the chances of recommendations being implemented.

There are several follow-up methods which can be employed. They can be used individually or in combination with each other depending on which approach is most effective. Whatever method is used, it should be keyed to the agreements made for implementing recommendations. Suggested methods are discussed below.

#### 1. Telephone Calls

This can be an effective method since it "humanizes" the process and can contribute to development of positive working relationships between AAP personnel and management officials. Periodic calls can be made at the appropriate time intervals to discuss progress being made in implementing recommendations. This is also a good method for identifying problems being encountered in implementing recommendations.

2. Progress Reports

This is an effective method for obtaining feedback on progress being made on recommendations. Its advantages are that it provides a record of progress made and can be specified at regular time intervals thereby minimizing the possibility of irregular follow-up. Reviewers are encouraged to always provide feedback to the organization making the report regarding the actions reported.

3. On-Site Visits

This is probably the most effective method in that it allows face to face discussion of progress being made on recommendations. This type of follow-up can be informal or formal.

The informal variety can be employed if the reviewer happens to be visiting the organization on other matters or if the recommendations are not serious enough to warrant a full-fledged follow-up evaluation.

The formal on-site follow-up should be planned and carried out in the same manner discussed above for initial evaluations. The reviewer should normally tailor the scope and objective of the follow-up evaluation to the initial recommendations. Otherwise, the same approach outlined above for initial evaluations should be followed. A review plan should be prepared and distributed prior to the follow-up. Opening and close out conferences should be held, and a report prepared on findings, conclusions and any recommendations resulting from the follow-up visit.

Reviewers are encouraged to document the "informal" varieties of follow-up to ensure that there is a record of progress being made. Such documentation should be provided to the organization reviewed.

**Attachment A**  
**Application of**  
**Four-Fifths Rule**



Application of Four-Fifths Rule

A. Introduction

The Uniform Guidelines on Employee Selection Procedures embody the concept that selection procedures resulting in adverse impact upon racial/ethnic or gender groups are discriminatory unless proven otherwise. There is evidence of adverse impact when any racial/ethnic or gender group has a selection rate of less than 80% of the group with the highest selection rate.

Selection procedures are those that lead to employment decisions in such areas as recruitment, hiring, promotions, demotions, retention, transfers, details, dismissals, layoffs, pay adjustments, awards, training, and performance appraisals. Whenever adverse impacts are found three options for action by the STA are available.

- o Change the procedure.
- o Use a different procedure.
- o Validate the procedure.

STA's are required to count and record applicants and selections by the five racial/ethnic origin groups and two genders. Records must be maintained on an annual basis on the number of persons hired, promoted, and terminated for each job.

Annual adverse impact determinations are required for each group comprising 2% or more of the relevant labor force or applicable workforce. For example, adverse impact determinations must be made for new hires for each group which constitutes 2% or more of the applicants. For promotions adverse impact determinations must be made for each group constituting 2% or more of the STA's workforce. The same principle applies to adverse impact determinations on terminations.

Whenever adverse impact is found, the STA should examine the selection procedure to determine what is causing it. At that point the three options should be considered and exercised as appropriate.

B. Examples of Four-Fifths Rule Application

This section provides examples of Four-Fifths Rule applications to new hires, promotions, and terminations. Formats for maintaining and analyzing statistics in these areas follow the examples.

1. New Hires

Job: Maintenance Worker

1053 applicants, 359 selections

	<u>Blacks</u>	<u>Whites</u>	<u>Hispanics</u>
Applicants	351	452	250
Selections	100	220	39
Selection Rate	28%	49%	16%
Ratio to Highest Rate	.57	1.00	.33
Adverse Impact	Yes	No	Yes

Selection rates are determined by dividing the number of selections by the number of applicants, for each group. For example, out of 452 white applicants, 220 were selected for a selection rate of 49%.

To determine whether there is adverse impact, the other selection rates must be divided by the highest rate. In this case whites had the highest selection rate (49%). Blacks had a 28% rate. Dividing 28% by 49% results in a ratio of .57 which is less than .80 or Four-Fifths of the highest rate. Thus, adverse impact is indicated against blacks. It is also indicated for Hispanics.

The STA should examine selection procedures for Maintenance Workers to determine why blacks and Hispanics have selection rates lower than 80% of the white selection rate. Once the reasons are determined, the three options mentioned under "A" above should be considered and the appropriate one(s) exercised.

2. Promotions

Job: Clerk-Typist

1350 applicants, 720 selections

	<u>Blacks</u>	<u>Whites</u>	<u>Hispanics</u>
Applicants	320	620	410
Selections	169	329	222
Selection Rate	53%	53%	54%
Ratio to Highest Impact	.98	.98	1.00
Adverse Impact	No	No	No

Selection rates and ratios to the highest rate should be calculated in the same way as in the new hires example. In this case there is no adverse impact since the black and white selection rates are more than 80% of the Hispanic rate. No further action by the STA would be expected.

### 3. Terminations

Job: Highway Project Inspector  
135 lay-offs

	<u>Blacks</u>	<u>Whites</u>	<u>Hispanics</u>
Beginning Total	130	250	70
Terminations	85	20	30
Number Retained	45	230	40
Retention Rate	35%	92%	57%
Ratio to Highest Rate	.38	1.00	.62
Adverse Impact	Yes	No	Yes

To determine adverse impact in terminations the retention rate for each group must be determined. This is done by dividing the number of employees retained by the number employed before the terminations occurred. Once the highest retention rate is identified (in this case, 92% for whites) the other groups' ratio to it is determined by dividing their selection rates by the highest rate. For example, the black retention rate 35% divided by 92% results in .38. Whenever the ratio is less than .80 adverse impact exists.

In this example adverse impact exists for blacks and Hispanics. The STA would be expected to examine the retention procedures involved, identify the causes for the adverse impact, and consider and exercise the options listed under "A" above.

### C. Forms for Four-Fifths Rule Application

Sample formats for applying the Four-Fifths rule to new hires, promotions, and terminations follow this section.







Attachment B  
Internal STA AAP  
Reporting System

Internal STA AAP Reporting System

Sample reporting formats for AAP progress reports on goal and action items, employment statistics by racial/gender groups and occupational categories, and personnel actions follow this page.



GOALS AND OBJECTIVES REPORT

Month/Quarter/Year

<u>Goal/Objective</u> (List each one)	Responsible Official	Target Date	<u>Status</u> (Extent of Accomplishments, Efforts Made to Accomplish, Problems Encountered)

**XYZ Department of Highways and Transportation  
Net Changes in Employment  
1986-1987**

Total employment decreased from 3,914 to 3,869 or 1.15%. Minority employment increased from 470 to 476 or 1.28%. Female employment increased from 495 to 498 or .61%. Minority percentage representation remained the same at 12%. Female percentage representation remained the same at 13%. Net changes by occupational categories were as follows:

	<u>Total</u>		<u>Minority</u>		<u>Female</u>	
	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>
Officials/Administrators	-1	-2.86%	0	0	0	0
Professionals	-8	-1.87%	1	5.88%	2	5.41%
Technicians	1	0.15%	1	2.13%	7	8.24%
Protective Service	8	3.69%	-3	-13.64%	0	0
Para Professionals	-8	-4.44%	1	25.00%	-1	-4.17%
Administrative Support	0	0	5	16.13%	-2	-0.93%
Skilled Craft	59	5.09%	26	19.70%	6	54.55%
Service Maintenance	-96	-10.69%	-25	-11.57%	-9	-8.91%
Total	-45	-1.15%	6	1.28%	3	0.61%

**Minority Underrepresentation**

Minority availability in the State civilian labor force is 14.5%. The following categories fall below that percentage.

Officials/Administrators	3%
Professionals	4%
Technicians	7%
Protective Service	8%
Para Professionals	3%
Administrative Support	12%
Skilled Craft	13%
Total	12%

Female Underrepresentation

Female availability in the State civilian labor force is 38.1%. The following categories fall below that percentage.

Officials/Administrators	0
Professionals	9%
Technicians	13%
Protective Service	9%
Para Professionals	13%
Skilled Craft	1%
Service Maintenance	11%
Total	13%















PERSONNEL ACTIONS REPORT

(Month/Quarter/Year)  
NET INCREASES/DECREASES  
SINCE LAST PROGRAM UPDATE

Job Categories	Total Columns B-K A	Male				Female						
		Non-Hispanic Origin		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	Non-Hispanic Origin		Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	
		White	Black				White	Black				
		B	C	D	E	F	G	H	I	J	K	
Officials/ Administrators												
Professionals												
Technicians												
Protective Service												
Para-Professionals												
Office/ Clerical												
Skilled Craft												
Service/ Maintenance												
Total												

FULL TIME EMPLOYEES (Temporary Employees Not Included)

Attachment C

Review Plan

Review of the XYZ Department  
of Highways and Transportation's  
Affirmative Action Plan  
Somewhere District  
Review Plan

I. Purpose of Review

To evaluate the XYZDHT's implementation of the Affirmative Action Plan at the Somewhere District level.

II. Background

XYZDHT's Affirmative Action Plan was last approved by the FHWA on December 20, 1986. Approval of the plan expired on December 20, 1987. Since then, the Department has been submitting periodic employment reports to FHWA. This review is the first one conducted by the XYZDHT's Headquarters Affirmative Action Office at the District level.

III. Scope

The review will concentrate on the AAP only and be conducted at the Somewhere District's Headquarters Office. The time period to be covered will be January 1987 to May 1988.

IV. Objectives

The objectives of the review are to:

- A. Evaluate the adequacy of AAP implementation.
- B. Identify significant accomplishments.
- C. Identify problem areas.
- D. Provide recommendations if areas requiring improvement are identified.

V. Review Responsibilities

The review will be conducted by Mr. Jack Smith of the Headquarters Affirmative Action Office. Ms. Maxine Smith of the XYZDHT's Headquarters Human Resources Division will also participate in the review.

VI. Methodology

The review will consist of the following:

A. Preliminary Analysis (At the Headquarters Office)

1. Review current XYZDHT AAP and Somewhere District employment data.
2. Identify areas of minority and female underutilization.
3. Develop review guidelines.
4. Identify documentation to be collected.
5. Distribute review plan.

B. Data Collection and Interviews (On-Site)

1. Interview Somewhere District Engineer and EEO Coordinator using attached guidelines.
2. Interview selected supervisors and employees using attached interview forms. Interviews will be conducted by Mr. Smith of employees in the EEO-4 occupational categories; i.e., Officials/Administrators, Professionals, Technicians, Para-Professionals, Office/Clerical, Skilled Craft, and Service/Maintenance. As available, the following mixture of District personnel by occupational category and racial/gender groups will be interviewed. In addition, as feasible, 25% of the interviewees will be supervisors and 75% will be non-supervisors.

Arrangements for the interviews' scheduling and private office space should be made by the reviewer prior to the on-site visit. Sufficient time must be allowed to ensure that there is not a "hurry-up" atmosphere. One-half hour per interview should normally be sufficient.

Officials/Administrators - 1: White Male

Professionals - 6: 1 White Male, 1 White Female, 1 Black Male, 1 Black Female, 1 Hispanic Male, 1 Hispanic Female.

Technicians - 15: 2 White Males, 3 White Females, 2 Black Males, 3 Black Females, 2 Hispanic Males, 3 Hispanic Females.

Para-Professionals - 3: 1 White Female, 1 Black Male, 1 Hispanic Male.

Office/Clerical - 5: 1 White Male, 2 White Females, 1 Black Female, 1 Hispanic Female.

Skilled Craft - 12: 2 White Males, 2 White Females, 2 Black Males, 2 Black Females, 2 Hispanic Males, 2 Hispanic Females.

Service/Maintenance - 6: 1 White Male, 1 White Female, 1 Black Male, 1 Black Female, 1 Hispanic Male, 1 Hispanic Female.

Totals 48: 8 White Males, 10 White Females, 7 Black Males, 8 Black Females, 7 Hispanic Males, 8 Hispanic Females.

3. Obtain documentation of AAP implementation.

C. Analysis (At Headquarters Office)

1. Review data collected.
2. Develop findings, conclusions and recommendations, if necessary.
3. Circulate draft report to Somewhere District office for input.
4. Prepare final report.

VII. Schedule

May 3, 1988

8:30 a.m. to Noon Interview Somewhere District Engineer and EEO Coordinator on AAP implementation.

1:00 p.m. to 5:00 p.m. 16 Employee/Supervisor Interviews

May 4, 1988

8:00 a.m. to 5:00 p.m. 32 Employee/Supervisor Interviews

May 5, 1988

8:30 a.m. to Noon Review of records and documentation.

1:00 p.m. to 2:30 p.m. Analyze data collected and prepare preliminary findings, conclusions, and recommendations for close out conference

2:30 p.m. Close out conference with Somewhere District Engineer.

XYZ Department of Highways  
and Transportation  
Somewhere District  
AAP Review Guidelines

I. Publicizing of EEO Policy and AAP

- A. How has the District informed supervisors of the EEO Policy and AAP?
- B. How are employees informed of the EEO policy and AAP?

II. AAP Staffing and Organization

- A. Who has been assigned primary responsibility for AAP implementation within the District?
- B. What are the District EEO Coordinator's AAP responsibilities?
- C. What AAP responsibilities have been assigned to other District supervisors and managers?
- D. How does the District ensure accountability for AAP implementation?

III. AAP Implementation

A. Recruitment

- 1. What actions has the District taken to recruit minorities and women?
- 2. What efforts have been made to correct Black, Hispanic and female underutilization in the Professionals category?
- 3. What actions have been taken to correct Black, Hispanic and female underutilization in the Technicians category?
- 4. What efforts have been made to correct minority/female underutilization in the Para-Professionals category?
- 5. What efforts have been made to correct minority/female underutilization in the Office/Clerical category?
- 6. What actions have been taken to correct female underutilization in the Skilled Craft category?
- 7. Have minority and female organizations and colleges been contacted? If so, what has resulted?

8. Has the District analyzed its applicant flow? If so, what action has been taken as a result of the analysis?

B. Promotions

1. What are the District's promotion policies and practices?
2. What is done to make sure that all employees are aware of promotional opportunities?
3. Are promotion actions analyzed to determine the extent of minority and female representation?

C. Dismissals, Demotions and Disciplinary Actions

1. What are the District's policies and practices with regard to these types of actions?
2. How are such actions monitored to ensure that minorities and women are not adversely affected?
3. Are exit interviews conducted? If so, what action is taken based on exit interview information?

D. Training

1. What are the District's policies and practices with regard to training?
2. What kind of training is available to District employees?
3. What is done to ensure that training opportunities are provided fairly?
4. Has EEO training been provided to supervisors and managers? If so, describe.

E. Minority and Female Goals

1. Has the District established goals for correcting minority and female underutilization? If so, describe.
2. If goals have been established, are they assigned to supervisors and managers?
3. Have established minority and female goals been met?



F. Skills Bank

1. What does the District's skills bank consist of?
2. Has it been used to facilitate upward movement of minorities and women within the District?

G. Job Restructuring and Upward Mobility

1. Does the District have an active upward mobility program? If so, describe.
2. Has the program been used to enhance the upward movement of minorities and women within the District? If so, describe results in terms of minority and female participation rates.

H. EEO Meetings

1. Have EEO meetings been conducted?
2. If so, who conducts the meetings? How often are such meetings held?
3. What is covered through the EEO meetings?
4. Are EEO meetings documented?

I. Employee Orientation

1. How often are such orientations held?
2. What is covered during the orientation sessions?
3. Who conducts the orientation sessions?

J. AAP Advisory Committee

1. Does the District have an AAP Advisory Committee?
2. If so, what are the functions of the committee?
3. How often does the committee meet?
4. Describe the committee's AAP-related activities.
5. What is the committee's composition by race, sex and occupational category?

K. Discrimination Complaints

1. How are supervisors and employees informed of the discrimination complaint procedures?
2. Have any complaints of discrimination been filed in the District during the time period covered by this review? If so, how many, what were their bases (race, color, religion, sex, national origin, age, and handicap), how did the District deal with them and what is their current status?

IV. AAP Assessment and Evaluation

A. Minority and Female Hiring Goals

How does the District monitor these goals?

B. AAP Implementation

How does the District evaluate the effectiveness of its AAP implementation?

C. Problem Identification

Has the District identified any EEO or AAP related problems through its self-assessment? If so, what action has been taken to correct them?

D. Monitoring by the Headquarters Human Resources Division Office

What type of monitoring has this Headquarters office done of the District's AAP implementation?

E. EEO Reports

1. Has the District prepared these reports as described in the current AAP?
2. Describe the contents of these reports.
3. How have the reports been used by the District in implementing its AAP?

V. Documentation

Is documentation maintained by the District adequate to provide evidence of AAP implementation?

VI. Interviews

Conduct interviews in accordance with the attached interview guides.

EMPLOYEE INTERVIEW GUIDE

Date \_\_\_\_\_

Manager/Supervisor

1. Name, Title, Race and Sex
2. How long have you been employed by the XYZDHT?
3. How long have you been a manager/supervisor?
4. How many employees do you supervise? (# minority and female)
5. What types of positions do you supervise?
6. Have you had any EEO training?
7. What are your responsibilities regarding XYZDHT's AAP?
8. Have you been assigned any minority and female goals? If so, describe.
9. Do you have authority to hire, fire, or promote employees?
10. Have you taken any affirmative action to locate minorities or females (1) to fill vacancies? (2) for promotional opportunities? Describe efforts.
11. Have you terminated any employees? What were the reasons? Were any of them minority or female?
12. Do you recommend, authorize or approve training for your subordinates?
13. How are employees selected for training?
14. Have you attended or conducted EEO meetings?
15. Have any discrimination complaints been filed against you? If so, describe circumstances.

16. What does the term "sexual harassment" mean to you?
17. Are you aware of any major AAP accomplishments or problems?
18. Do you have any suggestions for improving the AAP?

EMPLOYEE INTERVIEW GUIDE

Date \_\_\_\_\_

Nonsupervisory Employee

1. Name, Title, Race and Sex.
2. Section employed in:
3. How long have you been employed by the XYZDHT?
4. How long have you been in your present position?
5. Do you know who the XYZDHT's Affirmative Action Officer is?
6. Have you seen a copy of the XYZDHT's AAP? Do you know where to find a copy?
7. Have you attended any meetings where XYZDHT's EEO Policy or Affirmative Action Plan were discussed?
8. What types of training have you received?
9. Have you discussed your career goals with your supervisor? What was the result of the discussion?
10. Have you filed any discrimination complaints? If so, describe particulars. Has anyone retaliated against you for filing a complaint?
11. Do you know what to do if you feel you've been discriminated against?
12. What does the term "sexual harassment" mean to you?
13. Are you aware of any problems with sexual harassment?

14. Are you aware of any other problems?
15. Do you have any suggestions for improving the XYZDHT's AAP and its implementation?

Attachment D  
Evaluation Report

Evaluation Report

Review of the XYZ Department of  
Highways and Transportation  
Affirmative Action Plan  
Somewhere District  
May 3 - 5, 1988

I. Introduction

The purpose of this review was to evaluate implementation of the XYZDHT Affirmative Action Plan at the Somewhere District level. The review was conducted by Mr. Jack Smith of the Headquarters Affirmative Action Office. He was accompanied by Ms. Maxine Smith of the Headquarters Human Resources Division. The time period covered by the review was January 1987 to May 1988.

The XYZDHT's AAP was approved on December 20, 1986. Since then, the Department had been submitting periodic employment reports to FHWA. This review was the first one conducted by the Affirmative Action Office at the District level.

Review findings and conclusions are based on information obtained through preliminary analysis of the AAP and Somewhere District employment data, interviews with the Somewhere District Engineer, District EEO Coordinator, and AAP Committee Chairman; interviews with District employees, and review of documentation maintained by the District on AAP activities.

A total of 49 employee interviews were conducted. Eleven or 22% were supervisors and 38 or 78% were non-supervisors. Women comprised 25 or 51% and minorities 29 or 58% of the interviewees. A complete breakdown of interviewees by racial/gender groups and supervisory/non-supervisory categories is set forth on Attachment 1.

The following persons were involved in this review:

Alex McAllen	District Engineer
J. Jones	Assistant District Engineer and EEO Coordinator
Jacob Messersmith	Director, Human Resources Division
Max Roberts	AAP Committee Chairman

Review findings and conclusions were discussed with District personnel and Mr. Messersmith at a close out conference held on May 5, 1988.



## II. Findings

### A. AAP Staffing and Organization

Mr. J. Jones is assigned primary responsibility for implementation of the AAP. He has held this responsibility since 1979. The following are his AAP responsibilities.

- o Overall monitoring of the District's implementation of the AAP.
- o Monitoring of the District's progress in meeting minority and female hiring goals.
- o Meeting with supervisors on AAP implementation. This includes informing supervisors whenever problem areas are encountered or identified.
- o Monitoring of the District's racial/gender composition.
- o Working with the AAP Committee Chairman.
- o Keeping the District Engineer informed on the AAP.

The District has a very active AAP Advisory Committee. The primary purpose of the committee is to recognize and remove any barriers to full employment opportunities. This is accomplished through periodic meetings between the committee and employees (2 to 4 per year). The committee is made up of 8 District employees and includes supervisors, non-supervisors, blacks, whites, Hispanics and women.

Mr. Max Roberts is the current chairperson of the committee. Mr. Roberts has served in this capacity for approximately 5-6 years.

All AAP committee meetings are documented. Minutes of the meetings are provided to the District Engineer and the Assistant District Engineer. They review discussion items and provide responses to concerns raised at the meetings. The AAP Committee meetings are a very effective method for providing AAP information to employees and identifying employee problems and concerns.

District supervisors and managers are also assigned AAP responsibilities. They are as follows:

- o Recruitment of minorities and women for underrepresented occupations.
- o Providing of training opportunities to employees.

- o Keeping their employees informed of the Department's EEO policy and AAP.
- o Keeping top District management informed of employees, particularly minorities and women, under their supervision who have potential to advance.

**B. Publicizing of EEO Policy and AAP**

The District publicizes the EEO policy and AAP through the following methods:

- o The AAP is discussed with supervisors at supervisor meetings held periodically. These are usually held 4-8 times per year.
- o The AAP committee chairman meets periodically with supervisors on the results of the committee's meetings with employees.
- o Supervisors are required to conduct EEO meetings with their employees at least quarterly. During employee interviews, it was learned that the EEO meetings are usually held more frequently than quarterly.
- o The AAP committee chairperson makes a presentation on the AAP at monthly orientation sessions held for new employees.
- o The Department's EEO policy and complaint procedures are posted on District bulletin boards.

Through the employee interviews conducted during this review, it was found that awareness of the AAP within the District is exceptionally high.

**C. Recruitment**

The District has made extensive efforts to recruit minorities and women. Examples of these efforts are set forth below:

- o Recruitment visits have been made to Glen View A&M, Jackson State University and the University of Decatur.
- o Career days held by local colleges have been attended.
- o Job vacancy listings are sent to minority and female recruitment sources. The current mailing list includes a total of 58 institutions, agencies, and individuals.
- o Periodic meetings with minority legislators.

The District's recruitment activities have been supplemented through establishment of a recruiting team at the Department's Headquarters level. The team was established in September of 1987 and has received training in recruitment techniques at State University. The team's primary objective is the recruitment of college graduates. The team is made up of employees from the Headquarters Office and various Districts. It includes a cross-section of men, women, and minorities. The team makes recruitment visits to colleges and universities in Georgia, South Carolina, Alabama, and Florida. Colleges and universities visited include minority colleges.

D. New Hires

From January 1987 through May of 1988, a total of 136 new hires were made in the District. Minorities represented 38 or 28% and women 29 or 21% of the new hires. A further breakdown of new hires reveals that blacks represented 19 or 14% and Hispanics 19 or 14% of the new hires. Attachment 2 to this report provides complete data on new hires by occupational categories and racial/gender groups.

E. Promotions

From January 1987 through May 1988, a total of 121 District employees were promoted. Minorities comprise 29 or 24% and women 38 or 31% of those promoted. A further breakdown of minority promotions reveals that blacks represented 21 or 17% and Hispanics 6 or 5% of all promotions. Attachment 3 to this report provides complete promotion data by occupational category and racial/gender groups.

F. Dismissals

From January 1987 through May 1988, a total of 7 District employees were dismissed. Minorities represented 1 or 14% of the dismissals. The one minority dismissal was a black male. Attachment 4 to this report provides complete data on dismissals by occupational categories and racial/gender groups.

G. Training

The District provides numerous training opportunities to its employees. Examples of training provided are:

- o College courses for which the District reimburses costs of tuition and books.
- o Right-of-way seminars.
- o Management training.
- o Auto mechanics.

District employees receiving training are coded by race, ethnic origin and sex to enable monitoring of minority and female participation rates. Twenty-eight percent (28%) of all employees receiving training have been minorities.

The District's EEO Coordinator and Personnel Officer have both received formal EEO training. Additionally, the District is planning to send its supervisors to an EEO training course sponsored by the Somewhere Council on Human Resources.

H. Skills Bank

The District maintains a skills bank on its employees. Employees are asked to inform the District Headquarters office of any new skills or training acquired.

Presently, the skills bank is updated manually. It is, therefore, quite difficult to maintain its currency and to retrieve information readily on district employees' skill levels. The district is planning to computerize the skills bank data to facilitate information retrieval.

I. Job Restructuring and Upward Mobility

Although the District does not have a "formal" upward mobility program, job restructuring in maintenance, technician, and right-of-way occupations has resulted in the advancement of minorities and women in these areas.

J. Discrimination Complaints

District employees are informed of the Department's discrimination complaint procedures through notices posted on bulletin boards and through the periodic EEO meetings held by every supervisor. The AAP committee also provides employees information on the complaint procedures.

Since 1982, a total of 12 discrimination complaints have been filed against the District. All but two have been resolved. Ten of the complainants alleged racial discrimination (black) and two of the complainants alleged sex discrimination. In two of the cases (1 alleging racial discrimination and the other alleging sex discrimination), the District recognized that there were some discriminatory practices and took corrective action.

One of the discrimination cases developed into a class action lawsuit alleging that the District was discriminating against blacks. The lawsuit has been tried, but a decision had not been rendered at the time of this review.

K. Minority and Female Goals

The District has established minority and female hiring goals to increase black, Hispanic and female representation in occupational categories where they are underrepresented. Supervisors are expected to take affirmative action to meet the goals. Most of the goals have been met or exceeded.

L. Minority and Female Representation

Civilian labor force (CLF) availability data indicates that minorities represent 27.2% and females 36.2% of the Somewhere Standard Metropolitan Statistical Area. A further breakdown of CLF data indicates that blacks represent 17.8%, Hispanics 9%, other minorities 0.4%, and minority females 10.9% of the Somewhere SMSA. As of May 1988, a total of 1,278 employees were employed in the Somewhere District. Minorities represented 349 or 27% and women 191 or 15% of the Somewhere District workforce. Blacks represented 185 or 14%, Hispanics 152 or 11%, and other minorities 12 or 1.1% of the District's total employment. Attachment 5 provides complete employment data of the Somewhere District by occupational categories and racial/gender groups.

As of December 1987, the District employed a total of 1,278 employees. Minorities represented 333 or 26% and women 153 or 12% of the District's workforce. Blacks represented 176 or 14%, Hispanics 145 or 11%, and other minorities 12 or 1.1% of the District's workforce at that time. Attachment 6 provides complete employment data on the District as of December 1987 by occupational categories and racial/gender groups.

Several significant changes occurred in the District's employment between December 1987 and May 1988:

- o Total minorities increased by 16 or 5%.
- o Total females increased by 38 or 25%.
- o Blacks increased by 9 or 31%.
- o Hispanics increased by 7 or 38%.
- o Actual numbers of females increased in the Professionals, Technicians, Para-Professionals and Skilled Craft occupational categories.
- o Actual numbers of blacks increased in the Professionals, Para-Professionals, and Skilled Craft categories.
- o Actual numbers of Hispanics increased in the Professionals, Para-Professionals, Office/Clerical, and Skilled Craft occupational categories.

- o Actual numbers of minority females increased in the Technicians, Office/Clerical, and Skilled Craft occupational categories.

Attachment 7 provides complete data on net changes in the District's employment from December 1987 to May 1988.

Although underutilization of blacks and minority females still exists in the District's total employment, considerable progress has been made by the District in increasing representation of these two groups in its workforce. Parity in total representation of Hispanics has been exceeded.

#### M. AAP Assessment and Evaluation

The District monitors minority and female hiring goals and AAP implementation through quarterly reports submitted by each District supervisor. The AAP is also monitored through the AAP committee meeting minutes.

The District has identified a couple of problems through its self-monitoring. One case, involving an allegation of racial discrimination (black), resulted in the removal of a white supervisor. In another case, a supervisor with an all white workforce was instructed not to fill any vacancies unless they were filled with minorities.

On the positive side, top District management has noticed a definite change in attitude toward the AAP within the District. This attitude change can be attributed to the direction Messrs. McAllen and Jones have given to District supervisors. In addition, communication between management and employees has improved as a result of the AAP.

#### N. Documentation

District documentation of AAP activities and implementation is adequate.

### III. Conclusions

As evidenced by the findings discussed above and increases in minority and female representation, this review revealed that the Somewhere District's implementation of the AAP has been very effective. No deficiencies were found and no instances of discrimination or sexual harassment were reported to the reviewers. In addition, employee awareness of the AAP was universal and supervisors' attitudes toward AAP implementation were very positive.

The effectiveness of the District's AAP implementation is attributable to the strong leadership which Messrs. McAllen and Jones have demonstrated.

XYZ Department of Highways and Transportation  
Somewhere District  
Interviewees

	Total	Total		White		Black		Hispanic		Other Minority	
		M	F	M	F	M	F	M	F	M	F
Supervisors	11 22%	6 55%	5 45%	3 27%	5 45%	2 18%	-- --	1 9%	-- --	-- --	-- --
Employees	38 78%	18 47%	20 53%	6 16%	6 16%	5 13%	7 18%	7 18%	7 18%	-- --	-- --
Total	49	24 49%	25 51%	9 18%	11 22%	7 14%	7 14%	8 16%	7 18%	-- --	-- --

Legend:

Top Figure = Actual Number

Bottom Figure = Percentage

M = Male

F = Female

XYZ Department of Highways and Transportation  
 Somewhere District  
 New Hires  
 January 1987 - May 1988

Job Categories	Total		White		Black		Hispanic		Other		Total
	M	F	M	F	M	F	M	F	M	F	
Officials/ Administrators	-	-	-	-	-	-	-	-	-	-	-
Professionals	4 67%	2 33%	3 50%	2 33%	1 17%	-	-	-	-	-	6
Technicians	16 100%	-	12 75%	-	1 6%	-	3 19%	-	-	-	16
Protective Service	-	-	-	-	-	-	-	-	-	-	-
Para- Professionals	-	-	-	-	-	-	-	-	-	-	-
Office/ Clerical	-	10 100%	-	8 80%	-	1 10%	-	1 10%	-	-	10
Skilled Craft	66 88%	9 12%	49 65%	6 8%	8 11%	2 3%	9 12%	1 1%	-	-	75
Service/ Maintenance	21 72%	8 28%	12 41%	6 21%	5 17%	1 3%	4 14%	1 3%	-	-	29
Total	107 79%	29 21%	76 56%	22 16%	15 11%	4 3%	16 12%	3 2%	-	-	136

Total Minorities: 38 - 28%  
 Total Females: 29 - 21%

Legend:  
 Top Figure = Actual Number  
 Bottom Figure = Percentage  
 M = Male  
 F = Female



**XYZ Department of Highways and Transportation  
Somewhere District  
Promotions  
January 1987 - May 1988**

Job Categories	Total		White		Black		Hispanic		Other		Total
	M	F	M	F	M	F	M	F	M	F	
Officials/ Administrators	1 100%	-	1 100%	-	-	-	-	-	-	-	1
Professionals	11 69%	5 31%	7 44%	4 25%	2 13%	1 6%	-	-	2 13%	-	16
Technicians	40 83%	8 17%	34 71%	6 13%	5 10%	1 2%	1 2%	1 2%	-	-	48
Protective Service	-	-	-	-	-	-	-	-	-	-	-
Para- Professionals	-	-	-	-	-	-	-	-	-	-	-
Office/ Clerical	1 5%	18 95%	1 5%	14 74%	-	3 16%	-	1 5%	-	-	19
Skilled Craft	30 81%	7 19%	20 54%	5 14%	7 19%	2 5%	3 8%	-	-	-	37
Service/ Maintenance	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>	<b>83 69%</b>	<b>38 31%</b>	<b>63 52%</b>	<b>29 24%</b>	<b>14 12%</b>	<b>7 6%</b>	<b>4 3%</b>	<b>2 2%</b>	<b>2 2%</b>	<b>-</b>	<b>121</b>

**Legend:**  
 Top Figure = Actual Number  
 Bottom Figure = Percentage  
 M = Male  
 F = Female

Total Minorities: 29 - 24%  
 Total Females: 38 - 31%

XYZ Department of Highways and Transportation  
 Somewhere District  
 Dismissals  
 January 1987 - May 1988

Job Categories	Total		White		Black		Hispanic		Other		Total
	M	F	M	F	M	F	M	F	M	F	
Officials/ Administrators	-	-	-	-	-	-	-	-	-	-	-
Professionals	-	-	-	-	-	-	-	-	-	-	-
Technicians	-	-	-	-	-	-	-	-	-	-	-
Protective Service	-	-	-	-	-	-	-	-	-	-	-
Para- Professionals	-	-	-	-	-	-	-	-	-	-	-
Office/ Clerical	-	-	-	-	-	-	-	-	-	-	-
Skilled Craft	3 75%	1 25%	3 75%	1 25%	-	-	-	-	-	-	4
Service/ Maintenance	3 100%	-	2 67%	-	1 33%	-	-	-	-	-	3
Total	6 66%	1 14%	5 71%	1 14%	1 14%	-	-	-	-	-	7

Total Minorities: 1 - 14%  
 Total Females: 1 - 14%

Legend:  
 Top Figure = Actual Number  
 Bottom Figure = Percentage  
 M = Male  
 F = Female

XYZ Department of Highways and Transportation  
Somewhere District  
Employment as of May 1988

Job Categories	Total		White		Black		Hispanic		Other		Total
	M	F	M	F	M	F	M	F	M	F	
Officials/ Administrators	3 100%	- -	3 100%	- -	- -	- -	- -	- -	- -	- -	3
Professionals	100 85%	18 15%	79 67%	17 14%	7 6%	1 1%	6 5%	- -	8 7%	- -	118
Technicians	238 87%	35 13%	195 7%	28 10%	21 8%	3 1%	19 7%	4 1%	3 1%	- -	273
Protective Service	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	-
Para- Professionals	5 42%	7 58%	2 17%	6 50%	2 17%	1 8%	1 8%	- -	- -	- -	12
Office/ Clerical	7 12%	51 88%	6 10%	39 67%	1 2%	7 12%	- -	4 7%	- -	1 2%	58
Skilled Craft	711 92%	64 8%	489 63%	42 5%	118 15%	15 2%	104 13%	7 1%	- -	- -	775
Service/ Maintenance	23 59%	16 41%	14 36%	9 23%	6 15%	3 8%	4 10%	- -	- -	- -	39
Total	1087 85%	191 15%	788 62%	141 11%	155 12%	30 2%	133 10%	19 1%	11 1%	1 0.1%	1278

Legend:  
Top Figure = Actual Number  
Bottom Figure = Percentage  
M = Male  
F = Female

Total Minorities: 349 - 27%  
Total Females: 191 - 15%

XYZ Department of Highways and Transportation  
Somewhere District  
Employment as of December 1987

Job Categories	Total		White		Black		Hispanic		Other		Total
	M	F	M	F	M	F	M	F	M	F	
Officials/ Administrators	1	-	1	-	-	-	-	-	-	-	1
	100%	-	100%	-	-	-	-	-	-	-	
Professionals	95	9	79	8	5	-	4	1	7	-	104
	91%	9%	76%	8%	5%	-	4%	1%	7%	-	
Technicians	251	27	203	23	23	2	22	2	3	-	278
	90%	10%	73%	8%	8%	1%	8%	1%	1%	-	
Protective Service	-	-	-	-	-	-	-	-	-	-	-
Para- Professionals	4	2	3	1	1	1	-	-	-	-	6
	67%	33%	50%	17%	17%	17%	-	-	-	-	
Office/ Clerical	13	54	9	46	3	5	1	2	-	1	67
	19%	81%	13%	69%	4%	7%	1%	3%	-	1%	
Skilled Craft	721	38	516	27	104	6	100	5	1	-	759
	95%	5%	68%	4%	14%	1%	13%	1%	0.1%	-	
Service/ Maintenance	40	23	19	10	17	9	4	4	-	-	63
	63%	37%	30%	16%	27%	14%	6%	6%	-	-	
Total	1125	153	830	115	153	23	131	14	11	1	1278
	88%	12%	65%	9%	12%	2%	10%	1%	1%	0.1%	

Total Minorities: 333 - 26%  
Total Females: 153 - 12%

Legend:  
Top Figure = Actual Number  
Bottom Figure = Percentage  
M = Male  
F = Female

XYZ Department of Highways and Transportation  
Somewhere District  
Net Changes December 1987 to May 1988

Job Categories	Total		White		Black		Hispanic		Other		Total
	M	F	M	F	M	F	M	F	M	F	
Officials/ Administrators	+2 200%	- -	+2 200%	- -	- -	- -	- -	- -	- -	- -	+2 200%
Professionals	+5 5%	+9 100%	- -	+9 113%	+2 40%	+1 100%	+2 50%	-1 100%	+1 14%	- -	+14 13%
Technicians	-13 5%	+8 30%	-8 4%	+5 22%	-2 9%	+1 50%	-3 14%	+2 100%	- -	- -	-5 2%
Protective Service	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -
Para- Professionals	+1 25%	+5 250%	-1 33%	+5 500%	+1 100%	- -	+1 100%	- -	- -	- -	+6 100%
Office/ Clerical	-6 46%	-3 6%	-3 33%	-7 25%	-2 67%	+2 40%	-1 100%	+2 100%	- -	- -	-9 13%
Skilled Craft	-10 1%	+26 68%	-27 5%	+15 56%	+14 13%	+9 150%	+4 4%	+2 40%	-1 100%	- -	+16 2%
Service/ Maintenance	-17 43%	-7 30%	-5 26%	-1 10%	-11 65%	-6 67%	-1 25%	- -	- -	- -	-24 38%
Total	-38 3%	+38 +25%	-42 5%	+26 23%	+2 1%	+7 30%	+2 2%	+5 36%	- -	- -	- -

Legend:  
 Top Figure = Actual Number  
 Bottom Figure = Percentage  
 M = Male  
 F = Female  
 - = No Change

Total Minorities: +16 - 5%  
 Total Females: +38 - 25%  
 Total Nonminorities: -16 - 2%  
 Total Males: -38 - 3%

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 15**

**State EEO Plan Update Checklist**

# STA EEO PLAN UPDATE CHECKLIST

STATE \_\_\_\_\_  
UPDATE DUE IN R/O \_\_\_\_\_  
TIME PERIOD COVERED BY PLAN \_\_\_\_\_  
Plan/Update Received in R/O \_\_\_\_\_  
Plan/Update Returned to D/O for Revision \_\_\_\_\_  
Plan/Update Forwarded to W/O \_\_\_\_\_  
Date Approval Memo Can Be Sent to D/O \_\_\_\_\_

## CONTRACTOR COMPLIANCE

# of Reviews Conducted: \_\_\_\_\_  
# of Contractors Reviewed: \_\_\_\_\_  
# In-Compliance: \_\_\_\_\_  
# In Non-Compliance: \_\_\_\_\_  
# Voluntary Corrective Action Plans: \_\_\_\_\_  
# Show Cause Notices Issued: \_\_\_\_\_

### Administrative Actions Taken to Obtain Compliance:

Withholding progress payments: \_\_\_\_\_  
Reduction in bid ceiling: \_\_\_\_\_  
Other: \_\_\_\_\_

### External Training Programs:

Goal: \_\_\_\_\_  
No. of Slots Assigned: \_\_\_\_\_  
Total Minority Starts: \_\_\_\_\_  
Total Female Starts: \_\_\_\_\_  
Total Minority Completions: \_\_\_\_\_  
Total Female Completions: \_\_\_\_\_

## AFFIRMATIVE ACTION PROGRAM

Assessment Report: \_\_\_\_\_  
Accomplishment Report: \_\_\_\_\_  
Problem Identification: \_\_\_\_\_  
Action Items (Addressing problems): \_\_\_\_\_  
Goals and Timetables:  
    Long-Term: \_\_\_\_\_  
    Short-Term: \_\_\_\_\_  
EEO-4: \_\_\_\_\_  
Statistical Analyses:  
    Underrepresentation: \_\_\_\_\_  
    Adverse Impact: \_\_\_\_\_  
    Barrier: \_\_\_\_\_  
Previously cited deficiencies addressed: \_\_\_\_\_

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 16**

**Contract Compliance Review Report Checklist**



## Contract Compliance Review Report Checklist

Under 23 CFR 230 and 23 USC 140, State Transportation Agencies (STA) are required to conduct contract compliance reviews of contractors to ensure compliance with the Equal Employment Opportunity contract provisions. To ensure compliance by STAs contract compliance review reports may be reviewed and approved by the Division Office or at the Division Administrator's discretion handled under a process review approach.

In reviewing the report the Division Office should determine:

- Is the report complete and accurate (All items on the review report form must be completed, workforce calculation correct and signed by the reviewer)?
- Does the report include workforce data by number of employees, and/or number of work hours?
- Does the report clearly identify the reporting period for the workforce data?
- Does the report include specific information on new hires, terminations, and trainees for the reporting period?

### Compliance Determinations

A. If the finding of the review report indicates that the contractor is in compliance, the following areas need to be reviewed:

- Did the contractor have an adequate representation of minorities and females in each construction trade in relation to their availability in the relevant labor pool?
- If underrepresentation exists, review the good faith efforts exerted by the contractor. Good faith efforts are all those intense, aggressive, sincere, and result oriented actions taken by the contractor designed to meet the minority/female utilization goals required under the contract. Examples of good faith efforts include, but are not limited to:
  1. Actions to Ensure Nondiscrimination in Employment Opportunities
    - o Issue company's Equal Employment Opportunity (EEO) Policy.
    - o Implement company's Affirmative Action Plan.
    - o Develop and disseminate discrimination complaint procedure.

- o Show evidence of holding managers and supervisors accountable.
- o Have frequent EEO meetings with employees and trainees as standard operating procedure.
- o Provide EEO related training to field superintendents.

2. Actions Taken to Recruit Minorities and Women

- o Establish relationship with specific result oriented recruitment sources such as:
  1. Minority and Women Employment and Training Programs.
  2. Trades women groups.
  3. Organizations receiving funds through the Job Training Partnership Act (Private Industry Councils).
  4. Government service agencies (e.g., job service, public welfare/social service offices).
  5. Community colleges/vocational education schools.
  6. Job Corps Centers.
  7. YMCA's and YWCA's.
  8. Military bases.
  9. Armed Services transition centers.
  10. Correctional facilities.
  11. Displaced homemaker programs and Women's Centers.
  12. Churches/community groups, particularly those serving minorities and women groups.
- o Provide adequate information regarding wage rates, working conditions, tools and equipment, and available training and support efforts.

- o Produce and disseminate recruitment flyers aimed at minorities and women.
- o Contact the U. S. Department of Labor Women's Bureau office.
- o Provide transportation to and from job sites.
- o Encourage current employees to refer family members and friends.
- o Encourage female employees in clerical/administrative positions to consider a career in highway construction.

3. Actions Taken to Retain Minorities and Women

- o Provide dependent care information/services.
- o Acquisition/modification of tools and special equipment.
- o Provide copy of training program to trainees.
- o Provide opportunity for employee feedback.
- o Provide timely response to employee concerns/complaints.
- o Keep State Transportation Agency informed of potential problem areas.
- o Maintain a harassment-free work place.
- o Take steps to reduce the feeling of isolation among minorities and women to curb hostile attitudes and behavior (e.g., have several minorities and women at the job site, provide access to a support group/system).
- o Target minorities and women in the first wave of hires for a job.
- o Establish system to get urgent messages to workers on the job.
- o Design benefits package responsive to family needs.
- o Provide adequate and appropriate toilet facilities for women.

- B. If the review report indicates a finding of noncompliance by the contractor, the following areas need to be reviewed:
- \_\_\_ Are the workforce deficiencies clearly identified?
  - \_\_\_ Does the review report include the copy of the show cause notice? If not, what other corrective action was required?
  - \_\_\_ Is there a letter requiring a conciliation conference and a corrective action plan?
  - \_\_\_ The corrective action plan should be attached to the report and should include specific actions to be taken by the contractor with time frames.
  - \_\_\_ Does the documentation submitted with the review report indicate when a follow-up review will be conducted, or reports required from the contractor?
  - \_\_\_ The authority for making the compliance determination should have no reference to E.O. 11246 (Reference 23 USC 140 and 23 CFR 230).

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 17**

**Roles & Responsibilities Under E.O. 11246 & Title  
23 U.S.C. 140**

## Roles & Responsibilities Under Executive Order 11246 & Title 23 U.S.C. 140

Prepared May 12, 1999

### OFCCP

- ☛ Covers race, color, religion, sex & national origin. {**Executive Order 11246 & 41 CFR 60-1.1**}
- ☛ Determine compliance of covered contractors with Executive Order 11246 & implementing rules & regulations. {**Executive Order 11246, Parts II, III & IV; 41 CFR Parts 60-1, 60-2, 60-4, 60-250, 60-741**}
- ☛ Conduct compliance reviews and initiate or direct the initiation of enforcement actions against non-complying contractors by FHWA or a State and assume direct jurisdiction over any matter involving the Executive Order. {**41 CFR 60-1.25**}

### FHWA/STATE DOT

- ☛ State to develop program, including on-site reviews to determine contractors' compliance with Title 23 U.S.C. 140 & implementing regulations. {**23 U.S.C. 140; State EEO Assurances; 23 CFR 230, Subparts A, C, & D; & required contract provisions pursuant to 23 U.S.C. 140**}
- ☛ Assist & cooperate actively with OFCCP & FHWA in obtaining contractor compliance with Executive Order 11246. {**41 CFR 60-1.4(b)(7)**}
- ☛ Neither FHWA or State to review or determine compliance with Executive Order 11246. {**FHWA Order 4710.8 Issued 2/1/99**}
- ☛ FHWA to require State to include equal opportunity clauses in contracts. {**41 CFR 60-1.4(b) & 60-4.2(a) & (d)**}
- ☛ State may require Indian preference on or near reservations & insert appropriate preference clauses in contracts. {**41 CFR 60-1.5(a)(6) & 23 U.S.C. 140(d)**}
- ☛ State to file OFCCP & FHWA required reports. {**41 CFR 60-1.7; 23 CFR 230.121; 23 CFR 230, Subpart C & Subpart D**}
- ☛ FHWA & State to refer matters of noncompliance with Executive Order 11246 to OFCCP. {**FHWA Order 4710.8 Issued 2/1/99**}

### CONTRACTOR

- ☛ Covered if government (construction & non-construction) or federally assisted construction contractor with contract over \$10,000.
- ☛ Comply with required contract provisions and insert required provisions in non-exempt sub-contracts and material supply agreements (by reference O.K.). {**41 CFR 60-1.4(b), (c) & 60-4.2(a) & (d)**}
- ☛ Take action with respect to subcontractors as directed by OFCCP, FHWA and/or State. {**41 CFR 60-1/4(b)(7); 23 CFR 230, Subpart A, Appendix A, paragraph 9(b)**}
- ☛ File OFCCP & State required reports. {**41 CFR 60-1.7; 23 CFR 230.121 & Appendix A, paragraph (10)**}

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 18**

**Guidelines For Assessing Contract Compliance Review  
Officers**

**GUIDELINES FOR DIVISION EEO SPECIALISTS TO  
DETERMINE EFFECTIVENESS OF SHA CONTRACT  
COMPLIANCE OFFICER'S REVIEW TECHNIQUES**

**INTRODUCTION**

1. Did the compliance officer introduce himself/herself and identify whom he/she represents? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

2. Was the purpose of the review explained? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

3. Were the different stages of the review described? YES \_\_\_\_\_ NO \_\_\_\_\_  
(Review of documentation, question and answer, site inspection and walk around and close out)

Comment:

4. Were arrangements for employee interviews made? YES \_\_\_\_\_  
NO \_\_\_\_\_

Comment:

**REVIEW OF DOCUMENTATION**

5. Did compliance officer ensure that all requested documentation was provided prior to the question and answer stage? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:



6. Did compliance officer examine documentation for completeness, accuracy and relevance? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

### REVIEW TECHNIQUE

7. Did compliance officer rigidly adhere to guideline questions? YES \_\_\_\_\_  
NO \_\_\_\_\_

Comment: If answer is yes, did this add or detract from the effectiveness of the reviewer?

8. What type of questions were asked?

\_\_\_\_\_ Leading questions. Example(s).

\_\_\_\_\_ Questions requiring yes or no answers. Example.

\_\_\_\_\_ Open ended questions. Example.

\_\_\_\_\_ Specific questions. Example.

9. Were leads identified? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment: (List leads identified or overlooked.)

10. Were identified leads followed up? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

11. Did compliance officer stick to subject matter at hand? YES \_\_\_\_\_  
NO \_\_\_\_\_

Comment:

12. Was reviewer pulled off the subject? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

13. Did reviewer move on to another question when in a stalemate?  
YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

### COVERAGE OF CONTRACT REQUIREMENTS

14. Did the reviewer go into sufficient detail to determine contractor efforts and obtain sufficient information to determine compliance with the following contract requirements:

A. EEO policy and dissemination? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

B. EEO Officer:? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

C. Recruitment? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

D. Personnel actions? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

E. Training and promotion? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

F. Unions? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

G. Subcontracting: YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

H. Records and reports? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

**CLOSE OUT**

15. Did reviewer clearly state findings? YES \_\_\_\_ NO \_\_\_\_

A. Deficiencies? YES \_\_\_\_ NO \_\_\_\_

Comment:

B. Recommendations: YES \_\_\_\_ NO \_\_\_\_

Comment:

16. Were deficiencies identified and recommendations made contract related? YES \_\_\_\_ NO \_\_\_\_

Comment:

17. Did reviewer explain various administrative alternatives to the contractor?  
(Show cause procedures, voluntary corrective action plan, corrective action plan)

**OVERALL IMPRESSIONS**

18. Was reviewer in control of the compliance review at all times? YES \_\_\_\_  
NO \_\_\_\_

Comment:

19. Did reviewer respond knowledgeably to questions or problems posed during the review? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

20. Was the reviewer decisive in determining:

A. Adequacy of documentation? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

B. Need for additional documentation? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

C. Deficiencies? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

D. Corrective Action? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

E. Contractor's Compliance? YES \_\_\_\_\_ NO \_\_\_\_\_

Comment:

## COMMUNITY SURVEY

Did the Compliance Officer have up-to-date information on employment patterns, minority population and referral resources in a reasonable recruitment area?

CCTRNG#1: A:\gdIntech.wpd: 6/2/97

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 19**

**FHWA Correspondence on Effect of Program  
Consolidation Into OFCCP**

Pch

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

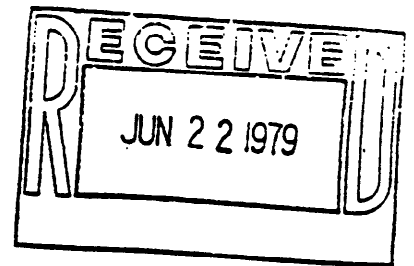
# Memorandum

SUBJECT: EEO Contract Compliance Function

DATE: JUN 22 1979  
In reply refer to: HOC-50.7

FROM : Chief Counsel

TO : Mr. K. W. Fendler  
HPT-22 Director, Office of  
Personnel and Training



You have asked us to comment on the civil rights responsibilities in the area of contract compliance remaining to FHWA after the transfer of E.O. 11246 responsibilities to the Department of Labor pursuant to E.O. 12086. Our interpretations of the various provisions of law are as follows, for whatever assistance they may be for classification purposes.

As we understand the problem, the contract compliance responsibilities in question relate to Federal-aid positions, and involve primarily Part III of E.O. 11246 (§§301-304), §§1-212 and 1-213 of E.O. 12086, and 23 U.S.C. §140. Direct Federal responsibilities are authorized only by the Executive Orders, not §140, and, therefore belong to the Department of Labor only.

Section 140 responsibilities are authorized independently of Executive Order responsibilities, and are unaffected by E.O. 12086. That Executive Order does not purport to transfer them with the E.O. 11246 responsibilities, and in fact, the President does not possess the authority to transfer them. Therefore, to the extent that these responsibilities overlap, FHWA retains the authority to perform them.

Section 140 and E.O. 11246 are significantly different even though both involve contract compliance. The former authorizes and directs FHWA to require the States to assure equal employment opportunity with respect to Federal-aid highway contracts, and to withhold future project approvals if the State is not in substantial compliance with its assurances. In addition to functions similar to these, E.O. 11246 authorizes and directs action with respect to the specific contract and contractor involved. These functions consist, among other things, of (1) negotiation and mediation to secure compliance by the contractor (not the State) on the contract being performed (not future contracts) and (2) cancellation or termination of the contract being performed.



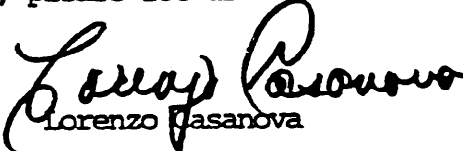
Whereas §140 relates only to the fitness of an applicant to qualify for future grants, E.O. 11246 is also directed to the Federal-aid contractor in the actual performance of Federal-aid work. This second function is what FHWA has lost, and the deletion may affect the classification process.

Legally, the FHWA "contract compliance" review function is no longer focused on securing compliance directly by negotiation with the contractor, nor does it involve sanctions at the contractor level. Its work is now determining whether the State is in substantial compliance with its assurances, rather like a process review; a State does not necessarily have to achieve total compliance in every instance to be found fit for future grants. The terms of §140 strongly suggest that such compliance can be determined from DOL and SHA information, although certainly FHWA on-site reviews are within the scope of authority as appropriate.

As for some of the functions mentioned in your memorandum, FHWA never had the authority under E.O. 11246 to debar contractors or to investigate complaints of employees. These were reserved to the Department of Labor and the Office of the Secretary of Transportation (in conjunction with other agencies), respectively. There exist in FHWA debarment procedures pursuant to which a contractor may be debarred for any fraud in connection with his contract responsibilities, but the program responsibility lies with the Inspector General (formerly the Office of Program Review and Investigations) and the Office of the Chief Counsel. These proceedings are based on violations of criminal statutes and involve numerous things other than violation of civil rights responsibilities.

As you know, the Office of Civil Rights has discussed these issues at length with us, and has asked that the attached memorandum accompany this opinion.

If we can be of further assistance, please let us know.

  
Lorenzo Gasanova

Attachment

UNITED STATES GOVERNMENT

# Memorandum

DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

DATE: June 20, 1979

SUBJECT: EEO Contract Compliance Function

In reply  
refer to: HCR-1

FROM : Director, Office of Civil Rights

TO : Mr. Kent W. Fendler  
IPT-1 Director  
Office of Personnel and  
Training

This is with further reference to our memorandum of May 21, 1979, which comments on your May 7 memorandum to Mr. Lorenzo Casanova. Recent conversations with you and communications from your office have clearly established the presence of misunderstandings, misconceptions, and misinterpretations about the purpose, scope, and impact of the separation of the Executive Order 11246 Contract Compliance Program from FHWA's Title 23 U.S.C. 140 Contract Compliance Program.

Your May 7 memorandum reflected a concern about the classification of civil rights positions and the affect that the transfer of the Executive Order Program might have on such positions. We are aware that Regional Administrators have initiated promotion actions to grade 13 positions in two cases. A third case involves classification action to downgrade the position of a Regional Civil Rights Officer from a GS-14 to a GS-13 position. To the best of our knowledge, limited by the fact that at no time did your office request our advice or concurrence, all these actions are in abeyance. It is apparent that your reluctance to proceed on what we would construe as normal career ladder progression hinges on the issue of contract compliance.

The Contract Compliance Program

As you know, Executive Order 12086 vested in the Office of Federal Contract Compliance Programs (OFCCP)/ Department of Labor (DOL) all the responsibilities of Executive Order 11246, which had previously been delegated to the Department of Transportation (DOT) and other Federal agencies. Secretary of Transportation Brock Adams requested Secretary Ray Marshall, DOL, to continue the delegation in the case of the FHWA by virtue of the fact that we have a comparable, statutory contract compliance responsibility (23 U.S.C. 140). The request was denied.

Section 140 states in part ". . .the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, or national origin." Beyond this relatively terse direction lies a framework of Congressional intent as manifested by the Senate Committee on Public Works' Report on "Equal Employment Opportunity with Regard to Federal-Aid Highway Projects" (S. Document 91-15, April 3, 1969).

The following is excerpted from that report:

"The Federal-State partnership. . .is a fundamental characteristic of the highway program. . . . By placing direct responsibility (for EEO) on the States, the Federal Highway Administration should be able to concentrate on assisting the States in properly developing and staffing their activities, and on assuring that the States carry out the approved program."

Senator Jennings Randolph, Chairman of the Committee on Public Works and Chairman, Subcommittee on Roads, made the following observation on the Senate floor:

"The (Committee) report recognizes that the program under review is new and relatively untested and that its success rests on effective administration. If the recommendations contained in it are implemented, it will be possible to have as many as 2,000 compliance reviews performed at the State level and another 750 by Federal

employees. . . The success of this program rests on the training programs which the Act requires and on the compliance reviews conducted by State agencies and the Federal Highway Administration."

One of the significant conclusions that emerges from these quotations is that the FHWA is assigned a dual role in contract compliance: management oversight of the States' programs along with technical assistance, monitoring, and evaluation; and the conduct of compliance reviews. Both functions have been performed throughout the duration of the Section 140 Program. It may be noted that the number of reviews conducted by FHWA personnel has decreased recently because of severe reductions in field staff.\* This dual role and the full scope of responsibilities, functions, and duties remains intact without the FHWA's direct involvement in the Executive Order Program.

There is, as a matter of fact, valid reason to believe that additional responsibilities will be superimposed on FHWA field staff as a result of the Executive Order consolidation. The Office of the Secretary (OST) is in the final stages of negotiation with DOL on a Memorandum of Understanding which delineates ongoing relationships between FHWA and OFCCP to assure efficient conduct of their respective program mandates and eliminate red tape and duplication. (See attachment.) The FHWA civil rights field personnel will be required to maintain constant liaison and coordination with OFCCP counterparts in implementing the Memorandum of Understanding, an assignment which heretofore has not existed.

There is a series of other ramifications which impinge on the field Civil Rights Officers' current and projected assignments. They include the following:

\* As of March 23, 1979, there were 44 full-time on-board personnel in civil rights positions in the regions and divisions. There were 66 personnel as of December 31, 1975.

1. The FHWA is being assigned the lead responsibility in managing State DOT internal EEO programs pursuant to an FHWA/Urban Mass Transportation Administration (UMTA)/Federal Railroad Administration (FRA) Memorandum of Understanding presently being cleared by OST. Under its provisions, FHWA will assume major responsibility in reviews, monitoring, and possible corrective administration or sanction action involving State DOT employment practices, acting frequently on behalf of and in coordination with UMTA and FRA. The effect will be to eliminate the need for each Modal Administration to act separately and, consequently, the Memorandum of Understanding should create order and efficiency out of a currently confused, duplicative process.
  
2. Minority Business Enterprise (MBE). The DOT Order 4000.7A created a totally new framework within which the MBE Program will be structured. Augmented by a Notice of Proposed Rulemaking, published in the Federal Register May 17, 1979, it formulates a new series of requirements on Modal Administrations, many of which impact on FHWA field staff. The MBE Program within the Washington Headquarters Office of Civil Rights is a primary function of the Title VI and Minority Business Enterprise Division. However, the Public Programs Division, under which contract compliance responsibilities rest, plays a vital role in reviewing the contractors' adherence to or compliance with contract provisions mandated by the forthcoming regulation. No such sharp distinction exists in field offices, where all aspects of MBE promotion, monitoring, and enforcement are centered on the Regional Civil Rights Officer and his/her staff. The compliance review process, then, will have the additional increment of assuring compliance with the contents of the regulation as it relates to federally assisted highway construction projects.

The functions deriving from the revised program include the following obligations on States and some contractors:

1. Preparation and approval of MBE Affirmative Action Plans.
  
2. Establishment of annual, and in some cases, project goals.

3. Certification to assure validity of MBE firms participating in the program.
4. Reporting.

The significance of the MBE Program and the role of the FHWA contract compliance personnel is dramatically illustrated by recent events surrounding the Grove Shafter Freeway in Oakland, California. On April 23 the State ordered work suspended on this project because of protests raised by Oakland community groups who contended that minority firms were not given adequate consideration in contracts and subcontracts, and that minority employment on the project was not adequate. A series of discussions, including community organizations, State and local government agencies, and the FHWA resulted in an agreement which permitted resumption of work on the project. The agreement provided for a goal for MBE participation in the total project at 37 1/2 percent of the total project cost, and also a minority employment goal of 50 percent. The FHWA program and contract compliance personnel contributed to the resolution of the issues, and the agreement provides for our continuous monitoring to ascertain achievement of its provisions.

Such functions will play an increasingly vital role as the DOT Order and regulation take effect. We call your attention to the FHWA Deputy Administrator's memorandum of October 16, 1978, appointing the Regional Civil Rights Officer as the MBE Coordinator Designee in each region.

#### Other Considerations

The continuing role of the civil rights specialist in contract compliance and his/her added functions in State DOT employment and MBE comprise only part of the newly imposed duties assigned to field civil rights staff. Among others are:

1. Significantly increased scope of EEO complaint investigations assigned by OST. These assignments are based on investigations of complaints arising in other DOT modes, principally the Federal Aviation Administration.

2. Recently assigned responsibility for investigating complaints alleging employment discrimination by reason of handicap.

#### Summary

The loss of the Executive Order Program will necessitate revisions in the methods by which FHWA will administer its contract compliance effort. Any conclusion that such changes will reduce the duties of field Civil Rights Officers and specialists would be totally erroneous and a misconstruction of the facts. As noted previously, 22 civil rights positions have been lost in field offices between December 31, 1975, and March 23, 1979. While the entire group of 66 participated to some extent in the Executive Order Program, the entire range of all other civil rights activities has been concentrated on the remaining 44. In addition, there are substantial reasons to believe that their duties will be enlarged. Added to the fact that their duties are being broadened in other program areas, we see no justification in the premise that consolidation of the Executive Order 11246 function in DOL will have any negative impact on the grade level assigned to those positions.

We, therefore, request that the Office of Personnel and Training proceed with normal processing of promotion and classification actions in the instant cases and as normally processed for all FHWA vacancies.

*R. Edward Quick*  
R. Edward Quick

Attachment

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 20**

**Civil Rights/EEO Contract Compliance  
In Highway Construction--Paper by Humberto Martinez  
(Prepared Around 1979)**



**THE EEO CONTRACTOR COMPLIANCE PROGRAM  
UNDER EXECUTIVE ORDER 11246 & THE FEDERAL AID HIGHWAY ACTS**

**A Paper Presented By Humberto R. Martinez  
1979**

# **The EEO Contractor Compliance Program Under Executive 11246 and the Federal Aid Highway Acts**

**A Paper Presented by Humberto Martinez (1979)**

## **INTRODUCTION**

The contract compliance review program has been in effect, at least in Region 6, since 1967. In terms of complexity, the program has gradually evolved from the "head count" compliance review to its present state where reviews are designed to identify and correct discrimination, where it exists, in all facets of employment and ensure equal opportunity through affirmative action. While present regulations provide adequate authority for program implementation and review procedures provide detailed guidelines for compliance officers, the program's desired impact on minorities and women has not been consistent. This is more obvious in certain states.

We must ask ourselves why, when we have the necessary authority and guidelines to implement the contract compliance review program, hasn't the program had the desired impact on the employment of minorities and women in the highway construction industry? While there are many factors involved in a program's effectiveness, some of which we have no control over (weather, economy, funding), there clearly are some factors which we can control. One of these factors, a very significant one, is the compliance officer and his or her knowledge and effectiveness. The following discussion focuses on compliance review techniques designed to assist the compliance officer in conducting effective compliance reviews and attaining desired program goals.

## **PROGRAM OBJECTIVE**

Simply stated, the contract compliance review program's objective is to ensure nondiscrimination in the hiring and employment practices of contractors involved in the highway program.

## **PURPOSE OF REVIEWS**

The purpose of a compliance review is to determine whether the contractor is in fact complying with his or her contractual requirement to not discriminate, provide equal opportunity and where appropriate take affirmative action. As stated in more specificity by the Office of Federal Contract Compliance Programs, the purpose of the compliance review program is to determine whether or not prime contractors or subcontractors maintain nondiscriminatory hiring and employment practices and are taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded,

promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. Each review shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom.

## **DEFINITIONS OF KEY TERMS**

**“Nondiscrimination,” “equal opportunity,” and “affirmative action”** are key concepts that outline the scope and depth of the contractor’s requirements and every contract compliance review. By the regulations, compliance officers are charged with the responsibility for not only determining whether a contractor is discriminating or not, but in addition, whether the contractor is taking affirmative action. There is a difference between the two terms.

Like other programs, civil rights/equal opportunity programs have their share of terminology. The problem is that terms germane to the program are carelessly used interchangeably by people not familiar with their definition. A clear definition of some of these terms is in order.

**“Nondiscrimination”** involves the consideration of persons on their capabilities rather than on their race, color, religion, sex or national origin.

**“Equal opportunity”** involves treating everyone the same or providing the same opportunities to all persons without regard to race, color, religion, sex or national origin.

**“Affirmative action”** encompasses those actions which go beyond mere passive nondiscrimination and ensure that equal opportunity is provided to those previously subjected to discrimination.

A contractor practicing nondiscrimination may not be providing equal opportunity. For example, take the contractor who relies solely on word of mouth referrals. If this contract’s workforce is predominantly non-minority, the referrals will, in all likelihood, be non-minority. While this contractor is practicing nondiscrimination because he considers all referrals on their capabilities, he is not providing equal opportunity. By relying solely on word of mouth referrals from an all non-minority workforce, minority groups in the area are not being given the same opportunity to access the contractor’s employment opportunities that is being given to non-minorities.

A contractor practicing equal opportunity may be found to not be taking affirmative action. An example would be the employer who has significant minority representation in his workforce throughout all classifications. However, the laborers classification is saturated with minorities and minorities are underutilized in the higher paying, skilled classifications. The contractor has not recognized the problem and continues to hire from outside sources

for the higher paying classifications. For this contractor to be considered in compliance with the "affirmative action" requirement of his contract he would have to identify the problem and take measures which go beyond mere passive nondiscrimination to correct it. A possible solution would be for the employer to review the promotion potential of his laborers and once having done so, utilize training programs to increase the skills of those identified as having the potential and willingness to enter the skilled crafts.

The role of compliance officers is not an easy role. Each review must obtain sufficient evidence to make an objective determination of a contractor's compliance or noncompliance with the EEO provisions of the contract. It is unlikely that overt acts of discrimination will be encountered. Unintentional or subtle acts of discrimination or contract violations are more likely to be encountered. These actions or inactions are more difficult to identify during a compliance review.

## **PROGRAM AUTHORITIES**

In essence, the authorities for the contract compliance review program are;

- Executive Order 11246 as amended by Executive Order 11375
- OFCCP Rules and Regulations 41 CFR 60
- Required Contract Provisions PR-1273
- Federal Aid Highway Acts of 1968 (Section 22) and 1970 (Section 110) (23 USC 140)
- State Assurances with Regard to the Equal Opportunity Program
- State Highway Agency EEO Programs (23 CFR 230, Subparts A, C, and D)
- Title VI of the Civil Rights Act of 1964
- 49 CFR 21 - Effectuation Of Title VI of the Civil Rights Act of 1964
- Minority Business Enterprise in Federal-Aid Highway Construction (23 CFR 230, Subpart B).

These authorities originated from Congress and the President. For our purposes, two Federal agencies have jurisdiction over the contract compliance program, the **Office of Federal Contract Compliance Programs (OFCCP)** and the **Federal Highway Administration (FHWA)**. The respective authorities and roles of each agency must be understood by all involved in the program.

Attachment A charts the connection between the Executive Order 11246 and Title 23 contract compliance programs. Executive Order 11246, issued by President Johnson on September 24, 1965, placed responsibility for the administration of Parts II and III of the Executive Order with the Secretary of Labor. Additionally, the Executive Order in Section 301 prescribed the responsibilities of the administering agency (FHWA in this case), and the contracting agency, the State Transportation Agency (STA)(in the Federal Aid Highway Program).

The FHWA is to require the STA to undertake and agree to incorporate or cause to be incorporated into all non-exempt Federally assisted construction contracts, the EEO clause. Further, the STA is to assist and cooperate actively with the FHWA and the OFCCP in obtaining contractor compliance and to furnish the FHWA and the OFCCP such information as they may require for the supervision of such compliance. The STA is required to carry out such sanctions and penalties imposed upon non-complying contractors as directed by the OFCCP and FHWA, and refrain from entering into any agreement with a debarred contractor.

The Secretary of Labor further delegated the authority granted by the Executive Order, except issuing rules and regulations of a general nature, to the OFCCP. This was done on October 5, 1965, by Secretary of Labor Order No. 26-65. The following responsibilities were assigned to OFCCP in that order:

- (A) Carrying out the responsibilities assigned to the Secretary of Labor in Parts II, III and IV of the Order.
- (B) Developing and recommending to the Secretary rules and regulations to achieve the purposes of the Order.
- (C) Coordinating with the Equal Employment Opportunity Commission and the Department of Justice and other agencies.
- (D) Providing regular reports to the Secretary of Labor.

Generally speaking, OFCCP is responsible for setting standards, prescribing procedures and reviewing overall performance of administering and contracting agencies.

The rules and regulations of OFCCP at 41 CFR 60 are applicable to all agencies of the government administering programs involving Federal financial assistance. These regulations require the head of each agency, in this case DOT, to prescribe regulations for the administration of the order and the regulations. Any agency developed regulations, directives and orders must be submitted to the OFCCP for approval prior to their implementation.

The Department of Transportation accepted OFCCP's regulations en toto until such time as DOT developed its own regulations. To fill this void, FHWA developed review procedures in the form of IM 40-2-72. Since then, these procedures have been revised and formalized as regulations and are presently found at 23 CFR 230. These regulations have been approved by the OFCCP.

On Attachment A, following the Executive Order line of authority we come to the STA. As

mentioned earlier, the Executive Order places certain responsibilities upon the administering agency (FHWA) and the contracting agency (STA). The STA is responsible for enforcing the required EEO contract provisions on a contract by contract basis. The STA is also required to develop a program to ensure contractor compliance with Executive Order 11246.

The contractor, at his level, is required to abide by the requirements of his contract and to cause the EEO requirements, where applicable, to be incorporated into non-exempt subcontracts and agreements for the procurement and/or lease of equipment and materials. Because of the contractual relationship with the STA, the contractor may be required to take additional action as deemed necessary by the STA or, because of the STA's relationship with FHWA, as directed by the FHWA.

Vendors and suppliers are subject to the Executive Order whenever they hold contracts where Federal aid funds are involved in excess of \$10,000. Thus, vendors and suppliers are required to not discriminate, take equal opportunity and affirmative action. While we have not actively pursued programs to address the compliance of vendors and suppliers, compliance officers should, as appropriate, explore strategies to ascertain their compliance. One method could be to require contractors to request and obtain employment data from their covered vendors and suppliers. Any such requests would have to be based solely on Executive Order 11246 authority.

Unions are included on Attachment A to the side of and at the same level as the contractor. This is because neither FHWA nor the STA have direct enforcement authority over unions. The agreement that exists is between the contractor and the union. There are of course procedures that FHWA and STAs can undertake to address compliance problems emanating from union membership structure and referral practices. We'll address these procedures later on.

We have traced the line of authority of Executive Order 11246 from the President through the vendor and supplier. But unlike most other administering agencies, compliance officers in the Federal-aid highway program have another source of authority. That source of authority is the Federal-Aid Highway Act of 1968. Its Section 22(a) is codified in 23 USC 140. The Act was passed by Congress and required the Secretary of Transportation to obtain assurances from any State desiring to avail itself of the benefits of Title 23 that employment in connection with proposed projects will be provided without regard to race, color, creed or national origin.

The responsibility for requiring and obtaining such assurances was delegated by the Secretary of Transportation to the Federal Highway Administrator. The STAs, by executing such an assurance with the FHWA, place themselves under the jurisdiction of that agency with regard to its contract compliance program, among other programs, pursuant to the Federal-Aid Highway Act of 1968.

The relationship between the STA and its contractors and subcontractors with regard to the Federal-Aid Highway Act of 1968 is similar to that which exists pursuant to Executive Order 11246. However, the Federal-Aid Highway Act of 1968, Section 22, does not apply to vendors

and material suppliers. So the flow of authority pursuant to the Federal-Aid Highway Act of 1968 stops with subcontractors.

FHWA regulations at 23 CFR 230, Subpart A and Attachment 1, "Special Provisions" outline contractor responsibilities with regard to unions with which the contractor has a valid bargaining agreement.

## **OFFCCP AND FHWA POLICY DISTINCTIONS**

There are some differences between the programs and policies of the FHWA and the OFCCP. However, in most cases these differences can be minimized by applying reasonableness and common sense to specific situations.

One area where the programs are different involves compliance responsibility for Part I contractors in hometown plan areas. (The only hometown plan remaining in the country as of March 21, 1997, is the Denver plan.) OFCCP on the one hand maintains that it has sole responsibility for determining the compliance of Part I contractors pursuant to Executive Order 11246. On the other hand, FHWA maintains that just because a contractor participates under Part I of a hometown plan, does not ensure that contractor is fully complying with Executive Order 11246 and the Federal-Aid Highway Act of 1968. Since OFCCP cannot determine individual Part I contractors' total compliance through hometown plan audits alone and to discontinue FHWA's review of Part I contractors/trades would directly halt all FHWA/STA contract compliance activity in four critical plan areas in this region, it was decided that FHWA and STAs in this region would continue to review Federal-aid highway contractors pursuant to 23 USC 140 and Title VI of the Civil Rights Act of 1964.

Resolution of the difference between the two programs involved OFCCP and FHWA national and regional policy. The agreement reached, to continue reviews of Part I contractors by FHWA and STA personnel, involved reasonableness. The discontinuation of STA and FHWA reviews would have ended the EEO contract compliance review program in four plan areas in this region with significant minority populations and highway construction activity. This would not have been reasonable.

Another major difference between the two programs is the ability to provide remedies or "make whole" victims of discrimination or members of affected classes. Under the Executive Order, the OFCCP can order "make whole" remedies for all persons in an affected class (persons identified by OFCCP to have been adversely effected by a contractor's action, inaction, policy or procedure) and victims of discrimination. "Make whole" remedies may include back pay, reinstatement and restoration of lost employment related benefits. The Title 23 program does not provide for make whole remedies. The alternatives available to the FHWA or a STA are limited to taking enforcement actions against the contractor. In the process, the STA may recommend to the contractor that he or she may make whole the victims of discrimination or members of the

affected class in order to avoid or mitigate any enforcement actions that the STA may take against the contractor.

## **THE DIVISION OFFICE ROLE AND PROGRAM MANAGEMENT ACTIVITIES**

To this point we have discussed the purpose of a contract compliance review, significant terms, authorities, agency and contractor responsibilities and policy variations. All are important topics in any discussion of the contract compliance program. However, the role of the division office is a particularly significant one. Let us define that role now.

There are many activities that a division office can undertake in attaining the objectives of the contract compliance review program. These activities can be divided into two areas; **overall program management** and **program evaluation** which is part of program management.

To manage the contract compliance review program, a reassessment of current activities is in order. The object is to determine whether what you have been doing up to now has produced results. If not then more productive activities must be identified. For the most part, division offices (up through the 80's) have concentrated their efforts in conducting home office reviews and reviewing individual compliance review reports submitted by the STA. While these efforts were productive, to a certain extent, they do not address the needs of the total program and are only a small part of the overall program. Limiting oneself to such activities provides only a small picture focused on individual contractors' compliance rather than the big picture focused on the overall program's impact.

To provide overall program management, the division office jointly with the STA must;

- Provide overall program direction and planning
- Establish program focus
- Identify desired program outcomes
- Periodically evaluate the program

Our purpose is to identify major activities that our division offices can undertake to fulfill their responsibilities as overall program managers. The list is not intended to be all inclusive but is primarily designed to demonstrate the difference between overall program management and program administration itself.

### **TRAINING**

For any program to be successful, those responsible for its implementation must be properly trained. In the contract compliance program the division office should ensure that the following personnel are properly trained:

- STA Personnel
- Contractor Personnel
- Minority/Female Community Organizations



Training can serve to inform the STA and contractor personnel of FHWA expectations, program goals and requirements, and effective implementation techniques. Training and technical assistance can be accomplished through;

- Formal classroom presentations.
- On-the-job on a one on one basis.
- Seminars, conferences and workshops held for that purpose.
- Issuance of FHWA review guidelines.
- Issuance of STA program policy and procedures.
- Inclusion of unions in training activities as appropriate.

The question that should always be on the minds of division office persons assigned to this program is how can we do better?

## **PROGRAM EVALUATION**

To date, evaluation at the division level has been limited to the review and processing of individual review reports. There has been little or no program evaluation. This limited activity has not identified overall program impact.

The following techniques may be used by the Division Office working with the Regional Office of Civil Rights and the STA to evaluate an STA's contract compliance program;

- STA EEO program document review
- Analysis of STA compliance review reports
- Attendance at preconstruction conferences
- Observing STA conducted reviews
- Performing statistical analysis of the program
- Program/process assessments or reviews

## **TARGET AREA REVIEWS**

Another effective program management tool is the target area review. In this approach, an area of a state is selected based on population, availability of minorities and women in the workforce and contracts planned and underway. Problems particular to a certain geographical area could be most appropriately identified and addressed through the target area review concept. The division office may participate in target area reviews by serving as the overall coordinator for the target area review. This type of involvement is consistent with the overall program management concept in that the division office would be involved in assessing program implementation within a specified area rather than on an individual contractor basis.

## PROBLEM IDENTIFICATION

Problem identification is another program management tool. The division office should continually strive to identify significant policy and procedure problems that may exist at the FHWA national, regional and STA levels.

## ANALYSIS OF SHA COMPLIANCE REVIEW REPORTS

In analyzing reports of compliance reviews conducted by the STA, the division office should look for technical deficiencies as well as review deficiencies. Technical deficiencies include omissions, errors in addition and calculating percentages. While some of these deficiencies are minor they nevertheless need to be corrected prior to submitting the review report to the regional office.

Based on past experience, the items most frequently omitted or not reported properly on the FHWA-86 compliance review report form include;

- The appropriate blocks in item #5, **Review Authority**, should be "x"ed. In addition, when reporting compliance reviews of contractors in hometown plan areas, please annotate in block #31 the applicable hometown plan special provisions and whether the contractor is a Part I or Part II contractor.
- Item #21, **Subcontractors, Vendors, Suppliers**, etc., is often not filled out properly. For each subcontractor, vendor, and supplier listed, this block should include total employees, percent minorities and whether or not it is a minority enterprise. Contractors should be responsible for obtaining information from their subcontractors, suppliers, and vendors. All subcontractors, vendors, and suppliers should be listed, regardless of whether they are active or not.
- Item #23, **Other Recruiting Sources**, often times does not include the address of the recruiting source. This can be interpreted not only as a technical deficiency, but as the reviewing officer's failure to verify accuracy of the information provided by the contractor.
- Discrepancies continue to be noted in item #24, **On-Site Construction Employment Data**. The problem here is simple addition. Check the addition for all columns. Include the figures under the on-the-job trainees column in the total employees column.
- Whenever any of the items a through l in item #30 do not apply, please use "N/A" in the yes and no column. Include an explanation when deemed necessary.

Aside from technical deficiencies, such as we have just discussed, analysis of review reports should be made to determine:

- Whether the compliance determination can reasonably be supported by the information contained in the report.
- Whether there is evidence that the contractor has either discriminated or not provided equal employment opportunity.
- Whether the report is internally consistent regarding scope and conclusions.
- Whether the corrective actions taken or proposed are sufficient to correct the deficiencies noted.

On an overall program basis, analysis of review reports should be made to determine:

- Program deficiencies (policy and procedure).
- Review technique deficiencies.
- Problem areas (geographical).
- Program effect and impact.

As an example, analysis of individual review reports by this Regional Office of Civil Rights have turned up the following overall program deficiencies;

- An overconcentration in non-productive areas. Review reports often overemphasize "technical" or "paperwork" compliance. This sometimes results in the inclusion of irrelevant material not related to specific contract requirements in the review report itself.
- Patterns of discrimination and underutilization of minorities and women are overlooked or ignored.
- Review reports are submitted reflecting underutilization or a pattern of discrimination, yet specific corrective action has not been recommended or documented in the review report.
- Determinations are not supported by data reflected in the review report.
- Determinations of "in compliance" are often contrary to or not supported by information provided. As an example, a contractor is found to be "in compliance" while relying solely on "word of mouth" referrals in spite of an underutilization of minorities and women in his workforce.
- Still another example is a review report reflecting underutilization of minorities and women without documenting the particular contractor's turnover and his

affirmative efforts to recruit and train minorities and women. Without this information, a determination of "in compliance" cannot be substantiated.

- Lack of action with regards to union problems. Review reports alleging unions as the probable cause of underutilization of minorities and women fail to list specific actions recommended to correct the problem.
  - Untimely scheduling of reviews. Too many review reports have been received where the review was conducted after the peak employment period or near the completion of the project.
  - Review reports of projects in plan areas have not considered the contractor's total aggregate workforce in the plan area. This information is to be included in review reports and must be considered in determining the contractor's compliance status.
  - No record of adherence to show cause notice requirements. Review reports submitted involving issuance of a show cause notice often reflect disregard for the required time frames included in the show cause procedure.
  - Recommendations which go above and beyond contract requirements. Deficiencies can technically exist only if there is a contract requirement which the contractor has not complied with. Accordingly, recommendations should be made in line with deficiencies uncovered.

Comprehensive analysis of review reports submitted by STA personnel can be a productive activity when division office personnel remember their overall program management role in carrying out such analyses.

### **OBSERVING STA REVIEW OFFICERS**

Observing STA conducted reviews can be a productive activity that the division office could undertake. This can be done as part of the STA/EEO program/process review or it can be done separately.

This activity can be useful for program evaluation as well as a training tool. As observers, division personnel should;

- Never interfere with or disrupt the reviewer during the actual compliance review.
- Provide verbal feedback to the STA reviewer immediately following the review if possible.

- Formally document observations and recommendations and submit to the STA. Recommendations should, as appropriate, address training of reviewers observed.

## **PRE-CONSTRUCTION CONFERENCES**

Division personnel should, on a random basis, attend pre-construction conferences to determine whether EEO contract requirements are being addressed, by whom and to what extent. Attendance at preconstruction conferences should be formally documented with observations and recommendations presented to the STA. This is both a program management and a program evaluation tool.

## **STATISTICAL ANALYSIS**

Another effective program evaluation tool is statistical analysis. Statistical analysis can also include narrative data. One example is the frequency polygon. The minority/female employment charts developed for each State in Region 6 to reflect employment of minorities and women on highway construction projects and by State highway agencies are examples. Frequency polygons combined with concise and brief narrative analysis:

- Present comprehensible pictures.
- Indicate program trends over periods of time.
- Identify program impact or lack of it.
- Highlight specific problem areas; (critical trades, occupations, geographical areas)
- Allow strategic planning to address short and long term problem areas.

Frequency polygons can be utilized to evaluate other civil rights programs such as minority business enterprise, the internal EEO/AAP program and training programs.

## **THE CONTRACT COMPLIANCE REVIEW PROCESS**

### **GENERAL**

As stated earlier, the contract compliance review program's objective is to determine the contractor's compliance with the contractual EEO requirements. To arrive at this determination the reviewing officer has to request and obtain sufficient information from various sources.

Proper planning prior to the review is a must to ensure a successful review. During the planning stage, the reviewing officer must outline the scope of the review. In other words, will the review include a contractor's;

- Home office.
- Project site.
- Home office and project site.
- Project sites in a plan area or geographical area.
- Statewide employment.

In determining what information to consider during a home office review versus a project site review, a general rule of thumb to remember is that a home office review should consider company wide policy and practices while a project site review is concerned with a contractor's compliance for that particular project. As an example, let's take the contractor's equal opportunity policy. During a home office review, the reviewing officer should direct his efforts toward determining how the policy is applied, disseminated and implemented company-wide rather than within the home office only. During a project site review, the reviewing officer's efforts should be directed towards determining policy application and implementation on the project site being reviewed.

Still another example is purchase orders. During a home office review, the reviewing officer should be concerned with the contractor's procedures for ensuring that the applicable EEO provisions are incorporated in all non-exempt purchase orders in excess of \$10,000 company-wide. During a project site review, the reviewing officer should determine whether nonexempt purchase orders in excess of \$10,000 for the project being reviewed include the applicable EEO provisions.

The company wide policy versus the project site implementation concept can be applied to other areas evaluated during the course of a contract compliance review.

## **INTERVIEW TECHNIQUES**

Compliance review officers must be familiar with and apply effective interviewing techniques to ensure comprehensive and effective reviews. The contract compliance review guidelines are just that, guidelines. Compliance officers should not glue themselves to them. To do so will hinder the recognition and follow up on leads that present themselves during the review.

The interview is a challenging process for everyone involved. The responses to questions posed are usually answered honestly. They reflect the honest impressions and inferences of the interviewee. They may be false or distorted impressions, but reflect that person's understanding of the situation. These impressions should be validated by corroboration. Obvious inconsistencies identified during the review, especially those important in determining compliance, must be clarified immediately.

While there are no clear cut guidelines for conducting the perfect interview, the successful interviewer;

- Explains the purpose of the interview.
- Stays on the subject at hand.
- Refrains from questions that can be answered with a yes or a no.
- Asks who, what, where, when, and how.
- Follows leads that present themselves during the interview.
- Recognizes situations where it would be best to go on to another question.
- Repeats at a later stage of the interview and in a different form those previously asked questions that were not answered.
- Refrains from asking questions regarding information already provided or which is common knowledge.
- Refrains from using abbreviations or acronyms.
- Avoids leading questions.

The interview is not a precise tool, but often calls for instant decisions on the part of the compliance officer to obtain the most pertinent data in a limited amount of time while considering the relationship of information already obtained and the propriety, timing, relevance and priority of questions.

## **PLANNING AND SCHEDULING**

In discussing the actual contract compliance review, we will follow Region 6's "Civil Rights/EEO Contract Compliance Review Guidelines."

Priority in scheduling reviews shall be given to those contractor's projects;

- Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations).
- Located in areas which have significant minority and female labor forces within a reasonable recruitment area.
- That include special training provisions.
- Where compliance with equal opportunity requirements is questionable. (Based on previous PR-1391's, review reports and hometown plan reports or complaints).

- That the FHWA has requested be reviewed.

No home office compliance review shall be conducted where the home office work force is less than 15 employees. If deemed necessary, permission to conduct such reviews should be requested of the regional office. Requests to conduct such reviews should include the name and address of the contractor, size of home office workforce, total number and dollar value of Federal-aid projects held and the reasons for the request.

Reviews shall be conducted prior to or during peak employment periods.

At least two weeks written notification should be provided to the contractor. Attachment G, "Notification to Contractor" should be used for this purpose.

During the planning stage and after the contractor has been selected for review, the compliance review officer should obtain the following information prior to the review:

- The contractor's employment posture. This information may be obtained from State and Federal contract compliance review files, EEO-1's, or PR-1391's or other sources. A review of previous review reports can assist the reviewing officer in identifying problem areas uncovered in the past and following up on these areas.
- Where unions are involved, Form EEO-3 filed by each labor union operating in the area should be secured from the local EEOC District office. Having information regarding union membership allows the reviewing officer to place the appropriate weight to problems surfaced by the contractor during the review regarding union practices.
- Community or area population and residency patterns broken down by race, ethnic origin and sex. Sources for such data are: Bureau of the Census, Chamber of Commerce, Better Business Bureaus, minority and female organizations, State and Federal employment agencies and other agencies such as OFCCP, EEOC, and the Department of Justice.
- Trades for which there is a lack of skilled personnel in and around the project area. Sources for this information are labor unions, Bureau of Apprenticeship and Training, and State and Federal employment agencies.

## **ENTRANCE CONFERENCE**

Upon arrival at the review site, the compliance review officer should set the stage by identifying his or her role in the review. It is the reviewing officer who is responsible for gathering and evaluating the necessary information, preparing the review report and reaching a determination of compliance. As such, the reviewing officer should identify him or her self as the reviewing



officer and explain to all present that the question/answer procedure will be used. Primary communication should be between the reviewing officer and the contractor or his representative. Side conversations should be discouraged. Questions from anyone other than the contractor and the reviewing officer should be directed to the reviewing officer.

Once the compliance officer has identified their purpose and role, the following should be discussed with the contractor;

- The objectives of the review.
- The material submitted by the contractor.
- Arrangements for on-site tours and employee interviews.

## **REVIEW OF DOCUMENTATION**

Documentation provided by the contractor should be reviewed to ensure all documentation requested has been provided. Follow up on any documentation omitted. Proceed to fill out Attachment A which is basic contractor information. This information will facilitate the preparation of Form FHWA-86.

## **COMPLIANCE DATA REPORT**

In reviewing the payroll and the 1391, compare one to the other to ensure accuracy of information reported. Clarify any discrepancies noted. Where minorities are found in the same classification as nonminorities, determine whether there is a difference in rates of pay. If so, identify the length of employment for each employee in that classification to determine whether discrimination in wages exists.

Review 1391 to identify critical trades regarding minority/female underutilization in the contractor's workforce. If critical trades are identified, the compliance officer should keep them in mind so that at a later stage in the review, inquiry can be made about the contractor's efforts to increase minority/female underrepresentation in these trades. A review of new hires would provide the reviewing officer some insight as to the contractor's efforts along these lines.

Compliance officers have received numerous complaints and comments regarding the submittal of Standard Form 100 (EEO-1). Much of the confusion has arisen over who is required to file. The latest instruction booklet for the form indicates that the form is to be filed by: (a) All employers subject to Title VII of the Civil Rights Act of 1964 with 100 or more employees; (b) All employers subject to Title VII who have fewer than 100 employees if the company is owned or affiliated with another company, or there is centralized ownership, control or management so that the group legally constitutes a single enterprise, and the entire enterprise employs a total of 100 or more employees and; (c) All Federal contractors who are not exempt as provided by 41

CFR 60-1.5, have 50 or more employees and are prime contractors or a first tier subcontractor, and have a contract, subcontract, or purchase order amounting to \$50,000 or more.

## **REVIEW GUIDELINES**

Proceeding now to the actual question and answer portion of the review, we'll follow the review guidelines and discuss each item.

### **CONTRACTOR'S EEO POLICY**

- The compliance officer should review the contractor's EEO policy to ascertain whether it is equal to or greater than the policy required by contract provisions. (List deficiencies if any.)
- How does the contractor disseminate his EEO policy to all of his employees. (Meetings, employee handbooks, paychecks, bulletin boards etc.) Determine how effective these procedures are.
- Determine how supervisory and personnel office employees are informed of the contractor's EEO policy and its requirements. How are they informed and by whom? Are meetings held at least once every six months? (Follow-up on the effectiveness of procedures through employee interviews.)
- Determine how and when new supervisory or personnel office employees are indoctrinated on all major aspects of the contractor's EEO obligations. (Must be done within thirty days following their reporting for duty.) (Is the person responsible for this knowledgeable?)
- What instruction is provided to personnel who are involved in direct recruitment with regards to the contractor's procedures for locating and hiring minority/female employees? (Ascertain such personnel's knowledge of minority/female recruitment.)

### **EQUAL EMPLOYMENT OPPORTUNITY OFFICER**

- Determine if EEO requirements were discussed at the preconstruction conference. With whom, by whom and to what extent? (Ask each question separately)
- Review letter appointing EEO Officer.
- How was the State highway agency notified of the appointment?
- What experience does the person appointed have which would qualify as EEO related? (You may ask this directly of the EEO Officer.) If no previous experience is identified,

what training has been provided? What has the EEO Officer done to increase his/her knowledge of the program?

- What authority does the EEO Officer have to accomplish program objectives? (Look to see if the EEO Officer has been given the authority to implement program objectives formally or informally. Lack of authority combined with other deficiencies should be grounds for major recommendations.)
- What duties other than EEO does the EEO Officer have? (What we are looking for here is whether the EEO Officer has sufficient time to successfully implement the program.)
- How are employees informed of the EEO Officer's name and place where he can be contacted in reference to concerns, complaints or grievances? (Is this procedure effective? Highly visible publicizing of the EEO Officer's name and function is one step towards attaining program credibility among employees. A side benefit is that it increases potential for resolution of complaints at contractor level.)
- Determine the awareness and knowledge of the EEO Officer regarding EEO matters. (Provide short summary.) (EEO Officers should be familiar with, at a minimum, the EEO requirements of the contract.)

## **RECRUITMENT**

- How does the contractor advertise for employees? Do advertisements contain reference to the contractor's EEO policy? (Keep in mind that the contractor is not required to advertise for employees.)
- How does the contractor ensure that his advertisements for employees are published in newspapers or other publications having a large circulation among minority groups in the area from which the project workforce is derived? What attempts has the contractor made to identify such newspapers and publications? What results have been achieved?
- How has the contractor conducted systematic and direct recruitment? (This is a contract requirement where the special provisions are in effect, unless precluded by a valid bargaining agreement.)
- List sources with which systematic and direct recruitment procedures have been established. Obtain name of organization or individual, address and phone number. What procedures have been established between the contractor and recruitment sources?
- Does the above list indicate that the contractor has contacted organizations representing the various minority groups found in the area? If not, list the minority groups which the contractor has failed to contact and the reasons therefore. (Recruitment efforts directed solely towards one ethnic group in areas where there are other ethnic groups in significant

numbers does not constitute compliance with affirmative action requirements.)

- How does the contractor encourage present employees to refer minority group applicants for employment? Have referral procedures for referring minority group employees been discussed with employees? Are minority group employees aware of such procedures?
- Has the contractor posted appropriate notices on bulletin boards encouraging employees to refer other minority group applicants?
- Review blank applications for employment to determine if racial, ethnic, or sex data is requested prior to employment. (Nothing prohibits employer from maintaining this information on completed applications so long as such information is kept solely for record keeping purposes and not subject to misuse).

## **PERSONNEL ACTIONS**

- How has the contractor monitored the following to ensure nondiscrimination in: (Look at each item separately. Who does the monitoring? How often? What documentation is kept?)
  - Wages?
  - Working conditions?
  - Employee benefits. Identify any profit sharing, retirement or similar plans, requirements for participation therein and the total number of participants by race, ethnic origin and sex. (These are conditions of employment. Discrimination in this area is illegal.)
  - Hiring (What records are people with hiring authority required to keep? Are these records geared towards identification of hiring patterns?)
  - Upgrading
  - Promotions
  - Transfers
  - Demotions
  - Layoffs
  - Terminations
  - What is the frequency of the contractor's inspections of project sites to ensure nondiscriminatory treatment of project site personnel in terms of working conditions and employee facilities? (Look for assignments to equipment, where minorities or women may be assigned to older, unsafe or inferior equipment. Determine whether minorities or women are assigned the more undesirable tasks on the basis of their race, sex, or ethnic origin.) (You do not have to be an expert in construction equipment and work to determine whether disparate treatment has occurred. Assignment of the less desirable tasks to employees on basis of prohibited

factors is discriminatory and a violation of the EEO clause. The same applies to equipment assignments.)

- In cases where the contractor has found discriminatory actions what corrective action was taken? What was found? How was it corrected?
- List any complaint of alleged discrimination filed against the contractor. (Include name of complainant, the basis of complaint, date of complaint, issues involved, agency filed with, and status of complaint. If complaint is still pending, reviewing officer should attempt to locate complainant and discuss complaint and with information obtained during the review, consider the issues involved in reaching a determination of compliance. Issues raised in complaints can be considered as leads and as such should be followed up to identify potential problem areas.
- What corrective action did the contractor take? (Did the action resolve the matter?)
- Explain the outcome of such complaints.
- What information is provided to complainants regarding their avenues of appeal? (If the EEO Officer is not aware of other avenues for redress, the compliance Officer should provide the information.)

## **TRAINING AND PROMOTION**

- Training programs and requirements have been continually overlooked by reviewing officers as tools to address areas of minority/female underutilization.
- Determine training requirements of contracts. Compare actual enrollments to assignments. Could contractor be reasonably expected to provide required training before completion of contract? (Apply reasonableness.)
- List all OJT and/or apprenticeship programs the contractor is participating in. (How effective have these programs been in training minorities and women?)
- Obtain list of trainees enrolled by the contractor on the project being reviewed. On a home office review the list should include all trainees enrolled by the contractor for the one year period immediately preceding the review.
- Verify that list includes name, sex, ethnic or racial identity, and classification of trainee or apprentice. Use an asterisk (\*) to denote graduation. Use 2 (\*\*) asterisks to denote drop out. Use 3 (\*\*\*) asterisks to denote in training.

<u>Name</u>	<u>Sex</u>	<u>Race/ Ethnic Origin</u>	<u>Classifications</u>	<u>Length of Employment w/Contractor</u>
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- How has the contractor advised employees and applicants for employment of available training programs and entrance requirements for each? Who is responsible for this?
- How has the contractor utilized training programs to increase minority/female representation in trades where they are being underutilized? (Go back to those trades identified earlier in the review where underutilization exists.)
- Are trainees being trained in trades for which there is a shortage of qualified personnel? (The intent here is to ensure the most effective use of training programs. Providing training in trades for which there is not a shortage of journey persons is not cost effective nor consistent with program intent.)
- How has the contractor periodically reviewed the training and promotion potential of minority/female employees? Are employees interviewed? By whom? How often? Is particular attention paid to minorities/women in the lower skilled classifications?
- List specific examples of instances where contractor has encouraged employees to apply for training and promotion.
- What procedures are in effect to ensure that each trainee is provided with a copy of the training program that the trainee is to follow?

## **SUBCONTRACTING**

- What efforts has the contractor exerted to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority/female representation among their employees? What were the results?
- Does contractor have a list of minority-owned construction firms? What efforts has the contractor made to solicit bids from or to negotiate with such firms?
- What procedures does the contractor follow to secure subcontractors? Are the procedures nondiscriminatory? (Procedures can be through competitive bidding or the automatic use of subcontractors used in the past. Procedures can be formal or informal. Whatever procedures are used, they should be nondiscriminatory.)

- List the liaison officer named by the contractor to administer the contractor's minority business enterprise program.
- What efforts has the contractor made to ensure subcontractor compliance with their equal employment opportunity obligations? The following are the contractor's obligations with respect to subcontractor compliance;
  1. Include EEO provisions.
  2. Take action as directed by SHA or FHWA.
  3. Exert best efforts to ensure compliance.
- How does the contractor ensure the incorporation of appropriate EEO clauses in subcontracts and purchase orders?

### **RECORDS AND REPORTS**

- What records and reports are maintained by the contractor?
- Are these records sufficient to indicate efforts made?
- What provision has the contractor made to retain EEO records for at least 3 years following completion of the contract work?

### **PHYSICAL INSPECTION**

- Walk around, inspect bulletin board and determine its accessibility, inclusion of EEO poster, EEO policy statement, and letter appointing EEO officer.
- Determine what contractor has done to preclude segregated employee used facilities, such as restrooms, drinking fountains, eating and recreational areas. (List any viewed.)
- Make a visual survey of the extent of minority/female representation in contractor's workforce. (This is intended to assist in verifying employment data previously furnished.)

### **EMPLOYEE INTERVIEWS**

Leads uncovered during employee interviews should be followed up. The interviews should be designed to determine the impact and effect of the contractor's program at the employee level.

As a minimum, the compliance officer should interview at least one minority, one non-minority, and one woman in each trade or occupational classification.

The compliance officer should also interview the project superintendent or home office manager as appropriate. The intent here is to determine awareness and knowledge of the program including attitudes towards the program.

## **EXIT CONFERENCE**

At the exit conference the reviewing official will inform the contractor;

- Of any preliminary deficiencies that if not corrected within 15 days following the review would result in a determination of noncompliance.
- That voluntary corrective action plans may be negotiated at the exit conference so that within 15 days following the review, the reviewing official shall prepare the review report and make a determination of either;
  - Compliance and so notify the contractor, or
  - Noncompliance and issue a 30 day show cause notice.

Voluntary corrective action plans negotiated at the exit conference must be formalized in writing and transmitted by the contractor to the reviewing officer within 15 calendar days following the review. Corrective action plans must address specifically each deficiency uncovered, include results oriented action items and goals and timetables where appropriate.

The contractor should be informed, during the exit conference, that additional deficiencies may be uncovered upon further review of all documentation. Submittal of an unacceptable voluntary corrective action plan will result in the issuance of a show cause notice. In the event the contractor fails to submit a voluntary corrective action plan within 15 calendar days following the review, the contractor will be found in noncompliance and issued a show cause notice.

During the exit conference the contractor must be informed of all alternatives to resolve deficiencies uncovered. The primary distinction between a voluntary corrective action plan and a corrective action plan is that the former is voluntary and submitted to preclude a finding of noncompliance while the latter is required following a finding of noncompliance and the issuance of a show cause notice.

The show cause notice and its procedures must be explained to the contractor where deficiencies have been found. A show cause notice is a written notification to a contractor that informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, for the contractor to show cause why sanctions should not be imposed.

Issuing show cause notices frightens people to the point where compliance officers have been reluctant to even mention much less issue them. Most of this reluctance has been based on ignorance of the show cause procedure. A show cause notice is a serious matter, but as you can



see, there is nothing particularly complex or mysterious about it. Specific guidance and a sample show cause notice are provided in 23 CFR 230.

## **CONCILIATION CONFERENCES**

Executive Order 11246, its implementing regulations and 23 CFR 230 require the compliance officer 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 ensure equal opportunity.

To conciliate is to make compatible or to reconcile. A conciliation conference is for the purpose of bringing together the involved parties to reach an agreement within legal requirements. Conciliation involves negotiation. To negotiate is to deal or bargain with others. The important thing to keep in mind is what you can and cannot negotiate. You cannot negotiate contract requirements. They are legally binding.

As an example, you cannot negotiate away the affirmative action requirement of a contract. However, you can negotiate methods to be utilized by the contractor to take affirmative action so long as those methods are legal. Obviously successful negotiation involves a working knowledge of contract requirements as well as sources of law including the latest court opinions.

Negotiation on some procedural matters may be necessary. As an example, goals and timetables, recruitment procedures, selection procedures for promotion and training and other personnel actions are areas open for negotiation. However, specific contract requirements are not negotiable.

To determine the extent of negotiation regarding procedures, you should ask yourself, is the procedure likely to fulfill contract requirements and is the procedure in itself discriminatory?

The presiding official at the compliance conference should be a State official with sufficient authority or support to take the necessary action to reach an agreement capable of correcting the deficiencies cited.

The presiding official should be in control of the conciliation conference. The presiding official should;

- (A) Open the conference.
- (B) Introduce him or her self.
- (C) Explain the purpose of the conference.
- (D) Cite the authority for the conference.
- (E) Address each deficiency uncovered during the review.
- (F) Discuss deficiencies uncovered in the contractor's corrective action plan.
- (G) Provide specific recommendations for correcting deficiencies in the corrective action plan.

- (H) Summarize the conference, particularly specific agreements reached. (To ensure contractor understands clearly what is expected of him.)
- (I) Close the conference.

In the event the conciliation conference leads to the contractor agreeing to correct deficiencies in his corrective action plan, the contractor should be advised of the remaining time limit, within the 30 day show cause period, for submitting an acceptable corrective action plan. If the contractor submits an acceptable corrective action plan, the show cause notice is to be rescinded and the contractor notified accordingly.

## **HEARINGS**

When the show cause notice and conciliation conference are unsuccessful within the prescribed 30 days, the reviewer shall immediately recommend that the STA take enforcement action against the contractor or through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing. The contractor should be notified of this action.

Recommendations for hearing approval shall be accompanied by full report of findings and case files containing any related correspondence. The following items shall be included with the recommendation;

- (A) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party,
- (B) Copies of any contractor or subcontractor certifications,
- (C) Copy of show cause notice,
- (D) Copies of any corrective action plans, and
- (E) Copies of all pertinent manpower utilization reports, if applicable.

## **PREPARATION OF REVIEW REPORT**

FHWA Form 86 or an appropriately modified form approved by the FHWA, shall be used to report all compliance reviews. The **original** plus one copy shall be forwarded to the regional office.

Review reports should indicate:

- Whether there is reasonable representation and utilization of minorities and women in each trade or occupational classification.
- What the contractor has done to increase recruitment, hiring, upgrading and training of minorities and women.
- The effectiveness of contractor efforts to provide equal opportunity.
- Whether there is impartial treatment of employees.
- Whether affirmative action efforts are of an isolated or of a continuing nature.

- Look for isolated incidents -vs - an ongoing program.
- In hometown or imposed plan areas a contractor's total aggregate work force, federal and non-federal, shall be included in the review report and considered in reaching a compliance determination. Employment data for the particular project being reviewed should be listed in item #24 of the FHWA 86. Aggregate work force data should then be included as a separate attachment.

In findings of noncompliance or where deficiencies uncovered at the time of the review are corrected prior to the preparation of the review report, information supportive of the compliance determination should either be included within the FHWA-86 or as an attachment to the review report. Attachments should be referenced in the FHWA-86.

All deficiencies uncovered, regardless of whether they were corrected prior to preparation of the review report should be listed in item #31 of the FHWA-86. In the case of deficiencies corrected prior to the preparation of the review report, the FHWA-86 should indicate how they were corrected.

Do not attach evidence of corrective action without referencing said attachments in the review report. Often times review reports are received that look like Sears and Roebuck catalogs. Yet no explanation is given as to the corrective actions taken by the contractor and how the determination of compliance was arrived at. Clear and concise statements explaining the action taken by the contractor and the method used by the reviewer to verify such action should be made for each recommendation listed. Any attachments should then be referenced as exhibits.

Review reports indicating compliance should not necessitate the attachment of documents. Review reports submitted indicating noncompliance should include a copy of the show cause notice issued to the contractor and information supportive of the compliance determination.

Follow-up reviews should be conducted of contractors found in noncompliance. This is a form of management in that resources are concentrated towards resolution of identified problem areas where they would have the most impact. Solely relying on correspondence submitted by a contractor found in noncompliance, as evidence of the contractor's compliance is not conducive to effective implementation of the program.

In the case of a STA conducted review, three copies of the final review report should be transmitted to the FHWA division office within 15 days after completion of the review. The Division EEO Specialist will review and evaluate the report and forward two copies to the Regional Office of Civil Rights.

Some of the most frequently encountered problems with review report submittals have involved:

- Timeliness. Review reports are not being submitted within prescribed time limits.

- Compliance review transmittal memorandums. The FHWA 86 and supporting documentation do not include any evidence supporting the contractor's "in compliance status."
- Recommendations such as: "When seeking employees, actively pursue the hiring of minority and female employees." Yet no deficiency was listed and the contractor was found in compliance. This statement may be interpreted as a recommendation addressing a serious deficiency.
- Not reporting contractors' home office work force turnover when severe minority underutilization is apparent.
- Not reporting what good faith efforts were taken by the contractor to correct existing deficiencies.
- Not reporting an analysis of the available work force in the contractor's recruiting area.
- Two review reports of the same work force on two different projects.

## NEW DIRECTIONS

What is going to be emphasized in the contract compliance program? Where do we go from here?

It is expected that future review efforts be concentrated in the following areas;

- Quality and extent of coverage of EEO contract requirements at preconstruction conferences.
- Training for SHA and contractor personnel.
- Observation of SHA EEO officers conducting compliance reviews.
- Conciliation conferences.
- Reviewing training and supportive services programs to determine their impact on minority and female employment.
- Conducting follow-up reviews of contractors with serious deficiencies.

## HOMETOWN PLANS

Since we have touched on hometown and imposed plans, let's discuss the plan concept further. Hometown plans are OFCCP approved voluntary areawide agreements between representatives of the minority community, contractors and unions which establish goals and timetables for employment of minorities by craft. The plan and its signatory and participating parties are then governed by Part I of the bid conditions issued by OFCCP for the plan area. Contractors signatory to and participating in a Department of Labor approved hometown plan and utilizing a local craft under Part I of the bid conditions are required to:

1. Comply with the EEO clause.
2. Submit work force information to the home town plan administrative committee.
3. Demonstrate compliance with the fair share requirements of the plan.

For those contractors or unions not signatory to, or for some reason, not eligible under the hometown plan, Part II of the plan bid conditions set forth mandatory affirmative action requirements generally paralleling those of the hometown plans.

Part II contractors must:

1. Comply with the EEO clause.
2. Meet the minimum goals and timetables for aggregate work force utilization specified in the bid conditions, both in the contractor's federal and non-federal projects in the area.
3. Or provide documentary evidence of good faith efforts to implement the minimum acceptable affirmative action steps set forth in the bid conditions.
4. File monthly with the contracting or administering agency, from the effective date of the contract including:
  - (A) Work force utilization reports reflecting the prime contractor's and each subcontractor's aggregate work force in each covered craft within the area covered by the bid conditions.
  - (B) A listing of all Federally involved contracts within the bid condition area.
5. Provide access to books, records, and accounts for all covered construction sites and documentary evidence of good faith efforts to the compliance agency and OFCCP for review purposes.

The other type of plan is the **imposed plan**. When OFCCP determines that a hometown plan is not an effective affirmative action program, or that a hometown plan is not forthcoming from the community or that the enforcement of Executive Order 11246 can only be accomplished through the issuance of bid conditions imposing specific goals and timetables for minority and female utilization, OFCCP will develop and issue an imposed plan.

The principal distinction between a Part I and Part II contractor is that the obligations of contractors under Part II are individual obligations that run to their own work forces and as to which they must make good faith efforts to attain goals for minority utilization and are

responsible for their own training. Whereas under Part I (the hometown plan) the obligations are trade obligations and it is the administrative committee of the hometown plan that assigns individual goals to members of the trade. It is possible for example, that one or more Part I contractors may have no goal during a given period of time. So long as they cooperate with the hometown plan and the trade goals are being met, those individual contractors not otherwise guilty of discriminatory practices would be presumed to be in compliance with the executive order.

Signatory contractors and crafts subject to Part I of the bid conditions are monitored and evaluated by the hometown plan administrative committee. The hometown plan administrative committee is responsible for;

- Monitoring and evaluating the employment practices of Part I contractors and reporting findings to OFCCP.
- Development and implementation of a system for ensuring that Part I contractors equitably participate in the plan.
- Maintaining a current membership list of contractors and contractor associations signatory to the plan.
- Receiving and reviewing requests for signatory status from contractors and/or contractor associations for referral to OFCCP regional office.
- Recommending to the OFCCP regional office, the removal from Part I of those contractors not functioning in accordance with the plan.

With regard to signatory craft locals the hometown plan administrative committee is responsible for;

- Functioning as a recruitment and referral source for the placement of minorities and women with local unions.
- Maintaining up-to-date screening, recruitment and placement records on all local union minority and female applicants.
- Monitoring and evaluating the work assignments of minorities and women placed.
- Reviewing and recommending to the OFCCP regional office, revisions in the craft union local(s) goals and timetables.
- Reviewing and evaluating requests from craft union locals for signatory status and making recommendations to the OFCCP regional office.

- Supplying or ensuring submission for OFCCP regional office evaluation, of "good faith effort" information including membership and work hour data, for those craft unions not meeting their placement or membership goals.
- Reviewing and evaluating requests from signatory Part II craft unions for reinstatement to Part I as stipulated in OFCCP audit instructions.

## UNIONS

The Secretary of Labor is directed to use his best efforts to get unions to cooperate with and comply in the implementation of the executive order. In appropriate cases, the Secretary is to notify the EEOC, the Department of Justice, or any appropriate agency, whenever he has reason to believe a union is violating Title VI or Title VII or any other federal law. But OFCCP has no direct means of compelling compliance by unions since the obligation runs from the contractor to the government.

However, the OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved;

- (A) It shall be no excuse that the union, with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority or female employees.
- (B) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.
- (C) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and;

- (A) The contractor will be formally directed to comply with the equal opportunity requirements.
- (B) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.
- (C) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be informed of OFCCP's

policy. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with full documentary evidence to support the discriminatory pattern indicated.

The contractor's responsibilities with respect to unions are;

- Advise unions with which he has collective bargaining agreements of the EEO contract requirements.
- Post notice to unions.
- Exert best efforts to obtain union cooperation to increase opportunities for minorities and women and effect their referral by unions.
- Use best efforts to develop with the unions, joint training programs aimed toward qualifying more minorities and women for union membership.
- Use best efforts to incorporate an equal employment opportunity clause into each union agreement to contractually bind the union to refer applicants without regard to their race, color, religion, sex, or national origin.
- Obtain information as to the union referral policies and practices.
- Recruit directly whenever union is unable to provide a reasonable flow of minority and female referrals within the time limit specified in the bargaining agreement.
- Notify the STA whenever union referral practices prevent the contractor from complying with Executive Order 11246.

The STA is responsible, pursuant to the assurances required by the Federal-Aid Highway Act of 1968, for establishing and maintaining effective liaison with labor unions.

In reviewing union contractors, reviewing officers should obtain responses to the following;

- Determine with what unions the contractor has bargaining agreements.

	<u>Union</u>	<u>Local No.</u>	<u>Address</u>
1.			
2.			
3.			
4.			
5.			



6.  
7.

- Which of these agreements actually require, or have been interpreted to require exclusive referral? Place an asterisk (\*) beside such unions in the preceding tables. Review agreements to identify whether or not they are blanket agreements covering all contractors in that State or whether it is an individual agreement between the particular contractor and the union.
- Review agreements to verify if an acceptable EEO clause has been incorporated. If not, why not? What efforts has the contractor taken to ensure their inclusion?
- What efforts has the contractor made to obtain the cooperation of these unions to increase their minority representation and their minority referrals?
- What efforts has the contractor made in selection of any apprentices?
- Has the contractor used journeymen-apprenticeship ratios required by agreements to increase minority or female representation?
- Has the contractor made full efforts to obtain referrals directly, in the event the unions with which the contractor has said agreements would not, or could not provide applicants within the specified time limit?
- Determine what efforts the contractor has made in assisting non-union applicants and employees in obtaining union membership in areas where such membership is a prerequisite for remaining employed.
- What efforts has the contractor made toward developing, in cooperation with unions, joint training programs aimed towards qualifying more minorities for union membership and increasing the skills of presently employed minorities?
- What efforts has the contractor made to obtain information regarding the referral practices, policies and minority membership of labor unions? What were the results?

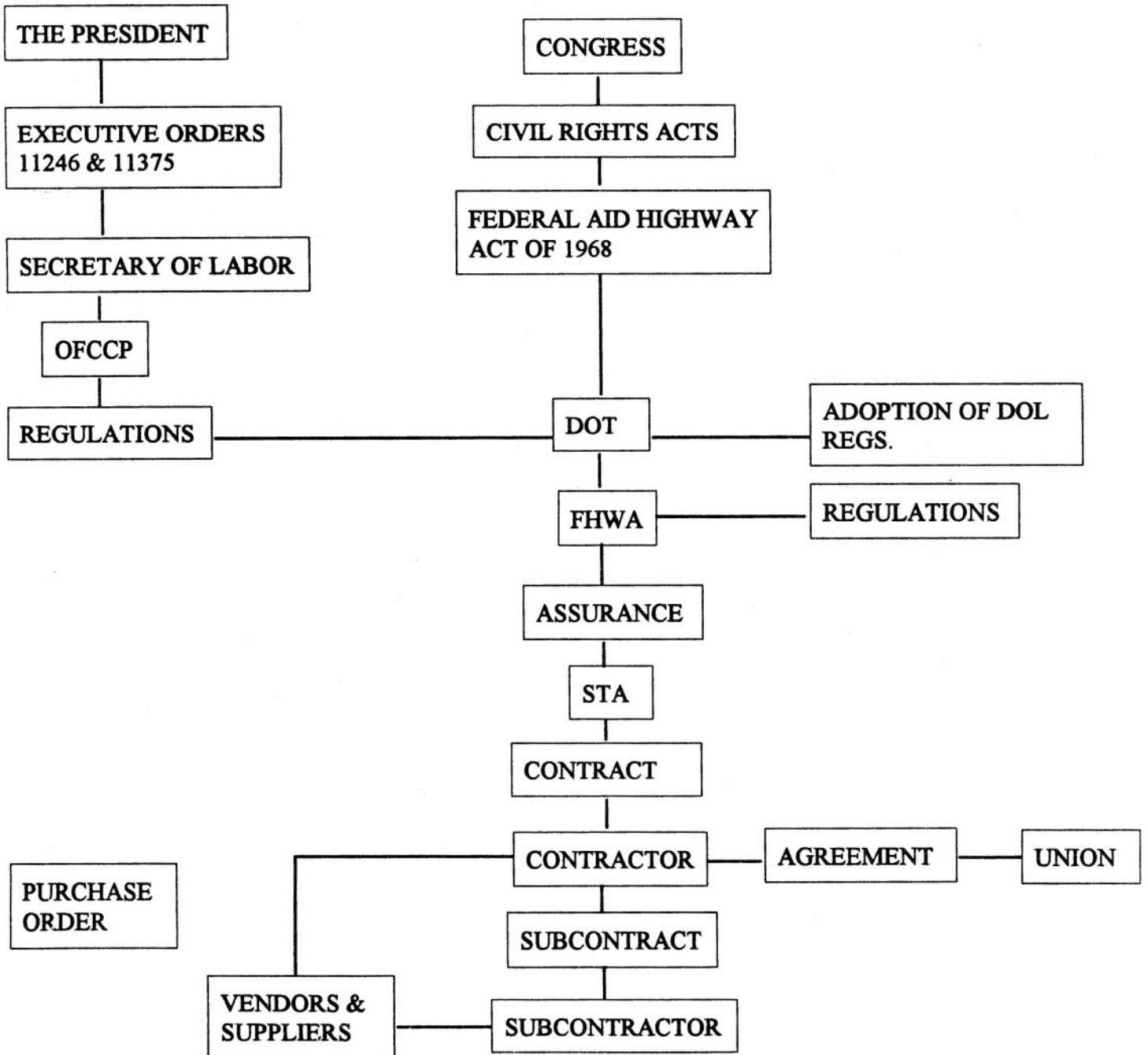
So in reviewing union contractors;

- Familiarize yourself with the contractor's requirements.
- Limit your expectations of contractor activity with regard to unions to the contract requirements.

## **CONCLUSION**

In summary, compliance officers should re-examine and expand their role in the contract compliance review program from one of administration to overall program management.

**LEGISLATIVE & EXECUTIVE SOURCES CHART**



**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 21**

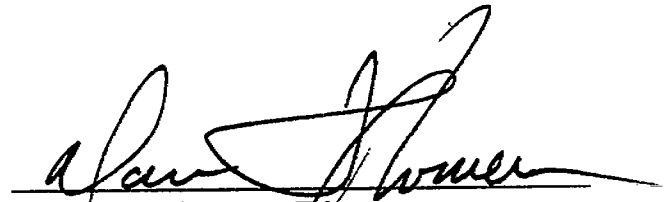
**AAP/Contractor Compliance Program Document and  
Updates--Arkansas Highway and Transportation Department**

**ARKANSAS STATE  
HIGHWAY & TRANSPORTATION  
DEPARTMENT  
CONTRACTOR COMPLIANCE**

## CONTRACTOR COMPLIANCE

The Arkansas State Highway and Transportation Department is committed to equal opportunity in employment and will work cooperatively with highway construction contractors to ensure compliance with federal statutes, regulations and executive orders which require equality of opportunity in the highway construction industry.

The Contractor Compliance section of the Department's Affirmative Action Plan outlines programs and procedures developed to monitor contractor compliance. District Engineers must assure that the procedures for monitoring contractor compliance at the District level are consistent with those in the manual. Overall responsibility for the direction of the Contractor Compliance Program has been assigned to the EEO Section Head.

A handwritten signature in black ink, appearing to read "Dan Flowers", written over a horizontal line.

Dan Flowers, Director  
Arkansas State Highway and  
Transportation Department

## INDEX

	Page
Organization and Structure	1
Contract Compliance Procedures	6
Contract Sanctions	12
Complaints	13
External Training Programs - Supportive Services	15
Disadvantaged Business Enterprises	17
Liaison	18
Innovative Programs	18

## I. Organization and Structure

### A. Chief of Administration and Public Affairs

The Chief of Administration and Public Affairs has been designated as the Civil Rights Officer and reports directly to the Director of the Arkansas State Highway and Transportation Department. The Civil Rights Officer directs all EEO and Title VI functions in the Department. The major programs included are Contract Compliance, Affirmative Action, On-the-Job Training and Supportive Services, Americans with Disabilities Act, and Title VI. Overall responsibility for program development, direction, and the day-to-day operation of the EEO programs lies with the Civil Rights Officer. This position is also responsible for implementation of civil rights policies, monitoring of the resulting programs, and compliance by Department and Contractor personnel.

The Civil Rights Officer is assisted in carrying out the Civil Rights programs by personnel in the Human Resources Division, Programs and Contracts Division, Construction Division, District and Resident Engineer offices. Any significant information relating to Civil Rights functions or activities is brought to the attention of the Civil Rights Officer for review and initiation of appropriate action through the responsible Department personnel.

### B. Contract Compliance Staff

1. The Human Resources Division (HRD) Head is responsible for oversight of EEO program activities within the HRD which is located in the Central Office, 10324 Interstate 30, Little Rock, AR 72209. The EEO Section of the HRD is charged with managing and administering the contract compliance function. The contract compliance staff is composed of the Section Head - EEO and an External EEO Coordinator. The principal accountabilities of the External EEO Coordinator are as follows:
  - a. Provide advisory and consultative assistance to Central Office and Field Office personnel in the interpretation and implementation of policies and procedures pertaining to the State's External EEO Program.
  - b. Provide assistance and guidance to all contractors involved in Federal-aid construction projects to ensure their compliance with the EEO, Training and Disadvantaged Business Enterprise Special Provisions which are an integral part of their construction contracts.
  - c. Conduct briefings regarding contract EEO, Training and Disadvantaged Business Enterprise Provisions at preconstruction conferences involving Federal-aid construction contracts.



- d. Conduct EEO Desk Audits, On-Site Reviews and On-Site Inspections to ensure EEO Program objectives are accomplished by the contractor.
  - e. Maintain local labor force data and other pertinent information to be used by the EEO Section to advise and assist contractors toward implementing their Affirmative Action Programs.
  - f. Establish liaison with minority oriented organizations, educational and vocational institutions and agencies performing similar or related duties.
  - g. Exercise administrative control of the State's External EEO Program.
  - h. Prepare reports and summaries to be forwarded to Federal Highway Administration (FHWA) as required.
2. The Section's Administrative Assistant's principal account-abilities to the external function are:
- a. Prepare necessary correspondence to contractors, FHWA and Department personnel involved in the EEO function.
  - b. Prepare and maintain project folders on Federal-aid construction contracts.
  - c. Prepare correspondence to contractors pertaining to the requirements and submission of necessary reports.
  - d. Maintain necessary logs to record receipt of forms and reports.
  - e. Advise contractors and project personnel on the preparation and submission of forms and reports.
  - f. Requisition and maintain a supply of forms and office supplies necessary to accomplish the EEO function.
3. The External EEO Coordinator performs EEO functions full-time Division, District and project personnel perform part-time EEO activities. The EEO compliance program is centralized.

### C. Division Personnel

1. The Programs and Contracts Division has the responsibility to include P.S. & E. documents in prime contracts for notification of EEO responsibilities by inclusion of FHWA-1273 and EEO Special Provisions required by FAPG, Title 23, Chapter I, Subchapter C, Part 230, as applicable.
2. Requests to sublet portions of the contract are reviewed, processed and approved by the Assistant Chief Engineer - Operations. All proposed subcontracts on Federal-aid projects are required to contain the following, or similar, statement: "All of the provisions of FHWA-1273 and Supplements, required Contract Provisions, Federal-aid Contracts, attached hereto, are made a part of this subcontract." The certification pertaining to EEO is also attached and must be completed by each subcontractor. Upon receipt and review of the proposal to sublet, everything being in order, one complete set of the above mentioned labor requirements is assembled and transmitted to the approved subcontractor with the letter of approval.

D. District Personnel

There are no District personnel with direct EEO responsibilities and duties in regard to contractor compliance. The District Engineer (DE), in exercising total responsibility for all maintenance and construction accomplished within the District, does possess a general knowledge of the contractor's EEO obligations. The DE has the responsibility of ensuring that preconstruction conferences are scheduled for each Federal-aid contract awarded within the District. The Resident Engineer (RE) serves as moderator during such conferences. The DE has no EEO reporting requirements regarding contractor compliance.

E. Project Personnel

1. The RE and the RE's staff are responsible for labor compliance and engineering. The RE administers the EEO Program as it applies to highway construction activities. The RE's responsibilities consist of the following:
  - a. Conduct preconstruction conferences.
  - b. Appoint an EEO Field Inspector.
  - c. Instruct the Field Inspector in the preparation of reports.
2. The responsibilities of the EEO Field Inspector consist of the following:
  - a. Ensure Field Reports are submitted as required on Federal-aid contracts including prime contractors and subcontractors.

- b. Review the project site bulletin board to ensure it contains necessary posters and notices for each contractor performing on the project.
- c. Conduct On-Site Inspections to make the following determinations:
  - (1) How often does the contractor's/subcontractor's EEO Officer or company representative visit the project?
  - (2) Does the contractor's supervisory personnel have sufficient knowledge of the company's EEO obligations?
  - (3) What kind of procedures are used in advertising? Do advertisements contain the notation "AA/EOE Women, Minority and Disabled People Encouraged to Apply"? (This notation is recommended, however, any notation which identifies the company as an Affirmative Action/Equal Opportunity Employer may be sufficient.)
  - (4) What methods are used by the contractor to inform employees of the company's EEO policy; i.e., letters, meetings, printed handouts, etc.
  - (5) Are facilities provided on a nonsegregated basis?
  - (6) Has any applicant for employment or employee registered a discrimination complaint?
  - (7) What positive efforts has the contractor exerted to place minority, female and disabled employees into on-the-job training (OJT).
  - (8) Are trainees being utilized in skill classifications identified on the company payroll?
  - (9) Are Disadvantaged Business Enterprise re-quirements being accomplished in accordance with the goal that has been established?
- d. On projects that have the Optional Training Proposal Special Provision (OTPSP), the following will be accomplished:
  - (1) Ensure the training proposed by the contractor is under an approved training program.

- (2) Ensure the receipt of a Registration Card for each trainee at the time of entry into training.
- (3) Prepare a Training Progress Record for each trainee employed under the contract special provision.
- (4) Transcribe hours of training indicated on contractor's weekly payroll to the Trainee Progress Record.
- (5) Prepare a Trainee Interview Form on each trainee enrolled on the project. This form will be prepared in duplicate. The original will be furnished to the EEO Section and one copy will be retained in the RE's file. The purpose of the interview is to determine whether the trainee:
  - (a) Is eligible for the training program.
  - (b) Is being trained in the craft in which enrolled.
  - (c) Has received a copy of the training program or training classification and a Fact Sheet on the Department's Supportive Services Program.
- (6) Prepare a Contractor Interview Form on the contractor or an appointed superintendent/foreman (woman) quarterly to evaluate their knowledge of the OJT Program. The distribution of this form is the same as the Trainee Interview Form.
- (7) Prepare a Trainee Termination Form as trainees terminate the training program. One copy is sent to each of the following: RE, EEO Section and the sponsoring agency of the training program. The EEO Field Inspector will review the form to ensure accuracy of the information provided.

#### F. Training

The EEO Staff has attended numerous seminars and training sessions in order to acquaint themselves with equal opportunity requirements. The EEO Staff will attend seminars and training sessions where the information disseminated is pertinent to the EEO function.

The External EEO Coordinator will conduct training sessions with District and project personnel to discuss the components of the External Program and the monitoring requirements on Federal-aid projects. These training sessions will be

conducted when revisions are made to the program and as need dictates. Internal and external resources will be used to assist in preparing and presenting these training sessions.

## II. Contract Compliance Procedures

### A. Implementation

1. The RE's EEO Field Inspector performs On-Site Inspections. The Field Inspector documents the inspection by completing an EEO Field Report. The original is sent to the EEO Section and a copy is retained by the RE.

The External EEO Coordinator utilizes "informal" and "formal" approaches to monitor contractor compliance with the EEO obligations as outlined in the Special Provisions. The "informal" type of review is an On-Site Inspection. Contractors are selected at random. These are "no notice" inspections. The "formal" types of reviews are the Desk Audit and the On-Site Review. The major difference between these procedures is the Desk Audit focuses on the contractor's EEO Program whereas the On-Site Review focuses on the project. The method for conducting Desk Audits, On-Site Reviews and On-Site Inspections is detailed in the Contract Compliance Review Guidelines.

2. The Desk Audit involves obtaining certain information from the contractor. The information requested is submitted by the contractor to the External EEO Coordinator. The information is analyzed and the results of the analysis are used to determine whether, and if, an On-Site Review is to be conducted.

Priority in scheduling Desk Audits is given to those contractors:

- a. Working on a significant number of contracts.
- b. Holding the greatest potential for employment and promotion of minorities and females (particularly in higher skilled crafts or occupations).
- c. Working in areas which have significant minority and female labor forces within a reasonable recruitment area.
- d. Working on projects that include special training provisions.
- e. Working on projects that have a Disadvantaged Business Enterprise goal.

- f. Whose compliance with equal opportunity requirements is questionable (based on review reports or other information available).
  - g. Who have not been reviewed or audited during the previous year.
3. When a contractor has been selected for a Desk Audit, a notification letter is sent to the contractor. The contractor is allowed at least three (3) weeks from the receipt of the notification letter to submit the requested information.

When the information is received, the External EEO Coordinator will:

- a. Review the information received from the contractor for completeness.
  - b. Review employment data for mathematical accuracy.
  - c. Review employment data for overall minority/female representation to ensure compliance with the employment goals outlined in 41 CFR 60-4, Appendixes A and B-80.
  - d. Identify specific classifications where minorities and females are underutilized.
  - e. Review previous compliance review reports on the contractor to identify serious deficiencies.
  - f. Review the remainder of the information received and identify any problem areas in order to apprise the contractor.
  - g. Review files for delinquent EEO reports.
4. Upon completion of a Desk Audit, the External EEO Coordinator will notify the contractor in writing of each deficiency identified and recommend specific actions to correct each deficiency. A decision on whether or not to perform an On-Site Review will be made; and, if so, when (based on peak employment period).

The letter to the contractor will advise the contractor of the opportunity to submit a voluntary corrective action plan including specific actions to correct each deficiency. The time limit for submitting a voluntary corrective action plan will be 20 calendar days from the date of the letter. The reviewing officer will also include in this letter the appropriate language that the contractor is required to incorporate in any voluntary corrective action plan submitted.

In the event additional information is needed, it will be solicited from the contractor.

Significant discrepancies in information submitted as a result of a Desk Audit will warrant the scheduling of an On-Site Review(s).

If, based on the information submitted by the contractor, it is determined that no further review is necessary, the reviewing officer will notify the contractor in writing of non-selection for review.

Desk Audit Reports will be prepared and submitted through appropriate channels within 15 calendar days following completion of the Desk Audit.

5. On-Site Reviews will be conducted:
  - a. When the External EEO Coordinator determines an On-Site Review is necessary to verify information submitted by the contractor for the Desk Audit.
  - b. When the information received indicates serious deficiencies or violations of EEO contract requirements.
  - c. When the contractor's amount of Federal-aid highway work and size of workforce warrant On-Site Reviews of randomly selected sites.
  - d. Instead of the Desk Audit.

At least a two (2) week written notification will be provided each contractor selected for an On-Site Review following a Desk Audit.

6. The On-Site Review can be conducted as a result of the Desk Audit or it can be the initial review. When the On-Site Review is the initial review, the prime contractor will receive at least a 30 day written notification. Included with the notification is a list of material which must be submitted to the External EEO Coordinator two (2) weeks before the scheduled review. The prime contractor is responsible for notifying active subcontractors that they must participate in the review.

Priority in scheduling On-Site Reviews is given to those projects:

- a. Which hold the greatest potential for employment and promotion of minorities and females (particularly in higher skilled crafts or occupations).

- b. Located in areas which have significant minority and female labor forces within a reasonable recruitment area.
  - c. That include special training provisions.
  - d. That have a Disadvantaged Business Enterprise goal.
  - e. Where compliance with equal opportunity requirements is questionable. (Based on review reports or other information available).
  - f. Where the prime contractor has not been reviewed or audited during the previous year.
7. On-Site Reviews will be conducted in two phases. Phase One will be a review of documentation submitted by the prime contractor and the subcontractors. Phase Two will be an On-Site Inspection to review the job site bulletin board, to ensure facilities are nonsegregated and to interview the project superintendent, minority and female employees and each trainee.

The Compliance Data Report will be used to summarize On-Site Reviews. Two copies of the review will be forwarded to the Federal Highway Administration Division Office within 15 days after completion of the review.

8. Home Office Reviews will be conducted using the Desk Audit Process. These reviews will include a review of the Federal-aid Highway construction projects that have been awarded the contractor. Home Office Reviews will not be conducted on contractors who have less than 15 employees in their home office workforces.

**B. District and Project Personnel Indoctrination**

As needed, the External EEO Coordinator will conduct meetings with District and Project Personnel for the purpose of discussing FHWA contract compliance directives and the Department's plan of action for compliance.

**C. Contractor Indoctrination**

1. The RE schedules a preconstruction conference for each Federal-aid project and furnishes a copy of the letter of notification to the EEO Section. The External EEO Coordinator participates in these conferences provided the contractor has not received an EEO briefing previously. The



procedures for advising contractors of their EEO contract requirements are as follows:

- a. The External EEO Coordinator gives a summary of the EEO provisions of the contract and furnishes contractors in attendance a pamphlet in which the following information is included:
  - (1) The name, address and telephone number of the External EEO Coordinator who conducts the EEO briefing.
  - (2) A notice informing contractors that subcontractors who have subcontracts in excess of \$10,000 are subject to the same obligations as the prime contractor. The contractor is reminded to exercise maximum efforts to utilize disadvantaged businesses.
  - (3) The goals and timetables for minority and female participation expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area.
  - (4) A sample Purchase Order Agreement (POA) in which the appropriate EEO clauses have been incorporated. The contractor is informed that a POA must be accomplished for all material purchases and leases of equipment in the amount of \$10,000 or more. The EEO Clauses can not be made by reference only.
  - (5) A Documentation Schedule to be used by the contractor as a guide for documenting affirmative action steps taken to comply with the EEO Special Provisions.
  - (6) Lists of referral sources likely to yield minority and female applicants in the contractor's recruitment area. The lists include Employment Security Division Offices, Vocational-Technical Schools, Offices of Economic Opportunity, Technical Colleges and Technical Institutes, Minority Male and Minority Female Referral Sources, Female Referral Sources (Minority and Non-Minority), Disabled Referral Sources and Minority Oriented Radio Stations and Newspapers. Contractors are instructed to furnish the Resident Engineer a copy of advertisements placed in newspapers and broadcast on radio or television.

(7) A list of posters and notices that must be displayed on the job site and home office bulletin boards. Contractors are informed that the bulletin board must be located in an area readily accessible to all applicants for employment and employees. All of the posters, except the Workers' Compensation Notice, are provided to the contractor by the Department. The list of notices provides examples of a company EEO policy statement, a notice encouraging employees to refer minority and female applicants for employment, a notice informing employees of an available training program and the entrance requirements, complaint procedures, a notice identifying the company EEO officer by name and including the address and telephone number where the EEO officer can be reached, work environment statement, certification of nonsegregated facilities and a notice to unions disseminating EEO commitments and responsibilities and requesting their cooperation. Included with these lists is an information sheet entitled "How to Avoid Gripes Becoming Grievances (Complaints)". This sheet identifies considerations for improving employee-employer relations.

(8) Federal-aid construction reporting requirements. The External EEO Coordinator discusses the procedure for preparing and submitting Forms PR-1391 and EEO-1 as applicable.

b. On Federal-aid projects that contain the OTPSP, the following information is provided, as well as the information in Paragraphs (a) (1-8):

(1) The RE reviews the Optional Training Commitment Form (OTCF) to ensure that training shall be for the purpose of developing full journey level persons in crafts identified as "critical" by the Department in terms of minority and female underutilization statewide. Training in classifications not listed as "critical" will not be approved. The RE reviews the form to ensure there is adequate time to train employees to journeyman status in classifications selected by the contractor.

(2) Pamphlets distributed at these conferences contain this additional information:

A list of the On-the-Job Training Program Reporting Requirements. The list identifies each form (Registration Card, Weekly Progress Card, Termination Form), the submission frequency and the necessary distribution. The contractor is given a thorough explanation of each form.

2. An External EEO Coordinator will only attend Federal-aid project preconstruction conferences as stated in Contractor Indoctrination, Item C-1. The contractor will be advised of the supportive services that are available to the trainee and contractor.

The contractor is instructed to maintain records relative to the EEO/Affirmative Action Program for a period of at least three (3) years following project completion.

### III. Contract Sanctions

- A. The Arkansas State Highway and Transportation Department will take affirmative action to include the imposition of contract sanctions and the initiation of appropriate legal proceedings under applicable State or Federal law, if necessary, to achieve equal employment opportunity on all Federal-aid highway projects. The Department will actively cooperate with the Federal Highway Administration and the Office of Federal Contract Compliance Programs in all investigations and enforcement actions initiated by either agency. Sanctions imposed by the Department will be reviewed by the Legal Division, prior to issuance, to ensure legal sufficiency.
- B. The Department has a procedure for withholding a contractor's progress payments for failure to comply with EEO requirements.
- C. The following laws are applicable.
  1. Civil Rights Act of 1964
  2. EO 11246 as amended by EO 11375
  3. EO 11764
  4. Federal-aid Highway Act of 1968, 1970
  5. 49 CFR Part 23
  6. Americans with Disabilities Act of 1990

D. In the event of a contractor's noncompliance with the nondiscrimination provisions of the contract, the Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

1. Withholding of payments to the contractor under the contract until the contractor complies, and/or
2. Cancellation, termination or suspension of the contract, in whole or in part.

The contractor will be notified of the deficiency/violation and given a reasonable (preferably a mutually agreed upon) period of time for corrective action. If corrective action has not been initiated in the specified time period or it appears the contractor has not exerted a good faith effort to comply, sanctions will be imposed.

#### IV. Complaints

A. The investigation and processing of all alleged complaints of discrimination received by the Department will be accomplished by the External EEO Coordinator.

When an allegation of discrimination is filed directly with the Department or if the Department is notified that an allegation has been filed with other Federal, State or local authorities, the Department will:

1. Notify the appropriate agency (Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, etc.) within 10 working days of the allegation. As a minimum, the following information will be included in every notification:
  - a. Name, address and telephone number of the complainant.
  - b. Name(s) and address(es) of alleged discriminating official(s).
  - c. Basis of complaint (i.e., race, color, religion, sex, national origin, disability, age).
  - d. Date of alleged discriminatory act(s).
  - e. Date complaint was received by the Department.
  - f. A statement of the complaint.

- g. Other agencies (State, local or Federal) with which the complaint has been filed.
  - h. An explanation of the actions the Department has taken or proposes to resolve the issues raised in the complaint.
- 2. Acknowledge 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 10 working days.
- 3. Investigate the allegation and based on the information obtained, determine whether or not discrimination occurred.
- 4. Prepare a report of findings.
- 5. Notify the complainant, within 45 days from receipt of the allegation, of the findings and the decision reached including proposed disposition of the matter. The notification will advise the complainant of avenues for appeal if dissatisfied with the decision. The proposed resolution will require action adequate to correct and prevent similar occurrences of discrimination.
- 6. Provide the appropriate agency with the decision and a summary of the findings within 45 days after receipt of the allegation.
- 7. Periodically inform the appropriate agency regarding the status of complaints.
- 8. Make informal attempts to resolve the matters. These informal attempts and their results will be synopsized in the report of investigations.

The procedure outlined herein will not prohibit interagency agreements between the Department and State or local Federal Employment Practice (706) agencies.

The fact that an allegation has been filed directly with the Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, etc., will not relieve the Department, upon being informed of the allegation, of the responsibility for taking action, pursuant to its own internal procedures, to resolve the matter.

- B. The Department has developed a procedure for processing verbal complaints alleging discrimination. When a RE or an EEO Field Inspector receives a complaint of alleged discrimination, the contractor will be given an opportunity to resolve the complaint. The following steps will be taken:

1. Notify the contractor within five days of the alleged discriminatory act and schedule a meeting with the company's EEO officer or an authorized company representative and the complainant in order to discuss the complaint. This meeting will be documented thoroughly.
2. If the complainant is satisfied with the company's proposal to resolve the complaint, the Section Head - EEO will be furnished a copy of the minutes of the meeting. The minutes will be signed by the complainant and the company's EEO officer or authorized representative.

A report of complaints resolved in this manner will be prepared and submitted to the Division Office of FHWA on a quarterly basis.

3. If the complainant is dissatisfied with the company's proposal to resolve the complaint, the complainant will be instructed to submit the complaint in writing to the Section Head - EEO. The Section Head - EEO will be furnished a copy of the minutes of the meeting. The minutes will be signed by the complainant and the company's EEO officer or authorized representative. All written complaints will be investigated and processed in accordance with the procedure described in paragraphs A. (1-10) of this section.

- C. When a RE or an EEO Field Inspector is notified that a complaint alleging discrimination has been filed with other Federal, State or local agencies by employees or applicants for employment of contractors holding Federal-aid contracts, the EEO Section Head will be notified immediately.

In order to avoid duplication of effort, the EEO Section Head will maintain contact with the agency regarding the progress of its investigation and the final determination made on the issues in the case. The Division Office of FHWA will be apprised of the current status of external complaints in the annual EEO Program update.

## V. External Training Programs - Supportive Services

- A. An OTPSP is included in certain contracts. This provision identifies the procedure to follow in administering a training program.

The highway contractor, in order to have an approved Training Program, can decide on one of the following:

1. Become a member of the Arkansas Chapter Associated General Contractors. This training program has been approved by the U. S. Department of Labor, Manpower Administration, Bureau of

Apprenticeship and Training and is periodically reviewed by the Office of Federal Contract Compliance Programs.

2. Develop and submit a Training Program for the company to the Arkansas State Highway and Transportation Department for approval with the concurrence of the Federal Highway Administration.
  3. Submit documentation indicating affiliation with an agency that has an approved training program if the company is an out-of-state highway contractor.
- B. The Department is administering a Supportive Services Program. Supportive services are provided in connection with the approved on-the-job training program and are designed to increase the overall effectiveness of the training program in providing an equal opportunity for minority, female, disabled and disadvantaged workers.
- C. Semi-annually, the External EEO Coordinator furnishes FHWA a progress report which contains the following information:
1. Number of trainees enrolled, terminated and graduated. This information is broken down by race, sex and training classification.
  2. Number of graduates contacted for four (4) months to determine how their skills are being developed. This information is broken down by race and sex.

The progress report is sufficient to evaluate the status of the training program with regard to minority and female representation.

- D. The Programs & Contracts Division will select those highway projects where training can be provided. Projects selected will exceed an estimated cost of \$2,000,000. The OTPSP will be included in the bid proposal with an OTCF. The OTCF should be completed and included in the contractor's bid proposal if the contractor elects to provide training on the highway project. This form does not have to be completed if the contractor elects not to provide training.

If the contractor completes the OTCF, Programs & Contracts Division will provide a copy of the form to the Construction Division (CD), the EEO Section and the RE's office.

If the contractor does not complete an OTCF and later decides to enroll individuals in the training program, the contractor must submit a completed OTCF to the RE's office for approval. The RE will review this submission. If everything is satisfactory, a copy will be sent to the District Engineer and a copy to the CD

The contractor will be given the option to train until there is not enough time remaining on the project for completion of training or for an individual to accumulate enough hours to graduate.

When a contractor requests approval from the CD for subcontracts of \$250,000 or more, the CD will furnish the subcontractor a copy of the OTPSP which includes the OTCF. The RE will follow the same procedure as described for the contractor. The subcontractor will be given the option to train until there is not enough time on the project to complete training.

#### VI. Disadvantaged Business Enterprises

The EEO Section is responsible for monitoring contractor compliance with the Disadvantaged Business Enterprise Program at the project level. This is done through a review of the Project log, EEO Field Reports, Compliance Reviews, On-Site Inspections and Verification Reviews.

When Federal-aid construction contracts are awarded, the required percentage of Disadvantaged Business Enterprise utilization is posted in the project log. The log is annotated to show DBE firms which are to be used when subcontract approval is received by the staff. The EEO Section Head monitors the log until a work start notice has been received.

The EEO Field Inspector will conduct an On-Site Inspection at the start of work by Disadvantaged Business Enterprises. During this inspection, it will be determined if the workers are permanent employees of the firm and if the equipment is owned by the firm.

Irregularities noted during inspections will be investigated and resolved. Any arrangements which are not consistent with standard industry practice, which serve no commercially useful function or in which the firm has relinquished control of the work will be reported to the State Construction Engineer by memorandum. The prime contractor and DBE subcontractor will be advised of the suspected irregularity by letter. A copy of the letter will be sent to the EEO Section Head. The State Construction Engineer will review the issues in the memorandum and determine whether an investigation is necessary and, if so, which Division/Section should conduct the investigation.

Contractors' compliance with the Disadvantaged Business Enterprise Special Provision in the contract is evaluated by the External EEO Coordinator during Compliance Reviews and On-Site Inspections. Verification Reviews will be conducted to determine whether firms are eligible to participate in the program. The method for conducting reviews and inspections is detailed in the Contract Compliance Review Guidelines.



VII. Liaison

The EEO Section maintains continuing liaison by correspondence, personal and/or telephone contact with minority, female and disabled organizations, individuals, educational institutions, elected officials, contractor organizations and agencies performing similar or related duties. The information disseminated by the Section relates to the Department's policies and procedures to ensure contractor compliance with equal employment requirements.

VIII. Innovative Programs

EXTERNAL YOUTH OPPORTUNITY PROGRAM

Each summer the Department promotes an External Youth Opportunity Program (EYOP) designed to provide meaningful work experience in highway construction for the State's youths, ages 18-21.

The External EEO Coordinator reviews the Department's Construction Division Job Report and selects those Federal-aid Highway Construction Projects that may provide employment opportunities during the summer. The criteria for selecting projects is as follows:

1. Construction time is 150 days or more.
2. Job Completion and time used is 25% or less.
3. Estimated date of completion is September or later.

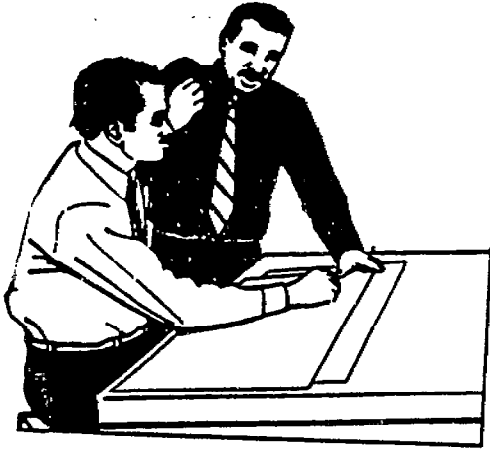
Other Federal-aid projects are reviewed and selected based on the size of the project (dollar amount and percent completed) and how active the project will be during the summer season.

The prime contractor is identified from this information. A contractor's list is developed by county and contains the name of the company's EEO Officer, address, and telephone number. A material supplier's list is also maintained by county. New suppliers are added to the list based on information obtained from Desk Audits and On-Site Reviews conducted the previous year.

Letters promoting the EYOP are sent to universities, colleges, technical institutions, minority and female referral sources, minority organizations, minority state legislative members and high schools near the projects. Enclosed with the letter is a list of prospective employers and/or a summary of the previous year's effort.

A letter is also mailed to each contractor and material supplier promoting the EYOP and requesting each to give consideration to hiring youths ages 18-21 during the summer season. Each contractor and material supplier is also requested to make a special effort to recruit and hire minorities and/or females. Enclosed with the letter is Form AHTD-EYOP which is used to report each firm's total youth employment broken down by race, sex, job classification, average wage rate, and educational data.

At the conclusion of each summer campaign, a letter will be sent to participating highway construction contractors and material suppliers expressing the Department's appreciation. The three companies employing the highest number of youths will be presented Certificates of Appreciation.



**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**  
**AFFIRMATIVE ACTION PLAN**

## **INDEX**

	<b>PAGE</b>
EEO Policy	1
Publicizing the AAP	1
Department Organization Charts	3
Staffing	5
Budgetary	7
AAP Awareness	7
Merit System Requirements	8
Recruitment Procedures	8
New Hire Procedures	9
Promotion Procedures	9
Termination Procedures	10
Training	10
Career Counseling Activities	12
Job Validation Procedures	13
AAP Monitoring and Evaluation Procedures	14
Complaint Procedures	15

## I. POLICY STATEMENT

### A. Equal Employment Opportunity Policy

The Director has issued the following policy statement which has been furnished to all managers and supervisors throughout the Department:

"The Department executed a Certificate of Assurances with regard to the Equal Employment Opportunity Program and is therefore legally obligated to insure equal employment opportunities for all persons regardless of race, color, religion, sex, national origin, age or disability as a fundamental agency policy.

The Arkansas State Highway and Transportation Department's internal employment practices are an integral part of the agency's total commitment and support of its Equal Employment Opportunity Program.

For effective administration and implementation of the EEO Program, there must be involvement, commitment and support of executives, managers and supervisors. You have been advised by my office that responsibility for positive implementation of the Affirmative Action Plan will be expected of and shared by all management and supervisory personnel. You have been further advised that you will be held accountable for your actions in this area and will be evaluated in carrying out these responsibilities.

The major responsibility must be recognition and removal of any barriers to equal employment opportunity, identification of problem areas and of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis.

This type of commitment not only benefits those who have been denied equal employment opportunity, but will also greatly benefit the organization by attaining maximum utilization of the great reservoir of untapped human resources and skills, especially among women, minorities and the disabled.

Therefore, each of you is assigned the specific responsibility for equal opportunity in all employment practices, including (but not limited to) recruitment, hiring, transfers, promotions, training, compensation, benefits, recognition, layoffs and other terminations within your area of authority."

### B. Publicizing the Affirmative Action Plan

1. Written communication from the Director receives Department-wide distribution.
2. The Affirmative Action Plan (AAP) is furnished to all Department Heads to be used as an operations manual. Publicity is given to the AAP in the Department's Magazine and Newsletter. It is distributed to each employee.

3. Periodic meetings are held with District and Central Office employees to make them aware of the basic elements of the AAP, avenues available for filing complaints, the illegality of reprisal actions and protection available against such actions.
4. The EEO Policy Statement is furnished to all Department Heads and is included in the Department's Newsletter and Employee Handbook.
5. The Supervisor's EEO Handbook is furnished to all supervisors to be used as an additional agency operations manual.
6. Periodic meetings are held with all managers and supervisors for the purpose of discussing the AAP and emphasizing the responsibilities they have assumed by virtue of their positions within the Department.
7. Employee orientation within the Central Office Complex is conducted by the Personnel Section. Districts are responsible for employee orientation in their areas of supervision. The AAP and available training programs are included in employee orientation.
8. The EEO Policy Statement and other EEO posters are displayed on work area bulletin boards. Information regarding complaint procedures and the appropriate person to contact has been distributed Department-wide with instructions to post on work area bulletin boards.
9. The AAP is distributed to minority groups, women's organizations, community action groups, State employment agencies and applicable professional organizations, along with a letter advising that the Department is an equal opportunity employer and encouraging referrals of minority and female applicants. Attached to this letter is a list of addresses of the various Department offices throughout the State.
10. Meetings are held between the Division Head of Human Resources and top management to discuss the AAP and assignment of responsibility for AAP implementation.

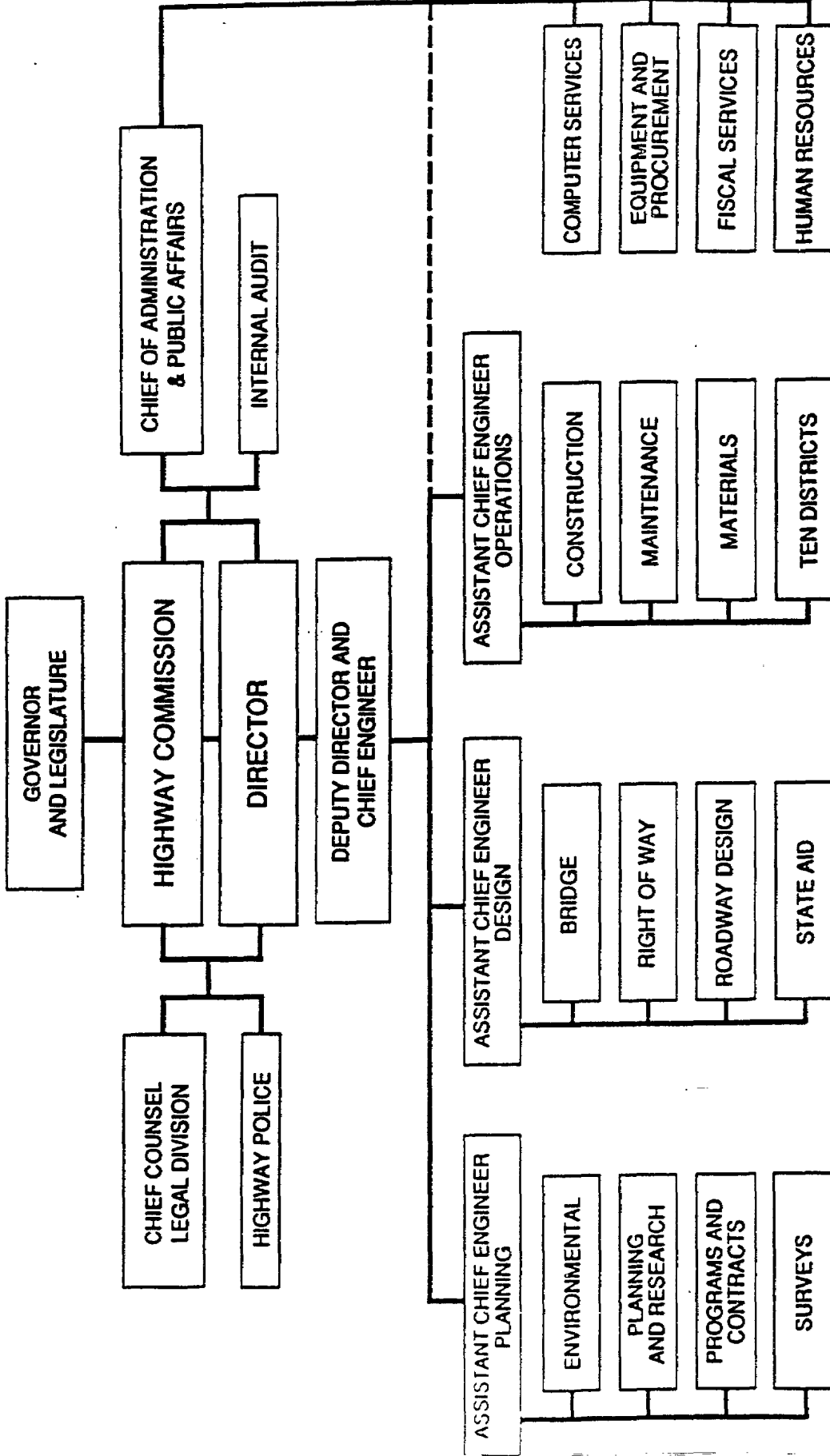
## II. STAFFING AND ORGANIZATION


### A. Organization Charts

#### 1. Department Organizational Chart



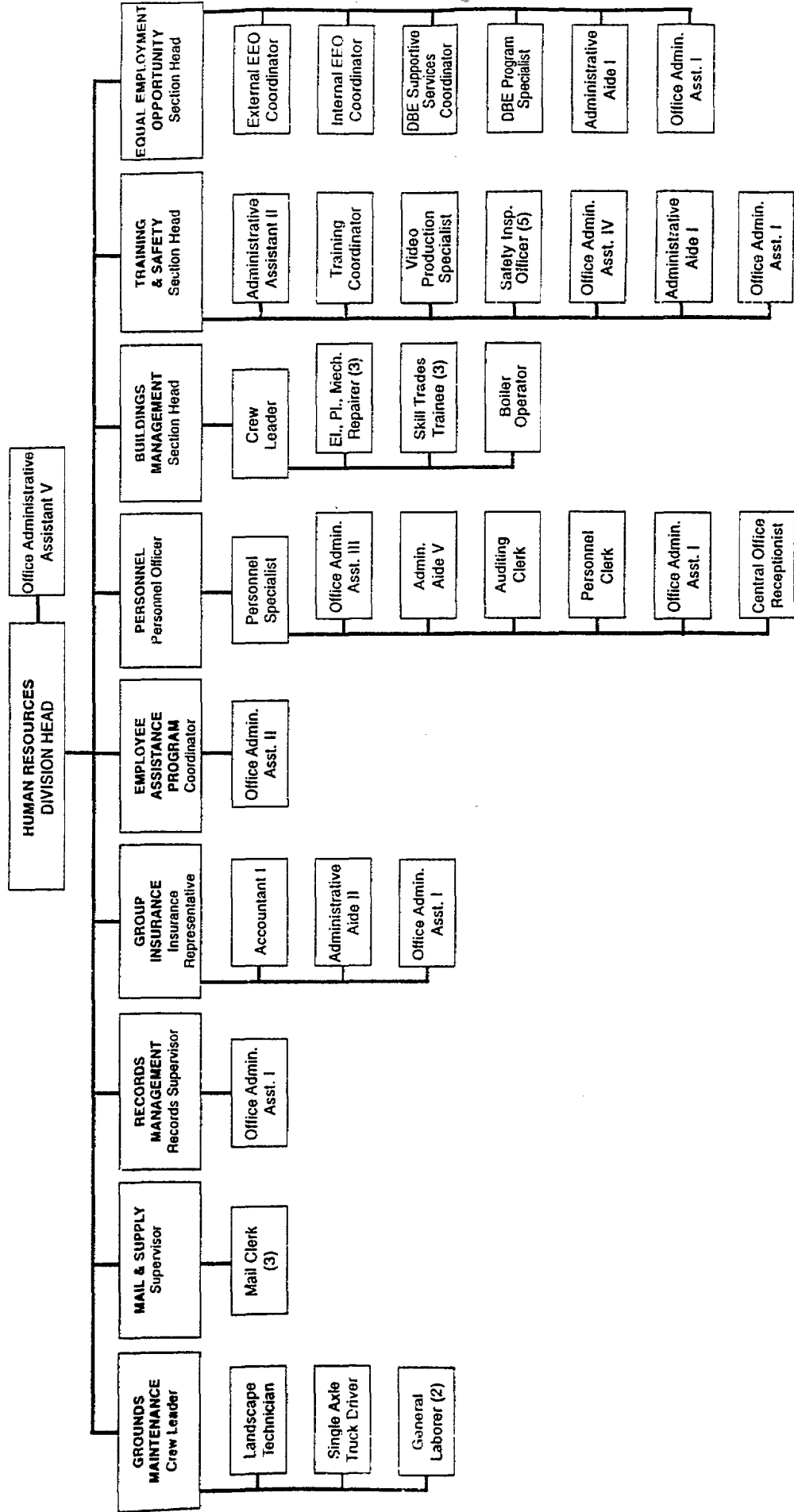
**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT  
ORGANIZATION CHART**



  
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## 2. Human Resources Division Organizational Chart

# HUMAN RESOURCES DIVISION



B. Affirmative Action Program Resources

1. Staffing - The EEO Office is located in Room 103 of the Central Office Complex, 10324 Interstate 30, Little Rock, Arkansas. Section employees have direct access to the Office of the Director.
  - a. The Internal EEO Staff is composed of the EEO Section Head, the Internal EEO Coordinator and the Office Administrative Assistant. The EEO Section Head is responsible for managing and administering the Internal EEO function. The Internal EEO Coordinator devotes full time to the Department's Affirmative Action Program. Responsibilities include:
    - (1) Developing a written Affirmative Action Plan as an integral part of the Department's EEO Program, incorporating the basic elements identified in Part II, Paragraph B, FAPG, Volume 2, Chapter 2, Section 2.
    - (2) Ensuring the contents of the Affirmative Action Plan are publicized internally and externally.
    - (3) Providing advisory and consultative assistance to managers and supervisors in collecting and analyzing employment data, to identify problem areas, set goals and timetables and develop programs that will ensure the achievement of such goals. Assistance to managers and supervisors includes specific remedies to eliminate any discriminatory practices discovered in the Department's employment procedures.
    - (4) Advising and assisting in resolving complaints of alleged discriminatory acts submitted by employees.
    - (5) Monitoring placement of employees to ensure equitable assignment of work, equipment and work area.
    - (6) Monitoring the operation of the promotion program and reviewing promotion actions to assure that requirements, procedures and practices support the Affirmative Action Program objectives and do not have a discriminatory impact on the Department's overall operation.
    - (7) Evaluating promotion criteria, i.e., supervisory evaluation, qualification standards, etc., and their use by selecting officials to identify and eliminate any factors which may lead to "selection-out" of employees and applicants, particularly minorities, females and the disabled.

- (8) Scheduling meetings for participation by managers and supervisors to ensure they have an overall knowledge of the Department's Affirmative Action Program and advising them of their responsibilities in the administration of policies and procedures, to include a discussion of Federal, State and local laws pertaining to Equal Employment Opportunity.
- (9) Collecting and analyzing statistical data to the extent necessary to prepare meaningful reports for submission to the Director and FHWA, identifying the current status of minority and female utilization in the total Department workforce.
- (10) Establishing and maintaining constant liaison with managerial and supervisory personnel to assure a coordinated effort is being exerted to accomplish the goals defined in the Department's Affirmative Action Program.
- (11) Maintaining a cooperative relationship with all Divisions, Districts and Sections within the Department and groups, organizations and educational institutions in the public sector.
- (12) Reviewing actions whereby minorities, females and disabled employees have been disciplined, discharged or demoted prior to the action becoming final.
- (13) Providing AAP and career counseling for employees.
- (14) Conducting exit interviews, whenever possible, with individuals who terminate their employment with the Department.

b. Other Positions with AAP Responsibilities:

- (1) Every District Engineer, Division Head and Independent Section Head has been assigned responsibility for positive implementation of the Affirmative Action Plan in their specific areas of supervision. Duties and responsibilities include submission of required reports, posting of notices on work area bulletin boards, advising supervisors of pertinent AAP information, exerting efforts to attain assigned goals and other duties as defined in the Supervisor's EEO Handbook. Time devoted to AAP responsibilities - 10%.
- (2) The Office Administrative Assistant types and transmits correspondence to FHWA, AHTD personnel and outside organizations, does layout and typing of the Affirmative Action Plan and maintains the Internal EEO files. Time devoted to AAP responsibilities - 50%.

- (3) The Division Head of Human Resources provides career counseling and orientation for new employees, supervises recruiting activities, validates Forms 125 (approval to hire), maintains applicant flow data for new hires and promotions, conducts equal pay studies, is responsible for the Department's classification and compensation program and provides AAP counseling as need dictates. Time devoted to AAP responsibilities - 25%.
- (4) The Training Representative formulates training goals and policies, organizes and develops the training reference library, visual aids and other educational materials, disseminates internal and external training information within the Department, provides coordination as necessary for organizing training sessions, and maintains quarterly reports reflecting training activity. Time devoted to AAP responsibilities - 25%.

## 2. Budgetary

- a. The EEO Section has an adequate approved budget broken down as follows:

Salaries - 78%  
Payroll additives - 15%  
Other expenses  
(travel, supplies, etc.) - 7%

Training funds for AAP purposes are not assigned to the EEO budget. Expenses are assigned to the specific area utilizing training opportunities.

- b. The Director is responsible for development and control of the EEO budget. Recommendations from the EEO Section are considered when the EEO budget is developed.

## III. AFFIRMATIVE ACTION PROGRAM ASSESSMENT

### A. AAP Awareness

Employees are apprised of the AAP as described in I B 1 through 10 of this document. Additional methods follow:

1. Department Newsletter - Distributed with paycheck to all employees
2. Annual EEO performance evaluation of managers and supervisors

3. Oral and written communication from the Division Head of Human Resources, the EEO Section Head and the Internal EEO Coordinator
4. Quarterly publication of Department Magazine
5. On-site reviews

**B. Merit System Requirements**

Department personnel policies and practices are not governed by a State Civil Service System.

**C. Recruitment Procedures**

1. Active recruitment efforts will be exerted by managerial and supervisory personnel when filling existing vacancies by utilizing the known referral sources to obtain qualified employees on a nondiscriminatory basis. Results of these efforts are evident when analyzing applicant flow data.
2. Contacts will be maintained with organizations representing minority groups, women and other sources likely to refer candidates for technical, professional and management level positions.

These contacts include a program developed to inform students from junior high to college of the career opportunities available within the Department. This comprehensive program utilizes employees to encourage students to pursue courses of study that will prepare them for careers with the Department. This program has evolved to include presentations at various educational facilities, tours of Highway Department facilities and presentations to other academic groups.

3. Recruitment literature or brochures will be prepared in such a manner as to be relevant to all employees, including minorities, females and the disabled.
4. Supervisors and managers have been advised that recruitment, placement and assignment of work, will be accomplished on a nondiscriminatory basis. This item is addressed in the Supervisor's EEO Evaluation.
5. The Internal EEO Coordinator is furnished data which reflects the make-up of the workforce for each District, Division and Independent Section. As vacancies occur, contact will be made with the selecting official prior to verification of Forms 125 (Personnel Authorization to hire, promote, etc.) when underutilization of minorities or females exists. The EEO Section will determine what efforts were made to recruit qualified minorities or females and offer to assist selecting officials by recruitment or drawing from the applicant pool. Each Form 125 must have an attachment which reflects all applicants for the position vacancy, with a breakdown by race and sex.

#### D. New Hire Procedures

1. As vacancies occur, they are publicized throughout the Department by posting memorandums from the Personnel Office on work area bulletin boards. Vacancies are advertised for a minimum of two weeks. Closing dates for receiving applications appear at the bottom of the memorandums. A description of duties and qualifications is attached to the position vacancy announcement. Interested persons are instructed to contact the Personnel Office or the appropriate District office. Applications for specific advertised vacancies are not normally accepted after the specified closing date; however, if a qualified applicant is not found during this period, applications may still be accepted.
2. The Department's classification and compensation system contain entry level and trainee positions to facilitate progression within occupational areas. Efforts to increase entry level salaries to enhance the Department's attractiveness to minorities and females have been and will continue to be made. Salaries at all levels are controlled by the Legislature. Salary authorization is revised every two years.
3. Applicant flow as well as new hire data is maintained and analyzed through application of the "Four-Fifths Rule" in order to assess the impact of new hire procedures on the representation of minorities and females. Application of the "Four-Fifths Rule" is accomplished annually. The "Four-Fifths Rule" is a mathematical rule of thumb used to determine adverse impact. Evidence of adverse impact is indicated when any racial/ethnic or gender group has a selection rate of less than 80% of the group with the highest selection rate.

#### E. Promotion Procedures

1. As vacancies occur, they are publicized throughout the Department by memorandums from the Personnel Office. Vacancies are advertised for a minimum of two weeks. Advertisements are dated and vacancies are not filled until the two weeks have expired. The following are exceptions to the two week advertisement which must be approved by the Director:
  - a. Emergency situations when the two week advertisement would hamper the operation of a particular function within the Department.
  - b. Transfers to reduce forces and avoid layoff.
  - c. After transfers are made for the convenience of the Department, advertisements will be accomplished only for the vacancy created as a result of the transfers.



2. The Department participates with other State agencies to permit inter-agency transfers of personnel to positions that offer progression or promotional opportunities. Personnel involved in inter-agency transfers retain their accrued vacation and sick leave, membership to the credit union, if applicable, and the same eligibility for use of vacation and sick leave afforded other Departmental employees.
3. The Internal EEO Coordinator will monitor the promotion program and review promotion actions to assure that requirements, procedures and practices support AAP objectives and do not have a discriminatory impact on the Department's overall operation.
4. Applicant flow, as well as promotion data, is maintained and analyzed through application of the "Four-Fifths Rule" in order to assess the impact of promotion procedures on the representation of minorities and females. Application of the "Four-Fifths Rule" is accomplished annually.
5. Managers and supervisors are charged with the responsibility of encouraging minority and female employees to apply for positions that offer progression and promotional opportunities. Outside applicants are not considered until active employees have been given full consideration and their qualifications have been determined.

#### F. Termination Procedures

1. Lay-offs are nonexistent.
2. A record of terminations is maintained to include name, race, sex, date of termination, Division/District terminated from and reason for termination.
3. Termination data is analyzed through application of the "Four-Fifths Rule" in order to assess the impact of termination procedures on the representation of minorities and females. This is accomplished annually.

When application of the "Four-Fifths Rule" to new hires, promotions or terminations indicates evidence of adverse impact, a review of procedures will be accomplished to determine why. Corrective action will be taken.

#### G. Employee Development Programs

1. Training

Training opportunities are publicized throughout the Department and minority and female employees are encouraged to participate. Present ongoing programs follow:

Specialized courses and seminars are developed and taught by in-house personnel. Video tapes are designed and produced to supplement this training. These include Surveying, Basic Materials, CPR, Highway Maintenance, Construction and Safety. Specialized courses on Human Resource issues include a Sexual Harassment Program, a Drug Awareness Program, an AIDS Awareness Program, Basic Supervision and a Wellness and Fitness Program including an annual Health Screening Clinic.

Participation in cooperative education where-by a student is employed by the Department in a specialized field such as accounting, computer, engineering, and receives academic credit for this on-the-job training.

In cooperation with the Federal Highway Administration/National Highway Institute, various courses are conducted in specialized areas for selected personnel.

A two day Maintenance Conference is usually conducted annually for participation by all District Engineers, Maintenance Superintendents and Area Maintenance Supervisors.

Office Administration Workshops are conducted annually at the Central Office for appropriate personnel throughout the State.

In cooperation with the State Training Officer for the State Department of Education, clerical classes are periodically scheduled.

A Highway and Transportation Conference is conducted every two years for the benefit of all engineers.

In cooperation with the Pulaski Vo-Tech Training School, McClellan Community School and the University of Arkansas at Little Rock, personal development and skills development courses are made available to employees.

Employees are offered a variety of training opportunities through the Inter-Agency Training Program administered by the Department of Finance and Administration, Office of Personnel Management. Agendas are distributed quarterly to each employee and cover a wide range of topics. Approximately 23 different courses are offered on a quarterly basis. Courses not designed for managers and supervisors are provided on request.

Records are maintained on training activity participated in by Department personnel. These reports are submitted on a quarterly basis and include name of participant, title, grade, step, race, sex and type of training. A review of training activity reports reveals whether minority and female participation rates are equal to their representation of the workforce.

Managers and supervisors are charged with the responsibility of advising minority and female employees of available specialized courses and training programs that would better prepare them for positions that offer progression and promotion opportunities. This area of responsibility is defined in the Supervisor's EEO Handbook. Supervisors are instructed to advise employees to remit documentation of training received to the Personnel Section to be made a part of employees' permanent files.

## 2. Career Counseling Activities

Employees are furnished career counseling and guidance as it relates to their occupational area and career goals. Due to the diversity of career opportunities within the Department and the geographical location of all employees, career counseling is accomplished within the various Divisions, Districts and Sections of the Department. The Human Resources staff also provides individual career counseling through the Career Enhancement Program.

The Personnel Office and District offices maintain an open-door policy to all employees desiring career counseling. This item is addressed in the Supervisor's EEO Handbook and supervisors are evaluated on their compliance with this requirement when the annual Supervisor's EEO Evaluation is accomplished.

## H. Job Validation Procedures

A Classification Specifications Manual has been prepared by the Personnel Section and contains written job descriptions for each class title.

Periodic reviews of the classification plan are accomplished to insure classifications are appropriate for actual duties performed.

When duties and responsibilities alter, the written specifications are modified to more accurately reflect requirements of the job to insure standards for all positions are job related. This is a Personnel function accomplished with input received from the supervisor(s) in whose area of responsibility the class titles are utilized.

## I. AAP Monitoring and Evaluation Procedures

### 1. Information/Feedback System

- a. Monitoring of AAP action items, goals and timetables is the responsibility of the Internal EEO Coordinator.

Contact is maintained with the official responsible for action items to determine progress. When appropriate, documentation is submitted to the Internal EEO Coordinator.

When goals and timetables have been established, specific, numerical goals are assigned to the various areas of the Department. Monthly computer reports are transmitted to the Personnel and EEO Sections which reflect the make-up of the workforce for each District, Division and Independent Section by actual number, as well as percentages. This report alerts reviewing officials of areas where underutilization exists. As vacancies occur, the selecting official is advised to recruit qualified applicants in areas of underutilization.

Periodic status reports are transmitted to Central Office and District management personnel by the Internal EEO Coordinator which contain a breakdown of new hire, promotion and termination data and progress made to meet projected goals. Problem areas are identified and recommendations offered for corrective action.

- b. Statistical data on overall employment by race, sex and occupational categories is maintained by the Internal EEO Coordinator.
- c. Applicant flow data for new hires and promotions for all advertised vacancies is maintained by the Personnel Section. This data is furnished to the Internal EEO Coordinator on an annual basis for analytical and reporting purposes.

Statistical data on new hires, promotions and terminations by race, sex and occupational categories is maintained by the Internal EEO Coordinator. This information is automated and furnished on an annual basis.

Application of the "Four-Fifths Rule" is accomplished on an annual basis to determine if there is evidence of adverse impact. Should such be the case, a review of selection procedures will be made to determine why and corrective action will be taken in situations that cannot be validated.

Training activity is maintained in the Training and Safety Section by the Training Representative. This data is furnished on a quarterly basis for analytical and reporting purposes.

- d. Data regarding the availability of minorities and females to the civilian work force is obtained from U. S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census and the Arkansas Employment Security Division.

Using this data, a comparison is made to analyze overall minority/female representation within the Department.

The Bureau of the Census includes health diagnosing occupations, health assessment and treating occupations, teachers, librarians and counselors in the Professional category. The Department does not utilize individuals in any of these occupations, therefore, data for those occupations is excluded. Likewise, data for health technologists and sales occupations is excluded from the data used in the Technicians category. To obtain the comparison data for the Protective Service occupations, a sub-category of the service occupations, private household and other service occupations is excluded. The Bureau of the Census combines the Para-Professional and Service categories, therefore, the comparison data is reflected accordingly.

Overall categories are aligned for comparison as follows:

<b>Arkansas Employment Security Division Labor Market Information</b>	<b>Department</b>
Executive, Administrative and Managerial Occupations	Officials/Administrators
Professional Specialty	Professionals
Technicians and Related Support	Technicians
* Service Occupations - Protective Service Occupations	Protective Services
Administrative Support, including Clerical	Para-Professionals/ Office Clerical
Precision Production, Craft and Repair Occupations/Machine Operators, Assemblers, Inspectors	Skilled Craft
Transportation and Material Moving/Handlers, Equipment Cleaners, Helpers, Laborers	Service Maintenance
* Reflects partial data from overall category	

## 2. Problem Identification and Resolution

The Department's information/feedback system allows for easy identification of problem areas. When this information is analyzed, problem areas are prioritized for corrective action.

#### IV. COMPLAINT PROCEDURES

##### A. Responsibility

Overall responsibility for execution of the discrimination complaint procedure rests with the EEO Section Head. Other Department officials are identified in the procedures which follow:

##### B. Grievance Procedures

It is the policy of the Arkansas State Highway Commission to provide a means for addressing any reasonable complaint an employee may have concerning employment with the Arkansas State Highway and Transportation Department through the formal grievance procedure provided that the matter of such grievance is not the subject of any pending litigation or the subject of any administrative review outside the agency grievance procedure.

Grievances are processed on an individual employee basis only and the Department has a policy which prohibits retaliation against employees who exercise their rights under the grievance procedure.

In the event an employee wishes to file a grievance, the grievance must be submitted, in writing, within thirty (30) calendar days of the event causing the grievance.

The following procedures shall be followed by the employee and Department management when a grievance is filed:

**Step 1**           The employee filing a grievance shall first take the matter up with his or her immediate supervisor. The grievance shall be stated in writing on Step 1 of the grievance form.

It is the duty of the immediate supervisor to make a fair review or investigation of the matter and, if possible, resolve the complaint.

The supervisor may respond to the grievance immediately or may postpone the response in order to study the situation and/or obtain more information. However, the response shall be given to the employee in writing, on the grievance form, within five (5) working days.

If the immediate supervisor's response does not resolve the grievance, the employee shall indicate in writing, at the bottom of Step 1 of the grievance form, his or her desire to refer the grievance to the Division Head or District Engineer. This desire for referral must be made within five (5) working days following the employee's receipt of the immediate supervisor's response.

Should the employee be satisfied with the immediate supervisor's decision, the employee should so indicate by signing the appropriate line on the grievance form under Step 1.

If the employee does not indicate his or her desire to proceed to Step 2 within the specified time, the Department will consider the grievance resolved.

**Step 2**

It shall be the responsibility of the immediate supervisor to notify the Division Head or District Engineer if the employee desires to advance to Step 2 of the grievance procedure. The immediate supervisor shall provide the Division Head or District Engineer with the original grievance form with the employee getting a copy of the same.

The Division Head or District Engineer shall consult with the immediate supervisor, the employee or others, if necessary, in an effort to acquire all pertinent facts relative to the grievance.

The decision of the Division Head or District Engineer on the matter shall be given to the employee in writing, on the grievance form, within five (5) working days following the date of receipt of the grievance from the employee's immediate supervisor.

If the Division Head's or District Engineer's decision does not resolve the grievance, the employee shall indicate in writing, at the bottom of Step 2 of the grievance form, his or her desire to refer the grievance to the Department's Grievance Hearing Officer. This desire for referral must be made within five (5) working days following the employee's receipt of the Division Head's or District Engineer's decision.

Should the employee be satisfied with the Division Head's or District Engineer's decision, the employee should indicate by signing the appropriate line on the grievance form under Step 2.

If the employee does not indicate his or her desire to proceed to Step 3 within the specified time, the Department will consider the grievance resolved.

**Step 3**

It shall be the responsibility of the Division Head or District Engineer to forward the original grievance form to the Department's Grievance Hearing Officer if the employee desires to advance to Step 3 of the grievance procedure. The employee shall be given a copy of the same.

The Department's Chief of Administration and Public Affairs will serve as the Grievance Hearing Officer.

The Grievance Hearing Officer may designate another official to hear a grievance.

The Grievance Hearing Officer will notify the employee, by certified mail, of a scheduled grievance hearing date, time and location.

In the interest of collecting accurate information for reference, this hearing will normally be tape-recorded unless circumstances dictate otherwise. The employee filing the grievance will receive a copy of the transcribed grievance hearing.

The Grievance Hearing Officer will review all available documentation and, if necessary, make or direct further investigations. After the facts have been considered, a report will be made to the Director.

The employee will be notified, in writing, of the Director's decision relative to the grievance. The written decision of the Director shall be the final phase of the grievance process.

### C. Discrimination Complaint Procedure

Complaints are processed on an individual basis only. The Department has a policy which prohibits retaliation against anyone who exercises their rights under the complaint procedure.

Persons who have cause to think they have been treated unfairly due to discrimination on their present job or as a result of application for a job within the Department shall follow the procedures below in processing and resolving their allegations of discrimination. The complainant is first encouraged to discuss the alleged discrimination with the immediate supervisor.

In the event the complainant feels it would not be in his or her best interest to approach the immediate supervisor with the problem, the complainant should contact the Internal EEO Coordinator for counseling. It will be the responsibility of the Internal EEO Coordinator to counsel with the complainant to determine if there is a legitimate discrimination complaint.

When a verbal complaint is filed, as a minimum, the following information will be recorded:

1. Date complaint received
2. Name, job title and telephone number of the complainant
3. Name(s) of alleged discriminating official(s)
4. Basis of the complaint (i.e. race, color, religion, sex, national origin, disability, age)
5. Date of alleged discriminatory act(s)
6. A statement of the complaint

When a written complaint is received, the complainant will be advised of the receipt of the complaint. The complaint will be reviewed with the complainant to ensure inclusion of all the information previously listed.



If it is determined there is a legitimate discrimination complaint, the Internal EEO Coordinator will immediately notify the Chief of Administration and Public Affairs and the appropriate supervisor and request a meeting.

The complainant will be notified within 15 working days from receipt of the complaint of the findings and the decision reached including proposed disposition of the matter. If the complaint cannot be processed within the designated time frame, the complainant will be apprised of the current status of the complaint periodically until a decision is reached.

Should the complainant not be satisfied with the determination, he or she will be advised that avenues of appeal include the internal grievance procedure or the Equal Employment Opportunity Commission.

If it is determined that the complaint is not a matter of discrimination, the Internal EEO Coordinator will explain the internal grievance procedure and offer to assist the complainant in processing an internal grievance.

- D. Complaint procedures are posted on all work area bulletin boards, discussed in EEO meetings, periodically published in the Department's Newsletter and appear in the Personnel Manual and Employee Handbook.

**PART I**  
**CONTRACTOR COMPLIANCE UPDATE**  
**1997**

## I. ACCOMPLISHMENTS

### A. Contract Compliance Review Activity

1. Reviews conducted
  - a. Desk audits - Three
  - b. On-site reviews - Two
  - c. Contractors reviewed - Eight
  - d. Contractors found in compliance - None
  - e. Contractors found in noncompliance. Eight contractors reviewed were found to be in noncompliance. Voluntary corrective action plans (VCAP) were negotiated with seven contractors and the contractors were required to submit progress reports quarterly. One contractor has not submitted the company's VCAP.
  - f. Show cause notices issued - None
  - g. Show cause notices rescinded - None
  - h. Show cause notices unresolved - None

The goal for contract compliance reviews was eight. Four contract compliance reviews were completed. One review is in progress.

In the 1996 Update, one On-Site Review was reported in progress because the contractor (DBE) had not provided requested payrolls to the Department in order for the review to be completed. A Verification Review of the contractor was scheduled after receiving information the contractor was not serving a commercially useful function on the project. Based on the review and appeal hearing, the contractor was determined to be ineligible to participate in the Department's DBE Program. The On-Site Review was not completed due to the prime contractor terminating the company's subcontract and the long delay before this office received the contractor payrolls.

2. On-Site Inspections Conducted
  - a. Number of inspections - Two
  - b. Number of contractors inspected - Four
  - c. Contractors found in compliance - None
  - d. Contractors found in noncompliance. Deficiencies were identified during each of the inspections conducted. Appropriate corrective actions were taken by the four contractors.
  - e. Show cause notices - None
  - f. Show cause notices rescinded - N/A
  - g. Show cause notices unresolved - N/A

The 1996 goal for on-site inspections was two.

## B. Verification Review Activity

1. In the 1996 Update, a contractor was close to declaring default on a project. The State Construction Engineer requested the EEO Staff determine if the DBE subcontractors were paid in full and the DBE goal was satisfied. The review revealed that two DBE contractors had not been paid in full and the DBE goal on the project would have a shortfall. The Department's agreement with the bonding company states that a good faith effort would be made to satisfy the DBE requirements by utilizing the two DBE subcontractors on the project. In order to determine if the DBE goal was satisfied on the project, the Department's Construction Division requested the bonding company submit a Certificate of Payment to DBEs. The document has not been received.

Also in the 1996 Update, Debbie's Construction, Inc. (DC) was requested to provide additional information to address concerns the Certification Committee had with the company. Based on that information and additional information received from the Missouri Highway and Transportation Department, the Committee upheld the determination that DC was eligible to participate in the Department's DBE Program.

2. The 1996 goal for Verification Reviews was four. Four companies were reviewed, two in response to U.S. Department of Transportation, Office of the Secretary of Transportation, Inspector General (OIG) hotline complaints. The companies examined in the other reviews were determined to be eligible for the DBE Program.

The Department received a hotline complaint on Aaron Trucking, Inc. (AT) from the OIG. The complaint indicated the company received DBE status falsely by misrepresenting the organizational structure of the company and the owner did not possess sufficient expertise or knowledge of the trucking business to run the company.

Based on the review of AT it appeared the company was a family-run business and ineligible to participate in the DBE Program and the Certification Committee decertified them.

A Verification Review of Beverly's Trucking, Inc. (BT) was in progress when the Department received a hotline complaint on BT from the OIG. The complaint indicated the company received DBE status falsely by misrepresenting the organizational structure of the company.

Based on the review of BT it appeared the company was a family-run business and ineligible to participate in the Department's DBE Program. The Certification Committee determined the company was not eligible for the program and issued a notice of intent to decertify.

BT appealed the decision. At the appeal hearing, the Certification Committee requested BT provide additional information before a determination could be made.

3. In addition to the Verification Reviews, the EEO Section conducted in-depth reviews of Greer Construction Company (GCC) and M.A.T. Enterprise (MAT).

Mr. Charlie Greer, owner of GCC, alleged nonpayment from Mitchener Excavation, Inc. (ME) and Howard Construction Company (HCC) for work performed. The Department's Certificate of Payment to DBEs from ME indicated GCC was paid for work performed on Job Number 110247.

On Job Number 5897, the Department's review indicated a commercially useful function was not performed. GCC and HCC did not have prior approval from the Department for HCC to pay GCC's suppliers. HCC filed a claim against the Department for work completed on the project. The Department is negotiating settlement of HCC's claim.

Ms. Minnie Tillman, President of MAT, contacted the Department's EEO office to determine if the prime contractor was paid for Stone Backfill which was an item in MAT's subcontract on Job Number 8895. Based on the review, it appeared that MAT did not perform a commercially useful function because the company did not approve the hauling of materials to the project by the prime contractor. A memo and a copy of the review were sent to the Department's Construction Division for review and determination.

A meeting was held at the Department between MAT and the prime contractor on Job Number 020127 concerning MAT returning to the project to complete the remaining work and paying the suppliers. The prime contractor wanted to cancel MAT's subcontract due to nonperformance; give the subcontract to another DBE, and develop a joint checking arrangement to pay MAT's suppliers. MAT would not approve the joint checking arrangement but agreed to another DBE contractor completing the remaining work. The contractor would be listed on MAT's payroll. The contractor would not agree to the payroll arrangement. MAT terminated the subcontract. The prime contractor requested and received approval from the Department to replace MAT with another DBE.

A memo was received from the Resident Engineer's office concerning MAT's failure to perform and pay material suppliers for material incorporated into the work on Job Number R70024. The Department approved a joint checking agreement between the prime contractor and MAT to pay material suppliers. The prime contractor wanted MAT to return to work and pay MAT's suppliers. After a review of federal DBE regulations and the project files, it was determined that MAT violated the joint checking agreement and the prime contractor was approved to pay MAT's suppliers and deduct the amounts paid from the amounts owed to

MAT for the work performed. A review is in progress to determine if MAT's subcontract should be canceled.

On Job Number R30081, the prime contractor requested the Department's approval to cancel MAT's subcontract because of nonperformance. Based on a review of the project, it was determined the prime contractor should be allowed to cancel MAT's subcontract. The prime contractor was requested to submit a plan of action to satisfy the DBE goal on the project.

On Job Number 080076, MAT indicated in a letter to the Department's Resident Engineer (RE) that the prime contractor had not paid the company for work performed. The RE has initiated a review of the project to determine the work performed by and payments made to MAT.

## II. CONTRACT SANCTIONS

The Department withheld payments to 45 contractors until Forms PR-1391 were submitted. All of the contractors reported.

## III. COMPLAINTS

In the 1996 Update, it was reported that Ms. Terri Sparks, white female, was planning to file a complaint with EEOC. Ms. Sparks filed the complaint and EEOC has advised the Department the case is closed.

Also in the 1996 Update, several employees filed a verbal complaint against The Hardaway Company alleging their salaries were reduced while other employees' salaries were increased; verbal abuse and harassment on the project; and failure to maintain a proper water supply for employees. A project meeting was held to review payrolls, compare job classifications and discuss why wage rates were reduced. The complainants were satisfied with the wage rate reduction after the discussion and review of the information provided. The company's EEO Officer held an EEO project on-site meeting to address the last two items. The EEO officer remained on the project all day for questions or comments by employees. The Department's EEO Field Inspector continued to monitor the project until completion. No additional complaints were filed and the case is closed.

## IV. EXTERNAL TRAINING PROGRAMS - SUPPORTIVE SERVICES

For the period January 1, 1996 through December 31, 1996, the training program did not have any enrollments, graduations or terminations.

V. ASSESSMENT

A. Employment Trends

The following charts reflect changes in Arkansas employment trends for July 1995 and July 1996.

In order to assess minority and female utilization, the minority availability in the civilian labor force statewide (14%) and the goals for female employment (6.9%) were used.

EMPLOYMENT TRENDS 1995 - 1996

	<u>1995</u>	<u>1996</u>	<u>CHANGE</u>
Total Projects	170	210	+40/23.5%
Total Dollar Value	\$558,762,542	\$752,367,024	+193,604,482/34.6%
Total Employment	2,720	3,239	+519/19.1%
Minority Employment	692/25.4%	1,032/31.9%	+340/49.1%
Female Employment	166/6.1%	177/5.5%)	+11/6.6%

Total, minority and female employment increased. Minority percentage representation increased and female percentage decreased.

CRITICAL TRADES

(Only trades with 30 or more employees listed)

The following trades are critical in terms of minority representation in Arkansas:

	<u>Total Employment</u>			<u>Minority Employment</u>		
	<u>1995</u>	<u>1996</u>	<u>CHANGE</u>	<u>1995</u>	<u>1996</u>	<u>CHANGE</u>
Mechanics	65	102	+37/56.9%	6	12	+6/100.0%
Supervisors	219	270	+51/23.3%	17	54	+37/217.6%
Foremen	155	156	+1/0.6%	18	19	+1/5.6%

The Mechanic, Supervisor and Foreman trades were the only critical areas identified in 1995 and employment increased in these trades. The Mechanic and Foreman trades were identified as critical in 1996.

The following trades have been identified as critical in terms of female representation in Arkansas:

<u>TRADE</u>	<u>Total Employment</u>			<u>Female Employment</u>		
	<u>1995</u>	<u>1996</u>	<u>CHANGE</u>	<u>1995</u>	<u>1996</u>	<u>CHANGE</u>
Supervisors	219	270	+51/23.3%	4	7	+3/75.0%
Foremen / Women	155	156	+1/0.6%	0	0	NONE
Equipment Operators	640	749	+109/17.0%	31	22	-9/29.0%
Mechanics	65	102	+37/56.9%	0	0	NONE
Truck Drivers	260	283	+23/8.8%	11	12	+1/9.1%
Ironworkers	39	35	-4/10.3%	2	3	+1/50.0%
Carpenters	184	231	+47/25.5%	5	3	-2/40.0%
Cement Masons	94	119	+25/26.6%	1	0	-1/100.0%
Semi-Skilled Laborers	474	589	+115/24.3%	23	26	+3/13.0%
Unskilled Laborers	474	553	+79/16.7%	40	35	-5/12.5%

All trades were identified as critical in 1995. Total employment decreased in one trade and increased in nine trades. Female employment increased in four trades, decreased in four trades and remained the same in two trades.

#### B. Problems Identified

There was a decrease in total female employment.



C. Accomplishments

The data which follows summarizes the results of the External Youth Opportunity Program for 1996:

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT EXTERNAL YOUTH OPPORTUNITY PROGRAM EMPLOYMENT RECORD CONTRACTORS AND MATERIAL SUPPLIERS 1996 EMPLOYMENT DATA																
	JOB CATEGORIES	AVG. HOURLY WAGE	ALL YOUTH EMPLOYED		BLACK Not of Hispanic Origin		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin		TOTAL	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F
			A	ADMINISTRATIVE-CLERICAL	5.73	6	13		2		1					6
B	ENGINEERING AIDE	8.80	4	1									4	1	4	1
C	TECHNICAL AIDE	6.00	3										3		3	
D	DRIVER-OPERATOR	7.32	4		1								3		4	
E	LABORER-MAINTENANCE	6.21	126	4	11				1				114	4	126	4
F	OTHER	8.33	3		1								2		3	
G	TOTAL	6.29	46	18	13	2		1	1				132	15	146	18
EDUCATIONAL DATA																
H	HIGH SCHOOL STUDENT		38	4	2	1							36	3	38	4
I	COLLEGE STUDENT		73	13	6	1		1					67	11	73	13
J	NON-STUDENT		35	1	5				1				29	1	35	1

The companies employing the highest number of youths and the number of youths hired were:

Lion Oil Company .....36  
 Forsgren, Inc. ....17  
 Southern Pavers, Inc.....14

VI. WORK PLAN

Contractor Compliance Program

Highway Construction

1997 Review/Audit Plan

<u>Calendar Quarter/1997</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
Reviews/Audits	0	3	3	2
On-Site Inspections	0	1	1	0
Verification Reviews	1	1	1	1

Reviews and audits will be scheduled by the Section Head - EEO and External EEO Coordinator. On-site inspections will be scheduled and conducted by the External EEO Coordinator.

## VII. PROBLEM SOLVING

In Section V.A., trades are identified as critical in terms of minority and female representation. A memo was sent to Resident Engineers advising of the underutilization and requesting contractors be encouraged to make exerted efforts to hire minorities and females. During preconstruction conferences and compliance reviews, contractors will be furnished copies of referral sources likely to yield minority and female applicants. Emphasis will be placed on hiring females.

On selected projects, the Department encourages the establishment and use of a voluntary cohesive partnership agreement between the Department, the prime contractor and subcontractors. The objectives of the agreement are to have effective and efficient contract performance, to complete the project within budget and on schedule, and to construct the project in accordance with the contract. The External EEO Coordinator participates in partnering workshops.

## VIII. REVISIONS

The Civil Rights/EEO Contract Compliance Review Guidelines have been revised and are hereby transmitted. Information in the loose leaf binders previously furnished should be discarded and substituted with the enclosed pages.

The majority of the revisions are editorial in nature.

**PART II**

**AFFIRMATIVE ACTION PROGRAM UPDATE**

**1997**

I. ACCOMPLISHMENTS

A. As evidenced in Attachment #1, minority and female percentage remained constant at 15% and 18%, respectively.

B. Action Items

Attachment #2 identifies 1996 Action Items. Status by item follows:

Item #1 - Accomplished.

Item #2 - Accomplished.

Item #3 - Accomplished.

Item #4 - Not accomplished, however, females are considered when attrition occurs.

II. ASSESSMENT

A. All analyses are based on activity which transpired during Calendar Year 1996.

Attachments #1 and #1a reflect net change by category for the year 1996 and degree of underrepresentation. Minority representation increased in the Professional and Skilled Craft categories. Female representation increased in the Official/Administrator, Professional, Office/Clerical and Skilled Craft categories.

Attachments #3, #3a and #3b reflect the most current EEO-4 Report.

Attachment #4 reflects the make-up of the workforce as of January 1, 1997.

B. Results of application of the "Four-Fifths Rule" are as follows:

New Hires - Attachments #5, #5a, #5b, #5c, and #5d

Promotions - Attachments #6, #6a, #6b, #6c, and #6d

Terminations - Attachments #7 and #7a

1. New Hires - Minorities were hired at 88% the rate of non-minorities.

Areas where there was evidence of adverse impact follow:

Females were hired at 77% the rate of males, however, females were promoted at the same rate as males.

Professionals - Minorities and females were hired at rates lower than those of non-minorities and males, however, minorities and females were promoted at higher rates in this category.

Technicians - No minorities were hired in this category and females were hired at 59% the rate of males. This is an action item for 1997.

Protective Service - No minorities or females were hired in this category, however, recruitment has been curtailed due to downsizing.

Para-Professional - No minorities were hired in this category and females were hired at 20% the rate of males, however, the number of individuals hired was too small to warrant a determination of adverse impact.

Skilled Craft - No minorities were hired in this category, however, minorities were promoted at a higher rate than that of non-minorities.

2. Promotions - Minorities were promoted at a higher rate than non-minorities and females were promoted at the same rate as males.

Specific areas where there was evidence of adverse impact follow:

Officials/Administrators - No minorities were promoted in this category, however, it should be noted that the promotion of one additional minority would shift the results where there would be no adverse impact.

Technicians - Minorities were promoted at 72% the rate of non-minorities, however, it should be noted that the promotion of one additional minority would shift the results where there would be no adverse impact.

Para-Professionals - No minorities were promoted in this category, however, minority representation exceeds the availability to the workplace and Department representation in this category.

Skilled Craft - Females were promoted at 29% the rate of males. This is an action item for 1997.

3. Terminations - There was no evidence of adverse impact. When employees terminate their employment with the Department, the EEO Section conducts exit interviews to ensure appropriate implementation of Department policies and procedures.

C. Training

The Department sponsors internal and external employee development programs to enhance employee performance and increase employee promotability.

Employees are advised of available training programs. With the exception of required supervisory and sexual harassment courses, participation is voluntary.

The supervisory and non-supervisory Sexual Harassment Programs, which were developed to increase employee awareness of the Department's policies and procedures regarding sexual harassment, provide employees with practical steps for creating a workplace free from harassment.

The EEO Section conducts meetings as needed or upon request by Districts or Divisions.

Attachment #8 is a statistical breakdown, by category, of the number of employees who participated in training activities and the number of training hours.

III. WORK PLAN

A. Goals

No goals were established because recruiting has been curtailed due to downsizing, however, minorities and females will be considered in all areas where there is attrition.

B. Action Items

Attachment #9 reflects Action Items for 1997.

Note: Statistical data, with the exception of Form EEO-4, does not show minorities by individual race, sex and ethnic groups. According to the 1990 census data, U.S. Department of Commerce, Bureau of the Census, minorities other than blacks represent approximately 2% of the total population. A breakdown is as follows:

White	-	83%
Black	-	16%
American Indian	-	.54%
Asian	-	.53%
Hispanic Origin	-	.85%
Other	-	.29%

At the end of calendar year 1996, a breakdown of the Department's workforce was as follows:

White	-	84.85%
Black	-	13.38%
American Indian	-	.89%
Asian	-	.10%
Hispanic Origin	-	.78%
Other	-	0%

Therefore, the minority figures shown reflect 88.32% blacks.

**ATTACHMENT 1**  
**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**  
**NET CHANGES IN EMPLOYMENT**  
**1996**

Total employment increased from 3806 to 3842 or .95%. Minority employment increased from 576 to 582 or 1.04% Female employment increased from 690 to 706 or 2.32%. Minority percentage and female percentage remained constant at 15% and 18%, respectively. Net changes by occupational categories were as follows:

	<u>Total</u>	<u>Minority</u>	<u>Female</u>
	#	#	#
	%	%	%
Officials/Administrators	1	0	+1
Professionals	-7	+3	+4
Technicians	-12	-1	+1
Protective Service	-10	-2	-1
Para-Professionals	0	0	0
Office/Clerical	+7	0	+6
Skilled Craft	+32	+10	+17
Service Maintenance	+25	-4	-12
<b>Total</b>	<b>+36</b>	<b>+6</b>	<b>+16</b>
	<b>+3.13%</b>	<b>+1.04%</b>	<b>+2.32%</b>
	<b>-1.48%</b>	<b>+11.11%</b>	<b>+6.35%</b>
	<b>-1.83%</b>	<b>-1.72%</b>	<b>+9.3%</b>
	<b>-4.72%</b>	<b>-8.00%</b>	<b>-4.76%</b>
	<b>0%</b>	<b>0%</b>	<b>0%</b>
	<b>+2.06%</b>	<b>0%</b>	<b>+2.47%</b>
	<b>+2.53%</b>	<b>+5.63%</b>	<b>+29.82%</b>
	<b>+3.96%</b>	<b>-3.26%</b>	<b>-7.14%</b>
	<b>+9.5%</b>	<b>+1.04%</b>	<b>+2.32%</b>



## ATTACHMENT 1-A

### MINORITY UNDERREPRESENTATION

	<u>Available to the Workforce</u>	<u>Department Representation</u>
Officials/Administrators	7.9%	6.1% *
Professionals	11.4%	6.4% *
Technicians	12.0%	8.8% *
Protective Service	18.3%	11.4% *
Para-Professionals/Office Clerical	11.7%	12.4%
Skilled Craft	15.6%	17.9%
Service Maintenance	18.7%	26.4%

### FEMALE UNDERREPRESENTATION

	<u>Available to the Workforce</u>	<u>Department Representation</u>
Officials/Administrators	41.6%	6.1% *
Professionals	59.9%	14.3% *
Technicians	55.5%	16.8% *
Protective Service	15.5%	10.0% *
Para-Professionals/Office Clerical	78.9%	51.2% *
Skilled Craft	27.4%	5.8% *
Service Maintenance	17.3%	23.5%

\* Areas of Underrepresentation

**ATTACHMENT 2**

**1996 ACTION ITEMS**

GOAL/OBJECTIVE	RESPONSIBLE OFFICIAL	TARGET DATE	STATUS
1. Conduct at least 2 District on-site reviews.	Internal EEO Coordinator	12/96	Accomplished.
2. Maintain minority representation and increase female representation.	Internal EEO Coordinator	12/96	Accomplished.
3. Maintain and expand minority and female referral source lists.	External EEO Coordinator	12/96	Accomplished.
4. Increase female representation by 2 in the Para-Professional category.	Internal EEO Coordinator and Personnel Officer	12/96	Not accomplished, however, females are considered when attrition occurs.



ARKANSAS HWY DEPT  
EEO COORDINATOR  
P.O. BOX 2261  
LITTLE ROCK AR 72203

Attachment 3-A

CONTROL NUMBER STATEWIDE

FUNCTION 2 STREETS AND HIGHWAYS

1. FULL-TIME EMPLOYEES

JOB CATEGORY	SALARIES	TOTAL	MALE					FEMALE															
			A	B	C	D	E	F	G	H	I	J	K										
PARA-PROF	0.1-15.2	33																					
	16.0-19.9	34																					
	20.0-24.9	35																					
	25.0-32.9	36	12	7																			
	33.0-42.9	37	126	89	11																		
	43.0-54.9	38	60	59	1																		
	55.0-69.9	39																					
	70.0-OVER	40																					
OFFICE/CLERK	0.1-15.2	41	19	2	1																		
	16.0-19.9	42	58	12																			
	20.0-24.9	43	144	38	5																		
	25.0-32.9	44	104	40																			
	33.0-42.9	45	22																				
	43.0-54.9	46																					
	55.0-69.9	47																					
	70.0-OVER	48																					
SKILL/CRAFT	0.1-15.2	49	2	1	1																		
	16.0-19.9	50	324	212	53																		
	20.0-24.9	51	322	236	69																		
	25.0-32.9	52	520	443	65																		
	33.0-42.9	53	127	123	3																		
	43.0-54.9	54	1																				
	55.0-69.9	55																					
	70.0-OVER	56																					
SERV/MAINT	0.1-15.2	57	291	148	58																		
	16.0-19.9	58	284	160	54																		
	20.0-24.9	59	71	51	11																		
	25.0-32.9	60	10																				
	33.0-42.9	61																					
	43.0-54.9	62																					
	55.0-69.9	63																					
	70.0-OVER	64																					
TOTAL		65	3842	2691	406																		
FULL TIME		65																					

TOTAL FULL TIME 65 3842 2691 406 17 2 20 569 108 13 2 14

ARKANSAS HWY DEPT  
CEO COORDINATOR  
P.O. BOX 2261  
LITTLE ROCK AR 72203

CONTROL NUMBER STATEWIDE  
Attachment 3-B

FUNCTION 2 STREETS AND HIGHWAYS

2. OTHER THAN FULL-TIME EMPLOYEES

JOB CATEGORY	TOTAL	MALE					FEMALE					
		A	B	C	D	E	F	G	H	I	J	K
OFFICIAL/ADM 66	74	30	9	18	17							
PROFESSIONALS 67												
TECHNICIANS 68												
PROTECT/SVC 69												
PARA-PROF 70												
OFFICE/CLERK 71												
SKILL/CRAFT 72												
SERV/MAINT 73												

TOTAL OTHER THAN F-T	74	30	9	18	17
3. NEW HIRES DURING FISCAL YEAR - PERMANENT FULL TIME ONLY					

OFFICIAL/ADM 75	15	13										
PROFESSIONALS 76	12	10										
TECHNICIANS 77	2	2										
PROTECT/SVC 78	3	2										
PARA-PROF 79	25	5	1									
OFFICE/CLERK 80	35	29	3									
SKILL/CRAFT 81	294	166	60	3	2	49	12					2
SERV/MAINT 82												

TOTAL	NEW HIRES	83	386	227	64	3	2	71	15	1	1	2
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CERTIFICATION. I CERTIFY THAT THE INFORMATION GIVEN IN THIS REPORT IS CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND WAS REPORTED IN ACCORDANCE WITH ACCOMPANYING INSTRUCTIONS. (WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001).

NAME OF CONTACT PERSON: TITLE OF CONTACT PERSON:  
ADDRESS: P.O. BOX 2261 LITTLE ROCK AR 72203 TELEPHONE NUMBER:  
AUTHORIZED OFFICIAL: DIRECTOR

NAME TYPED: DATE: 01/28/97  
SIGNATURE:

**ATTACHMENT 4**

**TOTAL EMPLOYEES**

**JANUARY 1, 1997**

**CLASSIFICATIONS:**

**OFFICIALS/ADMINISTRATORS**

**PROFESSIONALS**

**TECHNICIANS**

**PROTECTIVE SERVICE**

**PARA-PROFESSIONALS**

**OFFICE/CLERICAL**

**SKILLED CRAFT**

**SERVICE MAINTENANCE**

**TOTAL**

Total	CAUCASIAN		MINORITY		Minorities	TOTAL Females
	Male	Female	Male	Female		
33	29	2	2	0	2	2
467	382	55	18	12	30	67
643	488	98	47	10	57	108
202	162	17	20	3	23	20
198	155	27	13	3	16	30
347	92	204	6	45	51	249
1296	1016	55	206	19	225	74
656	367	111	133	45	178	156
3842	2691	569	445	137	582	706

**ATTACHMENT 5**

**1996 TOTALS**

**NEW HIRES**

	<b>APPLICANTS</b>	<b>HIRES</b>	<b>SELECTION RATE</b>	<b>PERCENT HIRED</b>	<b>4/5 Rule 80% of Base</b>
White	952	299	299/952	31.4	
Minority	320	88	88/320	27.5	87.6%+
Males	913	297	297/913	32.5	
Females	359	90	90/359	25.1	77.2%-

**ATTACHMENT 5-A  
NEW HIRES  
Officials/Administrators**

	APPLICANTS	HIRES	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	0	0	0	0	0%
Minority	0	0	0	0	0%
Males	0	0	0	0	0%
Females	0	0	0	0	0%

**Professionals**

	APPLICANTS	HIRES	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	41	13	13/41	31.7	
Minority	10	2	2/10	20.0	63.1%-
Males	34	13	13/34	38.2	
Females	17	2	2/17	11.8	30.9%-

**Technicians**

	APPLICANTS	HIRES	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	31	11	11/31	35.5	
Minority	2	0	0/2	0.0	0%-
Males	24	9	9/24	37.5	
Females	9	2	2/9	22.2	59.2%-

**Protective Service**

	APPLICANTS	HIRES	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	14	1	1/14	7.1	
Minority	3	0	0/3	0.0	0%-
Males	15	1	1/15	6.7	
Females	2	0	0/2	0.0	0%-



**ATTACHMENT 5-B  
NEW HIRES**

**Para-Professional**

	APPLICANTS	HIRES	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	14	3	3/14	21.4	
Minority	0	0	0/0	0.0	0%-
Males	4	2	2/4	50.0	
Females	10	1	1/10	10.0	20.0%-

**Office/Clerical**

	APPLICANTS	HIRES	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	123	15	15/123	12.2	82.4%+
Minority	27	4	4/27	14.8	
Males	23	3	3/23	13.0	
Females	127	16	16/127	12.6	96.9%+

**Skilled Craft**

	APPLICANTS	HIRES	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	54	16	16/54	29.6	
Minority	6	0	0/6	0.0	0%-
Males	56	14	14/56	25.0	50.0%-
Females	4	2	2/4	50.0	

**Service Maintenance**

	APPLICANTS	HIRES	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	675	240	240/675	35.6	
Minority	272	82	82/272	30.1	84.6%+
Males	757	255	255/757	33.7	95.5%+
Females	190	67	67/190	35.3	

**ATTACHMENT 5-C**

**NEW HIRES**

**APPLICANTS**

**CLASSIFICATIONS:**

	Total	CAUCASIAN		MINORITY		TOTAL	
		Male	Female	Male	Female	Minorities	Females
OFFICIALS/ADMINISTRATORS	0	0	0	0	0	0	0
PROFESSIONALS	51	32	9	2	8	10	17
TECHNICIANS	33	23	8	1	1	2	9
PROTECTIVE SERVICE	17	14	0	1	2	3	2
PARA-PROFESSIONALS	14	4	10	0	0	0	10
OFFICE/CLERICAL	150	19	104	4	23	27	127
SKILLED CRAFT	60	51	3	5	1	6	4
SERVICE MAINTENANCE	947	540	135	217	55	272	190
<b>TOTAL</b>	<b>1272</b>	<b>683</b>	<b>269</b>	<b>230</b>	<b>90</b>	<b>320</b>	<b>359</b>

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT  
 EQUAL EMPLOYMENT OPPORTUNITY REPORT  
 PERIOD COVERED FROM 01/01/96 TO 12/31/96  
 NEW EMPLOYEES.

OVERALL TOTALS Attachment 5-D

	TOTAL	CAUCASIAN		MINORITY		TOTAL		PERCENTAGE	
		MALE	FEMALE	MALE	FEMALE	MALES	FEMALES	MINORITY MALE	MINORITY FEMALE
OFFICIAL / ADMIN									
PROFESSIONALS	15	13		2		2	2	13	13
TECHNICIANS	11	9	2			2			
PROTECTIVE SERVICES	1	1							
PARAPROFESSIONALS	3	2	1			1			
OFFICE CLERICAL	19	2	13	1	3	16	4	21	84
SKILLED CRAFT	16	14	2			2			
SERVICE/MAINTENANCE	322	187	53	68	14	67	82	25	20
DISTRICT TOTALS	387	228	71	69	19	90	88	23	23

**ATTACHMENT 6-A  
PROMOTIONS**

**Officials/Administrators**

	APPLICANTS	PROMOTIONS	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	8	3	3/8	37.5	
Minority	0	0	0/0	0.0	0%-
Males	6	2	2/6	33.3	66.6%-
Females	2	1	1/2	50.0	

**Professionals**

	APPLICANTS	PROMOTIONS	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	191	49	49/191	25.7	
Minority	19	4	4/19	21.1	82.1%+
Males	177	44	44/177	24.9	91.2%+
Females	33	9	9/33	27.3	

**Technicians**

	APPLICANTS	PROMOTIONS	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	266	63	63/266	23.7	
Minority	41	7	7/41	17.1	72.2%-
Males	224	54	54/224	24.1	
Females	83	16	16/83	19.3	80.1%+

**Protective Service**

	APPLICANTS	PROMOTIONS	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	32	11	11/32	34.4	68.8%-
Minority	2	1	1/2	50.0	
Males	32	11	11/32	34.4	68.8%-
Females	2	1	1/2	50.0	

**ATTACHMENT 6-B  
PROMOTIONS**

**Para-Professionals**

	APPLICANTS	PROMOTIONS	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	139	20	20/139	14.4	
Minority	11	0	0/11	0.0	0%-
Males	118	19	19/118	16.1	
Females	32	1	1/32	3.1	19.3%-

**Office/Clerical**

	APPLICANTS	PROMOTIONS	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	177	39	39/177	22.0	
Minority	63	8	8/63	12.7	57.7%-
Males	56	10	10/56	17.9	89.1%+
Females	184	37	37/184	20.1	

**Skilled Craft**

	APPLICANTS	PROMOTIONS	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	692	176	176/692	25.4	89.4%+
Minority	169	48	48/169	28.4	
Males	748	193	193/748	25.8	94.2%+
Females	113	31	31/113	27.4	

**Service Maintenance**

	APPLICANTS	PROMOTIONS	SELECTION RATE	PERCENT HIRED	4/5 Rule 80% of Base
White	135	114	114/135	84.4	95.4%+
Minority	52	46	46/52	88.5	
Males	132	108	108/132	81.8	86.6%+
Females	55	52	52/55	94.5	

**ATTACHMENT 6-C**

**PROMOTIONS**

**APPLICANTS**

Total	CAUCASIAN		MINORITY		Minorities	TOTAL Females
	Male	Female	Male	Female		
8	6	2	0	0	0	2
210	166	25	11	8	19	33
307	208	58	16	25	41	83
34	30	2	2	0	2	2
150	114	25	4	7	11	32
240	44	133	12	51	63	184
861	611	81	137	32	169	113
187	97	38	35	17	52	55
1997	1276	364	217	140	357	504

**CLASSIFICATIONS:**

**OFFICIALS/ADMINISTRATORS**

**PROFESSIONALS**

**TECHNICIANS**

**PROTECTIVE SERVICE**

**PARA-PROFESSIONALS**

**OFFICE/CLERICAL**

**SKILLED CRAFT**

**SERVICE MAINTENANCE**

**TOTAL**

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT  
 EQUAL EMPLOYMENT OPPORTUNITY REPORT  
 PERIOD COVERED FROM 01/01/95 TO 01/02/96  
 PROMOTIONS

OVERALL TOTALS ATTACHMENT 6-D

	TOTAL		CAUCASIAN		MINORITY		TOTAL		PERCENTAGE	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MINORITY	FEMALE
OFFICIAL / ADMIN	1	1	1	1	1	1	8	2	4	17
PROFESSIONALS	45	7	36	7	1	1	8	2	4	17
TECHNICIANS	86	12	64	12	10	12	12	10	11	13
PROTECTIVE SERVICES	42	5	34	5	3	5	5	3	7	11
PARAPROFESSIONALS	13	1	11	1	1	1	1	2	15	7
OFFICE CLERICAL	43	8	8	27	1	7	34	8	16	79
SKILLED CRAFT	196	11	139	11	39	7	18	46	23	9
SERVICE/MAINTENANCE	118	31	51	31	22	14	45	36	30	38
DISTRICT TOTALS	544	93	344	93	77	30	123	107	20	23

**ATTACHMENT 7**

**1996 TOTALS**

**TERMINATIONS**

	BEGINNING TOTALS	TERMINATIONS	NUMBER RETAINED	RETENTION RATE	RATIO TO HIGHEST RATE
White	3230	17	3213	99.5%	
Minority	576	23	553	96.0%	96.5%+
Males	3116	31	3085	99.0%	
Females	690	9	681	98.7%	99.7%+

Note: Terminations reflect discharged employees. There is no breakdown by category because the number of individuals terminated is too small to warrant a determination of adverse impact.



ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT  
 EQUAL EMPLOYMENT OPPORTUNITY REPORT  
 PERIOD COVERED FROM 01/01/96 TO 12/31/96  
 DISCHARGED

OVERALL TOTALS Attachment 7-A

	CAUCASIAN		MINORITY		TOTAL		PERCENTAGE	
	MALE	FEMALE	MALE	FEMALE	MALES	FEMALES	MINORITIES	MINORITY FEMALE
OFFICIAL / ADMIN								
PROFESSIONALS								
TECHNICIANS	1		1		1		1	100
PROTECTIVE SERVICES								
PARAPROFESSIONALS								
OFFICE CLERICAL	1		1		1		1	100
SKILLED CRAFT	10	1	5	1	5	1	50	10
SERVICE/MAINTENANCE	28	3	12	7	16	7	57	25
DISTRICT TOTALS	40	13	18	9	23	9	58	23

## ATTACHMENT 8

### 1996 TRAINING ACTIVITIES

#### Total Training Participants

	<u>CM</u>	<u>CF</u>	<u>MM</u>	<u>MF</u>	<u>TOTAL</u>
Officials/Administrators	20	0	0	0	20
Professionals	668	100	35	11	814
Technicians	488	135	53	11	687
Protective Service	13	4	4	1	22
Para-Professionals	231	31	27	2	291
Office/Clerical	112	231	4	52	399
Skilled Craft	1533	127	335	46	2041
Service Maintenance	879	398	313	154	1744
<b>Total</b>	<b>3944</b>	<b>1026</b>	<b>771</b>	<b>277</b>	<b>6018</b>
Total Minorities	=	1048	or	17.4%	
Total Females	=	1303	or	21.7%	

#### Total Training Hours

	<u>CM</u>	<u>CF</u>	<u>MM</u>	<u>MF</u>	<u>TOTAL</u>
Officials/Administrators	274	0	0	0	274
Professionals	4424	750	240	28	5442
Technicians	2578	660	330	59	3627
Protective Service	47	10	7	10	74
Para-Professionals	1291	168	181	8	1648
Office/Clerical	636	1229	23	357	2245
Skilled Craft	6572	800	1606	565	9543
Service Maintenance	3808	2644	2153	1061	9666
<b>Total</b>	<b>19630</b>	<b>6261</b>	<b>4540</b>	<b>2088</b>	<b>32519</b>
Total Minorities	=	6628	or	20.4%	
Total Females	=	8349	or	25.7%	

**ATTACHMENT 9**

**1997 ACTION ITEMS**

<b>GOAL/OBJECTIVE</b>	<b>RESPONSIBLE OFFICIAL</b>	<b>TARGET DATE</b>	<b>STATUS</b>
1. Conduct at least 2 District on-site reviews.	Internal EEO Coordinator	12/97	Areas have been identified.
2. Maintain overall minority representation and increase female representation.	Internal EEO Coordinator	12/97	Managers have been advised of these areas of concern.
3. Expand minority and female referral source lists	External EEO Coordinator and Internal EEO Coordinator	12/97	Ongoing
4. Increase minority and female representation by 2 in the Skilled Craft and Technicians categories.	Internal EEO Coordinator and Division Head of Human Resources	12/97	Ongoing

**CIVIL RIGHTS/EEO**

**CONTRACT COMPLIANCE REVIEW GUIDELINES**

**Arkansas State Highway and Transportation Department  
Little Rock, Arkansas**

**(Revised February 1997)**

# TABLE OF CONTENTS

## PART I DESK AUDIT PROCEDURE

	Page
I. Authority	1
II. Background	1
III. Pre-Audit/Review Information	2
IV. Selection of Contractor for Desk Audit	2
V. Selection of Contractor for On-Site Review	5
VI. Selection of Project for On-Site Inspection	6

## PART II ON-SITE REVIEW PROCEDURE

I. On-Site Review Procedure	1
II. Physical Inspection	11
III. Exit Conference	12
IV. Report of Findings	12

**PART III  
DISADVANTAGED BUSINESS ENTERPRISE  
VERIFICATION REVIEW PROCEDURE**

I. Purpose	1
II. Pre-Review Information	1
III. Selection of Contractor for Review	1
IV. Exit Conference	2
V. Report of Findings	2

**PART IV  
ATTACHMENTS**

<b>Attachment</b>	
Notification of Scheduled EEO Desk Audit	A
1. Projects Only	
2. Home Office and Projects	
Contractor Letter of Findings	B
1. Desk Audit	
a. No Show Cause	
b. Show Cause	
2. On-Site Review	
a. No Show Cause	
b. Show Cause	
Notification of Nonselection for Review	C
Desk Audit Report	D
Notification of EEO On-Site Review following Desk Audit	E

Notification of EEO On-Site Review	F
Employee Interview Form	G
Highway Construction Trainee Interview Form	H
Superintendent Interview Form	I
Sample On-Site Inspection Letter of Findings	J
Compliance Data Report	K
Notification of Verification Review	L
1. On-Site Review	
2. Desk Audit	
Verification Review Procedure	M
DBE Owner Interview Form	N
DBE Employee Interview Form	O

**PART I**

**DESK AUDIT PROCEDURE**



# ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT CIVIL RIGHTS/EEO CONTRACT COMPLIANCE REVIEW GUIDELINES

## I. Authority

These review guidelines have been developed pursuant to Executive Order 11246, as amended, 23 United States Code, 23 Code of Federal Regulations and Title VI of the Civil Rights Act of 1964 for use by FHWA and State Highway Agency Civil Rights personnel in conducting EEO contract compliance reviews throughout Region 6. As guidelines, they provide reviewing officials with a single compact document designed to ensure comprehensive coverage of Civil Rights/EEO contractual requirements. Except where attachments are provided, findings for each item should be documented in the space immediately following the item. Special emphasis on women demands that the terms minorities and/or women be used separately and distinctly. If compliance personnel ignore the issue, contractors will do the same.

## II. Background

In the past, contract compliance review activity involved On-Site Reviews of contractors' home offices and project sites. For the most part, the procedure followed included the selection of the contractor, notifying the contractor of the review and the information to have available for the On-Site Review. During the On-Site Review, a considerable amount of time was expended by the compliance officer in reviewing documentation submitted by the contractor while the contractor and/or representative looked on.

Often times the information presented by the contractor to the reviewing officer at the On-Site Review was sufficient in itself to warrant a finding of compliance, thus, obviating the need for an On-Site Review.

In the interest of increasing the efficiency and effectiveness of compliance procedures so that the amount of budgetary and manpower resources necessary is reduced both on the part of FHWA, the Department and industry, the contract compliance program has been amended to provide for compliance determinations based on reviews of contractors selected, scheduled and prioritized by the Desk Audit Process.

The Desk Audit involves obtaining certain basic information from the contractor. The difference from the On-Site Review procedure is that the information requested from the contractor is submitted to the reviewing officer's place of business. The information will be analyzed and the results of the analysis will be used to determine whether, and if so, when an On-Site Review should be conducted of the contractor. Refer to Page 5, Item V, Selection of Contractor for On-Site Review.

The results of a Desk Audit is used as a prioritizing instrument, allowing a more controlled, effective and reasonable application of resources.

Credit to the reviewing office for Desk Audits will be given in the same manner as for On-Site Reviews.

On-Site Reviews consider the total aggregate workforce of the contractor in the standard metropolitan statistical or economic area covered by the review.

### III. Pre-Audit/Review Information

The following information is to be secured by the compliance officer prior to a Desk Audit or an On-Site Review:

- A. The contractor(s) aggregate employment posture for each Federal-aid highway project in the covered area. This information will be obtained from State and federal contract compliance review files, EEO-1's, PR-1391's, certified payrolls or other sources.
- B. EEOC District Office forms EEO-3 filed by each labor union operating in the area, when unions are involved.
- C. Population and civilian labor force data broken down by race, ethnic origin, and sex. Sources for such data are: Bureau of the Census, Chamber of Commerce, Better Business Bureaus, minority and female organizations, State and federal employment agencies such as OFCCP, EEOC and Department of Justice.
- D. Trades for which there is a lack of skilled personnel in and around the project area. Sources for this information are labor unions, Bureau of Apprenticeship and Training, and State and federal employment agencies.

### IV. Selection of Contractor for Desk Audit

#### A. Priorities

Priority in scheduling Desk Audits will be given to those contractors:

- 1. Working on a significant number of contracts. What is determined to be a significant number of contracts will vary from state to state and will be determined by the compliance officer.
- 2. Who have the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations)

3. Working in areas which have significant minority and female labor forces within a reasonable recruitment area.
4. Working on projects that include special training provisions.
5. Working on projects that have Disadvantaged Business Enterprise goals.
6. Whose compliance with equal opportunity requirements is questionable (based on review reports or other information available).
7. Who have not been reviewed or audited during the previous year.

**B. Scheduling**

1. Once a contractor is selected for a Desk Audit, a notification letter will be sent to the contractor. Attachment A, "Notification of scheduled EEO Desk Audit", will be used for this purpose.
2. The contractor will be allowed at least two weeks from receipt of the notification letter to submit the requested information.

**C. Desk Audit Procedure**

1. Review information received from the contractor for completeness. In the event that additional information is needed, it will be solicited from the contractor by telephone, fax or by certified mail at the discretion of the compliance officer.
2. Review employment data for mathematical accuracy.
3. Review employment data for overall minority/female representation.
4. Identify specific classifications where minorities and females are underutilized when compared to the data listed in Section III of these guidelines.
5. Review previous compliance review reports on the contractor. Identify serious deficiencies.
6. Review the remainder of the information received and identify any problem areas in order to apprise the contractor.

7. Contact each Resident Engineer prior to writing the letter of findings. The purpose of this contact will be to ascertain if the Resident Engineer has received the required reports from the contractor. Reports that have not been received which are of an EEO nature will be addressed in the letter of findings.

**D. Contractor Letter of Findings**

1. Upon completion of a Desk Audit, the reviewing officer will notify the contractor in writing of each deficiency identified, provide specific recommended actions to correct each deficiency and decide whether or not an On-Site Review would be appropriate, and if so, when (based on peak employment period).
2. The letter will advise the contractor of the opportunity to submit a voluntary corrective action plan including specific actions to correct each deficiency uncovered. The time limit for submitting a voluntary corrective action plan will be 20 calendar days from the day the letter is typed. (See Attachment B for sample letter.) The reviewing officer will also include in this letter the appropriate language that the contractor is required to incorporate in any voluntary corrective action plan submitted. (See Regional Administrator's Policy Memorandum of October 18, 1977.)
3. In the event that additional information is needed, it will be solicited from the contractor by telephone, fax or certified mail.
4. Significant discrepancies in information submitted as a result of a Desk Audit will warrant the scheduling of an On-Site Review(s).
5. If, based on the information submitted by the contractor, it is determined that no further review is necessary, the reviewing officer will notify the contractor in writing of nonselection for review (See Attachment C.)

**E. Preparation of Desk Audit Report**

1. Reports of Desk Audits will be prepared in the format of Attachment D.
2. While all of the documentation submitted by the contractor for the Desk Audit is not to be included in the Desk Audit Report, the following information will be attached as appropriate:
  - (a) Letter of findings issued to the contractor,
  - (b) Voluntary corrective action plan submitted by the contractor,

- (c) Letter advising contractor of the corrective action plan acceptance or unacceptance,
  - (d) Show cause notice,
  - (e) Corrective action plan submitted pursuant to show cause notice.
3. Desk Audit Reports will be prepared and submitted through appropriate channels within 15 calendar days following completion of the Desk Audit.
  4. In the event of a Department conducted Desk Audit, two copies of the Desk Audit Report will be submitted to the FHWA Division Office.
  5. In the event of an FHWA conducted Desk Audit, two copies of the Desk Audit Report will be submitted to the FHWA Regional Office and one copy to the Department.
  6. Documentation submitted by the contractor for the Desk Audit and the reviewing officer's notes will be retained by the reviewing agency.

V. Selection of Contractor for On-Site Review

A. On-Site Reviews will be conducted:

1. When the reviewing officer determines an On-Site Review is necessary to verify information submitted by the contractor for the Desk Audit.
2. When the information received indicates serious deficiencies or violations of EEO contract requirements.
3. When the contractor's amount of Federal-aid highway work and size of workforce warrant On-Site Reviews of randomly selected sites.
4. Instead of the Desk Audit.

B. Scheduling

1. When, upon completion of a Desk Audit, a contractor is selected for an On-Site Review, the contractor will be notified. Attachment E, "Notification of EEO On-Site Review", will be used for this purpose.
2. At least a two week written notification will be provided to the contractor.

C. Contractor Letter of Findings

1. Upon completion of an On-Site Review, the reviewing officer will notify the contractor in writing identifying each deficiency and providing specific recommended actions to correct each deficiency.
2. The letter to the contractor will advise the contractor of the opportunity to submit a voluntary corrective action plan including specific actions to correct each deficiency identified. The time limit for submitting a voluntary corrective action plan will be 20 calendar days from the day the letter is typed. (See Attachment B for sample letter.) The reviewing officer will also include in this letter the appropriate language that the contractor is required to incorporate in any voluntary corrective action plan submitted. (See Regional Administrator's Policy Memorandum of October 18, 1977.)
3. In the event that additional information is needed, it will be solicited from the contractor by telephone, fax or certified mail.

VI. Selection of Project for On-Site Inspection

A. Priorities

On-Site Inspections will be conducted on projects:

1. That have less than 150 work days
2. That have Disadvantaged Business Enterprise goals
3. When the prime contractor is reporting quarterly as a result of a Desk Audit or On-Site Review
4. Where scheduling a Desk Audit or On-Site Review is not feasible.

B. Physical Inspection

The reviewing officer will inspect the bulletin board, inspect employee facilities, make a visual survey of the extent of minority/female representation in the contractor's workforce and interview the project superintendent and at least one minority, one nonminority and one female employee.

A summary of the inspection will be prepared and made a part of the project file. Any discrepancies noted will be brought to the contractor's attention by letter (See Attachment J.)

**PART II**

**ON-SITE REVIEW PROCEDURE**

**CIVIL RIGHTS/EEO  
ON-SITE REVIEW PROCEDURE**





PROJECT SUMMARY SHEET

Date of Review \_\_\_\_\_

1. Contractor \_\_\_\_\_

2. Address \_\_\_\_\_

(Circle appropriate term for Items 3, 4, and 5)

3. Prime or Subcontractor

4. Black, Hispanic, American Indian, Alaskan Native, Asian or Pacific Islander, or White

5. Male                  Female

6. Project Address if Different \_\_\_\_\_

\_\_\_\_\_

7. Amount of Contract \_\_\_\_\_

8. Date of Award of Contract \_\_\_\_\_

9. Project Beginning Date \_\_\_\_\_

10. Peak Activity Date \_\_\_\_\_

11. Estimated Completion Date \_\_\_\_\_

12. Percent Completed \_\_\_\_\_

13. Type of Work (Bridge, Concrete, Dirt Work) \_\_\_\_\_

14. Policy Officer \_\_\_\_\_

15. Title \_\_\_\_\_

16. Address \_\_\_\_\_

\_\_\_\_\_

17. Phone Number (AC) ( ) \_\_\_\_\_

18. Project Officer \_\_\_\_\_

19. Title \_\_\_\_\_

20. EEO Officer \_\_\_\_\_

21. Title \_\_\_\_\_

22. Address \_\_\_\_\_

\_\_\_\_\_

**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT  
ON-SITE REVIEW PROCEDURE**

**I. On-Site Review Procedure**

**A. Introduction**

Discuss the following with contractor:

1. Objectives of the review
2. Procedure to be followed
3. Material submitted by the contractor
4. Arrangements for on-site inspections and employee interviews

**B. Documentation**

1. Review documentation provided for completeness.
2. Review payrolls to determine whether discrimination in rates of compensation exists. Note discrepancies, if any. (Consider length of time on the job, experience and pay rates recorded -vs- actual work being done.)
3. Review payrolls to identify critical trades regarding minority/female underutilization in contractor's workforce. List each trade or occupational classification where underutilization occurs.
4. Review list of new hires for past six months to determine if hires took place in trades or classifications with low minority/female representation. Determine what efforts contractor made to recruit minorities and women in these trades.

### C. Review Questionnaire

#### EEO Policy

1. How does the contractor disseminate his EEO policy to all employees? (Meetings, employee handbooks, etc.)
  
2. How are supervisory and personnel office employees informed of the contractor's EEO policy and its requirements? Are meetings held at least once every six months? How are they informed and by whom?
  
3. Determine how and when new supervisory or personnel office employees are indoctrinated on all major aspects of the contractor's EEO obligations. (Must be done within thirty days following their reporting for duty.)
  
4. What instruction is provided to personnel who are involved in direct recruitment with regard to the contractor's procedures for locating and hiring minority/female employees?

#### Equal Employment Opportunity Officer

5. Determine if EEO requirements were discussed at the pre-construction conference. (With whom, by whom and to what extent?)
  
6. How was the Department notified of the appointment of the contractor's EEO Officer?

7. What experience does the person appointed as EEO Officer have which would qualify as EEO related?
8. What authority does the EEO Officer have to accomplish program objectives?
9. What duties other than EEO does the EEO Officer have?
10. How are employees informed of the EEO Officer's name and place where the EEO Officer can be contacted by employees with concerns, complaints or grievances?
11. Determine the awareness and knowledge of the EEO Officer regarding EEO matters. (Give short summary.)

### Recruitment

12. How does the contractor advertise for employees? Do advertisements contain reference to the EEO policy of the contractor?
13. How does the contractor ensure that advertisements for employees are published in newspapers or other publications having a large circulation among minority and female groups in the area from which the project workforce is derived?

14. **How has the contractor conducted systematic and direct recruitment?**
  
15. **List sources with which systematic and direct recruitment procedures have been established for the site being reviewed. Obtain names of organizations or individuals, addresses and telephone numbers.**
  
16. **Does the above list indicate that the contractor has contacted organizations representing the various minority and female groups found in the area? If not, list the minority and female groups which the contractor has failed to contact and the reasons.**
  
17. **How does the contractor encourage present employees to refer minority and female group applicants for employment? Have referral procedures for referring minority and female group employees been discussed with employees?**
  
18. **Does the contractor maintain a file of the names, addresses and telephone numbers of each minority and female applicant and of the action taken with respect to each applicant?**
  
19. **Has the contractor posted appropriate notices on bulletin boards encouraging employees to refer other minority and female applicants?**
  
20. **Are applications for employment accepted and are selections made without regard to race, color, religion, sex, national origin, age or disability?**

Personnel Actions

21. How has the contractor monitored the following to ensure nondiscrimination in:
  - a. Wages?
  - b. Working conditions?
  - c. Employee benefits?
  - d. Hiring?
  - e. Upgrading?
  - f. Promotions?
  - g. Transfers?
  - h. Demotions?
  - i. Layoffs?
  - j. Terminations?
  
22. What is the frequency of the contractor's inspections of the project site to ensure nondiscriminatory treatment of project site personnel in terms of working conditions and employee facilities? (Look for assignments to equipment, where minorities or women may be assigned to older, unsafe or inferior equipment. Determine whether minorities or women are assigned the more undesirable tasks on the basis of their race, sex, or ethnic origin.)



23. In cases where the contractor has found discriminatory actions, what corrective action was taken?

Training and Promotion

24. Determine if contractor submitted an Optional Training Commitment Form (OTCF). If yes, compare actual enrollments to assignments. Could contractor be reasonably expected to provide training before completion of contract?
25. How has the contractor advised employees and applicants for employment of available training programs and entrance requirements for each?
26. How has the contractor utilized training programs to increase minority/female representation in trades where they are being underutilized?
27. Are trainees being trained in trades for which there is an underutilization of minorities and females?
28. How has the contractor periodically reviewed the training and promotion potential of minority/female employees?
29. List specific examples of instances where the contractor has encouraged employees to apply for training and promotion.

30. To what extent are persons being utilized in crafts in which training has been completed?
  
31. Determine whether trainees are being provided instruction in a craft or skill for which they are already qualified.
  
32. How are persons selected for training?
  
33. What procedures are in effect to ensure that each trainee is provided with a copy of the training program that the trainee is to follow?
  
34. What procedure is in effect to ensure that each trainee receives a copy of the Department's Supportive Services Fact Sheet and a report of the number of hours accumulated in the training program monthly?

Unions

35. Determine with what unions the contractor has bargaining agreements.

	<u>Union</u>	<u>Local No.</u>	<u>Address</u>
1.			
2.			
3.			

4.

5.

36. Ascertain if these agreements have exclusive referral rights by placing an asterisk (\*) beside name of union in the preceding table.

37. Review agreements to identify whether or not they are blanket agreements covering all contractors in that state or whether it is an individual agreement between the particular contractor and the union.

38. Review agreements to verify if an acceptable EEO clause has been incorporated. If not, why not? (What efforts has the contractor taken to ensure their inclusion?)

39. Determine what efforts the contractor has made to obtain the cooperation of these unions to increase their minority/female representation and their minority/female referrals.

Determine what efforts the contractor has made (if any) in selection of any apprentices.

40. Inquire as to whether or not the contractor, under an exclusive bargaining agreement, has made full efforts to obtain referrals directly, in the event the union with whom he/she has said agreement failed to, or could not provide applicants within the specified time limit.

41. Determine what efforts the contractor has made in assisting non-union applicants and employees in obtaining union membership in areas where such membership is a prerequisite for retaining employees.
42. Determine if the contractor has sent notices to unions with whom the company has collective bargaining agreements or other contracts or understandings, making the union aware of contractor's EEO commitments and responsibilities. Verify if these notices have been posted on contractor's bulletin board.
43. Determine the efforts the contractor has made toward developing, in cooperation with unions, joint training programs aimed toward qualifying more minorities and females for union membership and increasing the skills of presently employed minorities and females.
44. What efforts has the contractor made to obtain information regarding the referral practices and policies of labor unions? What were the results?

#### SUBCONTRACTING

45. What efforts has the contractor exerted to solicit bids from and to utilize disadvantaged firms? What were the results?
46. Does the contractor have a list of disadvantaged firms? What efforts has the contractor exerted to solicit bids from or to negotiate with disadvantaged firms listed by the State?
47. What procedure does the contractor follow to secure subcontractors? Are the procedures standardized? Formal? Informal? Nondiscriminatory?

48. How are the procedures applied? Is their application discriminatory?
49. List the liaison officer named by the contractor to administer the contractor's Disadvantaged Business Enterprise Program.
50. What efforts has the contractor made to ensure subcontractor compliance with equal employment opportunity obligations?
51. How does the contractor ensure the incorporation of appropriate EEO clauses in subcontracts and purchase orders?

**Records and Reports**

52. Are the records maintained by the contractor sufficient to indicate efforts made?
53. What provision has the contractor made to retain EEO records for at least three years following completion of the contract work?

## II. Physical Inspection

### A. Walk-Around

1. Inspect bulletin board and determine its accessibility, inclusion of EEO poster, EEO policy statement, notice encouraging employees to refer minority and female applicants for employment, notice informing employees of an available training program and the entrance requirements, notice identifying company EEO Officer by name including address and telephone number where EEO Officer can be located, work environment statement, certification of nonsegregated facilities, complaint procedures, notice to unions disseminating EEO commitments and responsibilities and requesting their cooperation (if applicable).
2. Determine what contractor has done to preclude segregated employee used facilities, such as restrooms, drinking fountains, eating and recreational areas. (List any viewed.)
3. Make a visual survey of the extent of minority/female representation in contractor's workforce.

### B. Employee Interviews

1. The compliance officer will interview at least: one minority, one non-minority, and one woman in each trade or classification and, where feasible, as many trainees (active and graduates) as possible. (Attachments G and H will be used.)
2. The compliance officer will also interview the project superintendent or home office manager as appropriate. (Attachment I will be used.)

### III. Exit Conference

At the exit conference, the reviewing official will inform the contractor:

1. Of any preliminary findings that if not corrected within 15 days following the review, would result in a determination of noncompliance.
2. That voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following receipt of the voluntary corrective action plan, the reviewing official will prepare the review report and make a determination of either:
  - a. Compliance, and so notify the contractor; or
  - b. Noncompliance and issue a 30 day show cause notice.

### IV. Report of Findings

- A. The Compliance Data Report (CDR), Attachment K, will be used to summarize all on-site compliance reviews conducted. Two copies of the review report will be forwarded to the Federal Highway Administration Division Office.
- B. The reviewing official will determine and the review report will indicate the following:
  1. Whether there is reasonable representation and utilization of minorities and women in each trade or occupational classification. Such a determination will be made based on the availability of minorities and women in the civilian labor force in the geographical area covered by the review. Such data will be included in the review report.
  2. What the contractor has done to increase recruitment, hiring, upgrading and training of minorities and women.
  3. The effectiveness of the contractor's efforts to provide equal opportunity.
  4. Whether there is impartial treatment of employees.
  5. Whether affirmative action efforts are of an isolated or continuing nature.
- C. In findings of noncompliance or where deficiencies uncovered at the time of the review are corrected prior to the preparation of the review report, information supportive of the compliance determination will either be included within the CDR or as an attachment to the review report. Attachments will be referenced in the CDR.

In findings of noncompliance, a copy of the show cause notice issued to the contractor will be attached to the CDR. Additionally and where applicable, show cause rescission letters and corrective action plans will be attached.

Procedures for issuing show cause notices can be found in Chapter I Part 230, Subpart D of the Federal-aid Policy Guide.

Show cause notices will advise the contractor of the appropriate language to be inserted in any corrective action plan submitted (See Regional Administrator's Policy Memorandum of October 18, 1977).

- D. Two copies of the final review report will be transmitted to the FHWA Division Office within 15 days after completion of the review. The Division Office will review and evaluate the report and forward two copies to the Regional Office of Civil Rights within 10 days.
- E. The reviewing officer will determine the status of the contractor's correction of any discrepancies noted in previous reviews. Recurring discrepancies which affect the provision of equal opportunity will be sufficient justification for a finding of noncompliance and the issuance of a show cause notice or the imposition of sanctions pursuant to contract requirements.



## **RECOMMENDATIONS**

A List of all recommendations will be compiled and numbered to correspond with item found deficient.

**PART III**

**DISADVANTAGED BUSINESS ENTERPRISE  
VERIFICATION REVIEW PROCEDURE**

# DISADVANTAGED BUSINESS ENTERPRISE VERIFICATION REVIEW PROCEDURE

## I. Purpose

The purpose of the Verification Review Procedure is to ensure the Disadvantaged Business Enterprise Program of the Arkansas State Highway and Transportation Department benefits those firms meeting U.S. DOT eligibility standards.

## II. Pre-Review Information

Prior to conducting the review, the External EEO Coordinator will review the contractor's Schedule A or B, as appropriate. Contacts will be made with agencies involved in disadvantaged business development or disadvantaged business supportive services in order to review files or other information available on the firm selected.

The External EEO Coordinator will identify each Federal-aid prime contract and subcontract awarded to the DBE. Each Resident Engineer will be contacted to obtain general information about the DBE's method of operating at the project site and to ascertain if the Resident Engineer has any concerns or suspects there may be some irregularities. Any information obtained will be used to the extent necessary in order to conduct a comprehensive review. It may be necessary to contact Resident Engineers after the review has been completed to ensure accuracy of the review report.

## III. Selection of Contractor for Review

### A. Priorities

The Arkansas State Highway and Transportation Department will utilize on-site and desk audit techniques to conduct Verification Reviews. Each calendar quarter one On-Site Review or one Desk Audit will be conducted on firms randomly selected from the Department's Disadvantaged Business Enterprise Directory. Businesses which have home offices in the state will be selected for On-Site Reviews. Businesses which have home offices outside the state will be primary candidates for Desk Audits. The DBE selected will be required to submit detailed documentation and verification information to the External EEO Coordinator. The information will be analyzed to determine whether the eligibility standards for participation in the program are met.

Once a contractor is selected for an On-Site Review or a Desk Audit, a notification letter will be sent. The letters found at Attachment L will be used for this purpose. The contractor will be given at least a two week notice.

Answers to the information requested in Attachment M "Verification Review Procedure", will be obtained during the review. The External EEO Coordinator will also interview the owner and as many employees as possible. Attachments N and Q will be used.

IV. Exit Conference

At the exit conference, the External EEO Coordinator will advise the contractor of the determination reached and the basis for the determination. If the External EEO Coordinator determines the contractor is ineligible, the contractor will be advised of his/her right to appeal.

V. Report of Findings

Upon completion of the On-Site Review or Desk Audit, the External EEO Coordinator will submit a written report to the Certification Committee. The report will reflect the coordinator's findings during the review. The Certification Committee will review the report to determine what action should be taken. The contractor will be notified of the committee's determination by letter within 15 days.

When the Verification Review has been completed, if decertification action is taken by the Arkansas State Highway and Transportation Department, two (2) copies of the review report and a copy of the decertification letter to the contractor will be forwarded to the Division Office of FHWA.

**PART IV**  
**ATTACHMENTS**

## **ATTACHMENT A**

### **NOTIFICATION OF SCHEDULED EEO DESK AUDIT**

- 1. Projects Only**
- 2. Home Office and Projects**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: Desk Audit Notification

Dear :

Equal employment opportunity is a national policy and all nonexempt direct Federal or Federal-aid contracts contain clauses which require affirmative action to achieve this goal.

Responsibility for monitoring implementation of the equal opportunity requirements of your contract(s) has been assigned to the Arkansas State Highway and Transportation Department. Accordingly, has been selected for an equal opportunity Desk Audit.

This audit will not require your presence. However, it will require submission of the information requested in the attached forms to the following address not later than

Arkansas State Highway and  
Transportation Department  
EEO Section  
P. O. Box 2261  
Little Rock, Arkansas 72203

The purpose of this audit is to examine indicators of the firm's equal employment opportunity program and its effectiveness in fulfilling the EEO requirements of your contract(s). This information will be used to determine whether an On-Site Review of the firm is necessary.

Failure to submit the requested information within the time limits specified can be grounds for the initiation of formal administrative proceedings.

In the interest of expediting this process, a prompt and complete response will be sincerely appreciated. Should you have any questions regarding the information requested, please call \_\_\_\_\_ at (501) 569-\_\_\_\_\_.

If circumstances indicate that the company's EEO program warrants a review, you will be so notified within 15 days of receipt of your response.

Data submitted may be validated by random site inspections. Submission of false or misleading information is a violation of 18 U.S.C. 1020. Such instances will be prosecuted.

Your cooperation is appreciated.

Yours truly,

Kay Crutchfield  
Section Head - EEO

KC:lc

Attachments



ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

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This audit will not require your presence. However, it will require submission of the information requested in the attached forms to the following address not later than

Arkansas State Highway and  
Transportation Department  
EEO Section  
P. O. Box 2261  
Little Rock, Arkansas 72203

This will be an audit of the firm's office and each Federal-aid highway project that the firm has under contract during the review period. Except where home office data is requested only, your responses should address home office and project site activity.

The purpose of this audit is to examine indicators of the firm's equal employment opportunity program and determine its effectiveness in fulfilling the EEO requirements of the contract(s). This information will be used to determine whether an On-Site Review of the firm is necessary.

Failure to submit the requested information within the time limits specified can be grounds for the initiation of formal administrative proceedings.

In the interest of expediting this process, a prompt and complete response will be sincerely appreciated. Should you have any questions regarding the information requested, please call  
at (501) 569-

If circumstances indicate that the company's EEO program warrants a review, you will be so notified within 15 days of our receipt of your response.

Data submitted may be validated by random site inspections. Submission of false or misleading information is a violation of 18 U.S.C. 1020. Such instances will be prosecuted.

Your cooperation is appreciated.

Yours truly,

Kay Crutchfield  
Section Head - EEO

KC:lc

Attachments

**DESK AUDIT INFORMATION**

1. Contractor \_\_\_\_\_  
 a. Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 b. Telephone \_\_\_\_\_  
 \_\_\_\_\_

2. Name and Title of Policy Officer \_\_\_\_\_  
 \_\_\_\_\_

3. List all Federal-aid highway construction projects under contract in Arkansas during the period \_\_\_\_\_ to \_\_\_\_\_

Covered Project(s)			
Job Number/ County	Amount (Approximate)	Date of Award	Estimated Peak Employment (Month, Year)

4. Attach project site certified payrolls covering the period \_\_\_\_\_ to \_\_\_\_\_ for each Federal-aid highway contract presently held in Arkansas. Annotate to show job classification, race or national origin and sex of each employee.

a. Statewide Employment Data. For payroll period ending (Federal-aid highway projects only.)

JOB CATEGORIES	TOTAL EMPLOYERS		TOTAL MINORITIES		BLACK Not of Hispanic Origin		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin		APPRENTICES		ON THE JOB TRAINERS	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS (HANDERS)																		
SUPERVISORS																		
FOREMEN/WOMEN																		
CLERICAL																		
EQUIPMENT OPERATORS																		
MECHANICS																		
TRUCK DRIVERS																		
IRONWORKERS																		
CARPENTERS																		
CEMENT MASONS																		
ELECTRICIANS																		
PIPEFITTERS, PLUMBERS																		
PAINTERS																		
LABORERS, SEMI-SKILLED																		
LABORERS, UNBILLED																		
TOTAL																		
APPRENTICES																		
ON-THE-JOB-TRAINERS																		

b. Home Office Employment Data. For payroll period ending  
 (Submit only if your firm has a home office located in this State.)

OCCUPATIONS	MALE EMPLOYEES					FEMALE EMPLOYEES					TOTAL ALL EMPLOYEES	
	TOTAL MALES	MINORITY GROUPS				TOTAL FEMALES	MINORITY GROUPS					
		BLACK	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	HISPANIC		BLACK	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	HISPANIC		
OFFICIALS & MANAGERS												
PROFESSIONALS												
TECHNICIANS												
SALES WORKERS												
OFFICE & CLERICAL												
SUB-TOTAL (WHITE COLLAR)												
OPERATIVES (SEMI-SKILLED)												
LABORERS (UNSKILLED)												
SERVICE WORKERS												
SUB-TOTAL (BLUE COLLAR)												
TOTAL												
TOTAL EMPLOYMENT FROM PREVIOUS REPORT (IF ANY)												
THE DATA BELOW SHALL ALSO BE INCLUDED IN THE FIGURES FOR THE APPROPRIATE OCCUPATIONAL CATEGORIES ABOVE												
ON-THE-JOB TRAINEES	WHITE COLLAR											
	PRO-DUCTION											

c. Attach Current Standard Form 100 (EEO-1).

6. Submit any documentation your firm maintains regarding solicitation of offers for subcontracts from disadvantaged business enterprise construction contractors and/or suppliers. Include responses to such solicitations. Submit for each Federal-aid highway project.

7. Name the liaison officer appointed to administer your Disadvantaged Business Enterprise Program.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Briefly list his/her duties.

8. List all subcontractors with whom you presently have an agreement in excess of \$10,000 to provide services on all your Federal-aid highway projects.

Job No.	Subcontractor and Address	DBE or Nonminority

Job No.	Subcontractor and Address	DBE or Nonminority



9. List all vendors or suppliers with whom you presently have an agreement in excess of \$10,000 to provide equipment, materials or supplies on all your Federal-aid highway projects.

Job No.	Vendor or Supplier and Address	DBE or Nonminority

Job No.	Vendor or Supplier and Address	DBE or Nonminority

10. Union Affiliations (If Applicable)

Union Title or Identification	Union Local Number	Does union have exclusive referrals rights?		Does union sponsor or participate in pre-apprentice, apprentice or post-apprentice training programs?		Does contractor sponsor or participate in pre-employment apprentice, or post employment training programs?	
		Yes	No	Yes	No	Yes	No

11. Attach a copy of your firm's equal employment opportunity notices posted on project site bulletin boards. Describe below how this information is disseminated to all employees.

12. Name your company EEO officer.

Name \_\_\_\_\_

Title \_\_\_\_\_

Briefly list his/her duties.

13. Submit any documentation your firm maintains regarding meetings held with supervisory personnel and employees where your firm's EEO policy, training and promotional opportunities are discussed.

Who conducts these meetings?

How often are these meetings held?

14. Provide a list of employee referral sources which your firm has contacted in efforts to secure minority/female employees.

Job No.	Name of Individual Organization or Agency	Address & Telephone No.	Date Contacted	Individual Contacted	Results

Job No.	Name of Individual Organization or Agency	Address & Telephone No.	Date Contacted	Individual Contacted	Results

15. Attach a blank copy of your firm's employment application form. If no formal application is used, describe procedure for screening candidates for employment.
  
16. Summarize total employment applications received during the period \_\_\_\_\_ to \_\_\_\_\_ . Include a copy of the Minority and Female Applicant Roster. Submit for each Federal-aid highway project.

Job No.													
Total Applicants		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

Job No.													
Total Applicants		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

Job No.													
Total Applicants		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

Job No.													
Total Applicants		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

Job No.													
Total Applicants		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

Job No.													
Total Applicants		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

Job No.													
Total Applicants		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F



17. Summarize total new hires during the period \_\_\_\_\_ to \_\_\_\_\_  
 Submit for each Federal-aid highway project.

Job No.	Source of Referral	Classification	Total Hired	Sex	Race or National Origin

Job No.	Source of Referral	Classification	Total Hired	Sex	Race or National Origin

Job No.	Source of Referral	Classification	Total Hired	Sex	Race or National Origin

<b>Job No.</b>				
<b>Source of Referral</b>	<b>Classification</b>	<b>Total Hired</b>	<b>Sex</b>	<b>Race or National Origin</b>

<b>Job No.</b>				
<b>Source of Referral</b>	<b>Classification</b>	<b>Total Hired</b>	<b>Sex</b>	<b>Race or National Origin</b>

<b>Job No.</b>				
<b>Source of Referral</b>	<b>Classification</b>	<b>Total Hired</b>	<b>Sex</b>	<b>Race or National Origin</b>

18. List all home office hires during the period . Submit only if your firm has a home office located in this State.

Total Employees		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

19. Submit a list of promotions effective during the period \_\_\_\_\_ to \_\_\_\_\_ . PROMOTIONS involve an increase in salary and responsibility. Submit for each Federal-aid highway project.

Job No.	Name	Race or Ethnic Origin	Sex	Classification Promoted To	Previous Classification	Salary	
						Previous	Present

Job No.	Name	Race or Ethnic Origin	Sex	Classification Promoted To	Previous Classification	Salary	
						Previous	Present



Job No.	Name	Race or Ethnic Origin	Sex	Salary	
				Previous	Present

21. Provide data on terminations and layoffs during the period \_\_\_\_\_ through \_\_\_\_\_  
 Submit for each Federal-aid highway project.

Job No.	Total	Sex	Race or Ethnic Origin	Reason

Job No.	Total	Sex	Race or Ethnic Origin	Reason



Job No.	Classification	Total	Sex	Race or Ethnic Origin	Reason

Job No.	Classification	Total	Sex	Race or Ethnic Origin	Reason

Job No.	Total	Sex	Race or Ethnic Origin	Reason
Classification				

Job No.	Total	Sex	Race or Ethnic Origin	Reason
Classification				

22. Submit the following information on complaints alleging discrimination filed against your firm during the period \_\_\_\_\_ to \_\_\_\_\_

Job No.	Name of Complainant	Basis for Complaint (Race, Sex, National Origin, Religion, Color, Age or Disability)	Agency filed with (FHWA, State, EEOC OFCCP or your firm)	Outcome (Resolved, Pending Under Investigation, Cause, No Cause, Corrective Action Order)

23. List your firm's employee benefit plans. (Profit sharing, insurance, retirement, etc.). List requirements for participation in each plan.

Plan	Total Employees Participating		Total Minorities Participating	
	M	F	M	F

24. List all on-the-job training or apprenticeship programs your firm participates in.

25. For each Federal-aid highway project, provide the following information for all trainees enrolled in the aforementioned program(s).

Job No.	Name of Trainee	Race or Ethnic Origin	Sex	Classification	Current Status: 1-Graduated 2-Terminated (Reason) 3-In-training

Job No.	Name of Trainee	Race or Ethnic Origin	Sex	Classification	Current Status: 1-Graduated 2-Terminated (Reason) 3-In-training

26. Attach information documenting the method used by your firm to apprise trainees of the number of hours accumulated in the training program.
27. Do you anticipate enrolling individual(s) in the training program on any projects listed in Item 3?

If so, indicate the job number, number of individual(s) to be enrolled, job classification(s) and estimated date of enrollment.

28. Attach copies of bargaining agreements between your firm and labor organizations.
- a. Attach any documentation demonstrating your efforts to work with labor unions in implementing your EEO contractual requirements.
  - b. Attach any records your firm maintains regarding union referral practices. (An example would be a record of total referrals broken down by race or national origin and sex.)
29. Attach a copy of at least one actual purchase order in excess of \$10,000 on each Federal-aid highway project.
30. Provide the name, official title, and address of the person primarily responsible for preparation of the foregoing data. Include a telephone number where this person can be reached by the reviewing officer, if necessary.

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_



## **ATTACHMENT B**

### **CONTRACTOR LETTER OF FINDINGS**

- 1. Desk Audit**
  - a. No Show Cause**
  - b. Show Cause**
  
- 2. On-Site Review**
  - a. No Show Cause**
  - b. Show Cause**

**DESK AUDIT  
NO SHOW CAUSE**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: Desk Audit

Dear :

As a result of the Desk Audit conducted by the Arkansas State Highway and Transportation Department on , the following areas were identified as deficient and recommendations for improvement are offered:

1. The goal established by the Department of Labor for minority utilization for each trade in County is % and 6.9% for females statewide. Project site payrolls for the period to revealed the following:

**Job No.**

**Job Classification**

**Total Hours  
Worked**

**Hours As A  
% of Total**  
**Minority      Female**

Based on the above information, there is an underutilization of minorities as \_\_\_\_\_ and an underutilization of females in all classifications except \_\_\_\_\_ and \_\_\_\_\_

The goal established by the Department of Labor for minority utilization for each trade in \_\_\_\_\_ County is \_\_\_\_\_ % and 6.9% for females statewide. Project site payrolls for the period \_\_\_\_\_ to \_\_\_\_\_ revealed the following:

**Job No.**

<b><u>Job Classification</u></b>	<b><u>Total Hours Worked</u></b>	<b><u>Hours As A % of Total</u></b>	
		<b><u>Minority</u></b>	<b><u>Female</u></b>

Based on the above information, there is an underutilization of minorities as \_\_\_\_\_ and an underutilization of females in all classifications.

The goal established by the Department of Labor for minority utilization for each trade in \_\_\_\_\_ County is \_\_\_\_\_ % and 6.9% for females statewide. Project site payrolls for the period \_\_\_\_\_ to \_\_\_\_\_ revealed the following:

**Job No.**

<b><u>Job Classification</u></b>	<b><u>Total Hours Worked</u></b>	<b><u>Hours As A % of Total</u></b>	
		<b><u>Minority</u></b>	<b><u>Female</u></b>

Based on the above information, there is an underutilization of minorities in all classifications and an underutilization of females in all classifications except \_\_\_\_\_ and \_\_\_\_\_

During the period \_\_\_\_\_ to \_\_\_\_\_, a total of 62 individuals including 18 minority males, two minority females and one nonminority female was hired. A good faith effort was made by your company to recruit minorities and/or females by contacting minority and female referral sources.

It is recommended that follow-up contacts be made, oral and/or written, with minority and female recruitment organizations servicing the company's recruitment area (25 mile radius of the project) when job opportunities are available or you are trying to build-up the company's applicant pool. A record of the contacts and the organizations' responses should be maintained. Refer to Attachment One.

2. A minority and female applicant roster was not maintained on Job Numbers \_\_\_\_\_ and \_\_\_\_\_

A current file of the name, address and telephone number of each minority and female off-the street applicant, and a list of minority or female referrals from a recruitment source, community organization or applicants who seek employment by telephone, should be maintained on each of the above Job Numbers. The file should reflect the action taken with respect to each individual. Refer to Attachment \_\_\_\_\_

3. An EEO meeting has not been held on Job Numbers \_\_\_\_\_ and \_\_\_\_\_ with \_\_\_\_\_ on-site employees at which the company's EEO policy and affirmative action obligations were discussed.

An EEO meeting should be held on the above Job Numbers as soon as possible, with supervisory personnel and employees at which the company's EEO policy, training and promotional opportunities are discussed. A written record should be made and maintained concerning each meeting. This record should identify the time and place of the meeting, persons attending, subject matter discussed and disposition of the subject matter. Refer to Attachment \_\_\_\_\_. EEO meetings should be held not less often than once every six months after the initial meeting.

Identified items may be addressed through submittal to this office of a voluntary corrective action plan in writing not later than \_\_\_\_\_. Enclosed is a sample corrective action plan with the appropriate language that can be used to prepare the written commitment. Please follow the format in submitting your plan. Should an acceptable voluntary corrective action plan be submitted within the specified time limit, the firm will be considered in compliance contingent upon satisfactory implementation of the plan.

Quarterly status reports should be submitted to the EEO Section of the Arkansas State Highway and Transportation Department regarding each action taken to improve the program. The initial report should cover the period \_\_\_\_\_ through \_\_\_\_\_. Subsequent reports should correspond to calendar year quarters. Submission dates should be on the 15th day of the month following the end of each quarter until construction on Job Numbers \_\_\_\_\_ and \_\_\_\_\_ is completed.

The corrective action plan should be accompanied by a cover letter which addresses the following items:

1. Purchase Order Agreements (POA) to record purchases of material in excess of \$10,000 for Job Numbers \_\_\_\_\_ and \_\_\_\_\_ were not utilized. POAs should be used to record purchases of materials in excess of \$10,000 for the above Job Numbers. Refer to Attachment \_\_\_\_\_.
2. The company's application form requests information relative to an applicant's date of birth. Refer to Attachment \_\_\_\_\_ for information which can be used as a guide to revise the employment application and to provide some insight on the types of questions which can be asked during interviews.

The EEO Staff is anxious to assist you in achieving compliance. Any questions concerning this matter should be addressed to: \_\_\_\_\_, Arkansas State Highway and Transportation Department, Human Resources Division, P. O. Box 2261, Little Rock, AR 72203, (501) 569-\_\_\_\_\_.

Yours truly,

James Moore, Jr.  
External EEO Coordinator

JMJ:lc

Enclosure

## **SAMPLE CORRECTIVE ACTION PLAN**

**Deficiency 1:** Payrolls revealed an underutilization of minorities as Superintendents, Heavy Equipment Operators and Laborers and an underutilization of females in all classifications. No documentation of contacts with minority and female referral sources.

**Commitment:** Minority and female referral sources provided by the Arkansas State Highway and Transportation Department will be contacted by letter on (Date) to solicit applicants for employment consideration. We will direct our efforts to hire individuals in job classifications where there is underutilization. If necessary, follow-up telephone calls will be made to each organization to request their assistance in locating qualified applicants for employment consideration. All contacts made by this company and all responses by referral sources will be documented on the Minority and Female Recruitment Source List. We will try to identify other organizations that may assist our company in locating applicants for employment consideration.

**Deficiency 2:** Failure to document meetings held with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations were discussed.

**Commitment:** An EEO meeting will be held on (Date) with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations will be discussed. A written record will be maintained identifying the time and place of the meeting, subject matter discussed and disposition of the subject matter. The record will be signed by each individual attending the meeting. Additional meetings will be held not less often than once every six months.

**Deficiency 3:** Very little effort to assure subcontractors have meaningful minority and female representation among their employees.

**Commitment:** We have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority and female representation. This meeting will be held on (Date) and we will provide you with a summary of the discussions and current posture of each subcontractor.

**We will submit quarterly reports until construction on this project is completed.**

**The following appropriate language is included in our corrective action plan:**

If, at any time in the future, the Office of Federal Contract Compliance Programs or the Federal Highway Administration or the Arkansas State Highway Commission or their successor(s) believe that \_\_\_\_\_ has violated any portion of this agreement,

\_\_\_\_\_ shall be promptly notified of the fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification shall provide \_\_\_\_\_ with 15 days to respond in writing to the notification except where the Office of Federal Contract Compliance Programs, the Federal Highway Administration or the Arkansas State Highway Commission alleges that such delay would result in irreparable injury. It is understood that enforcement proceedings for violation of this agreement may be initiated at any time after the 15 day period has elapsed (or sooner if irreparable injury is alleged) without issuance of a show cause notice.

It is recognized that where the Office of Federal Contract Compliance Programs and/or the Federal Highway Administration and/or the Arkansas State Highway Commission believes that \_\_\_\_\_ has breached this agreement, evidence regarding the entire scope of \_\_\_\_\_'s alleged non-compliance from which this agreement resulted, in addition to evidence regarding \_\_\_\_\_'s alleged violation of this agreement, may be introduced at the enforcement proceeding.

Violation of this agreement may subject \_\_\_\_\_ to sanctions pursuant to the Arkansas State Highway Commission contract administration procedures. It is further recognized that liability for violation of this agreement may also subject \_\_\_\_\_ to sanctions set forth in Section 209 of Executive Order 11246 as amended and/or appropriate relief.

\_\_\_\_\_  
Signature of Authorized Contractor Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of AHTD External EEO Coordinator

\_\_\_\_\_  
Date



**DESK AUDIT  
SHOW CAUSE**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: Desk Audit

Dear :

As a result of the Desk Audit conducted on \_\_\_\_\_ by the Arkansas State Highway and Transportation Department (AHTD), it was determined that \_\_\_\_\_ is not in compliance with the equal opportunity requirements and that good faith efforts have not been made in the following areas:

1. The goal established by the Department of Labor for minority utilization for each trade in \_\_\_\_\_ and \_\_\_\_\_ Counties is \_\_\_\_\_ % and 6.9% for females statewide. Project payrolls by job for the period \_\_\_\_\_ to \_\_\_\_\_ revealed the following:

**Job No.**

**Job Classifications**

**Total Hours  
Worked**

**Hours As A  
% of Total**  
**Minority      Female**

Based on this information, there is an underutilization of minorities in all classifications. There is an underutilization of females as \_\_\_\_\_ and \_\_\_\_\_.

**Job No.**

<b><u>Job Classifications</u></b>	<b><u>Total Hours Worked</u></b>	<b><u>Hours As A % of Total</u></b>	
		<b><u>Minority</u></b>	<b><u>Female</u></b>

Based on this information, there is an underutilization of minorities as \_\_\_\_\_ and \_\_\_\_\_. There is an under-utilization of females in all classifications.

During the period \_\_\_\_\_ to \_\_\_\_\_, four minority males, one minority female, and one nonminority female were hired. Besides the Employment Security Division Offices and the NAACP, contacts were not made with other minority and female referral sources when job opportunities were available. It is recommended that oral and/or written contacts be made with minority and female recruitment organizations serving the company's recruitment area (25 mile radius of the project) when job opportunities are available or you are trying to build-up the company's applicant pool. A record of the contacts and the organizations' responses should be maintained.

A review conducted by the Department on \_\_\_\_\_ revealed an underutilization of minorities and females in the workforce. The company has not established systematic and direct recruitment procedures with referral sources nor demonstrated that EEO is a vital management function.

2. Combined EEO and safety meetings were held with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations were discussed. However, you did not document the time and place of the meetings, persons attending, the subject matter discussed and disposition of the subject matter, for Job Numbers \_\_\_\_\_ and \_\_\_\_\_.
3. Purchase Order Agreements to record purchases of materials in excess of \$10,000 for Job Numbers \_\_\_\_\_ and \_\_\_\_\_ were not utilized.
4. The employment application form has the word handicap instead of disability.
5. The Disadvantaged Business Enterprise goals for Job Numbers \_\_\_\_\_ and \_\_\_\_\_ have not been satisfied.

When equal opportunity deficiencies exist, it is necessary that a commitment to correct such deficiencies be made in writing before the company can be found in compliance. The commitment must include the specific actions proposed to correct each deficiency and the projected date of completion. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. The written commitment must also provide for the submission of quarterly progress reports. The initial report will cover the period through . Subsequent reports should correspond to calendar year quarters. Submission dates should be on the 15th day of the month following the end of each quarter until construction on Job Numbers and is completed. Enclosed is a sample corrective action plan and the appropriate language which can be used to prepare the written commitment.

In order to assist you in developing the written commitment for submission by , a meeting will be held at the Arkansas State Highway and Transportation Department on at a.m. in room . This office should be notified in writing by if the time and date are convenient.

The EEO Staff is anxious to assist you in achieving compliance. Any questions concerning this matter should be addressed to: , Arkansas State Highway and Transportation Department, Human Resources Division, P. O. Box 2261, Little Rock, AR 72203, 501-569-

Yours truly,

James Moore, Jr.  
External EEO Coordinator

JMJ:ic  
Enclosure

cc: Ms. Wilson  
Mr. Hall  
Mr. Wilson  
Mr. Holmes

## **SAMPLE CORRECTIVE ACTION PLAN**

**Deficiency 1:** Payrolls revealed an underutilization of minorities as Superintendents, Heavy Equipment Operators and Laborers and an underutilization of females in all classifications. No documentation of contacts with minority and female referral sources.

**Commitment:** Minority and female referral sources provided by the Arkansas State Highway and Transportation Department will be contacted by letter on (Date) to solicit applicants for employment consideration. We will direct our efforts to hire individuals in job classifications where there is underutilization. If necessary, follow-up telephone calls will be made to each organization to request their assistance in locating qualified applicants for employment consideration. All contacts made by this company and all responses by referral sources will be documented on the Minority and Female Recruitment Source List. We will try to identify other organizations that may assist our company in locating applicants for employment consideration.

**Deficiency 2:** Failure to document meetings held with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations were discussed.

**Commitment:** An EEO meeting will be held on (Date) with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations will be discussed. A written record will be maintained identifying the time and place of the meeting, subject matter discussed and disposition of the subject matter. The record will be signed by each individual attending the meeting. Additional meetings will be held not less often than once every six months.

**Deficiency 3:** Very little effort to assure subcontractors have meaningful minority and female representation among their employees.

**Commitment:** We have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority and female representation. This meeting will be held on (Date) and we will provide you with a summary of the discussions and current posture of each subcontractor.

**We will submit quarterly reports until construction on this project is completed.**

**The following appropriate language is included in our corrective action plan:**

If, at any time in the future, the Office of Federal Contract Compliance Programs or the Federal Highway Administration or the Arkansas State Highway Commission or their successor(s) believe that \_\_\_\_\_ has violated any portion of this agreement,

\_\_\_\_\_ shall be promptly notified of the fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification shall provide \_\_\_\_\_ with 15 days to respond in writing to the notification except where the Office of Federal Contract Compliance Programs, the Federal Highway Administration or the Arkansas State Highway Commission alleges that such delay would result in irreparable injury. It is understood that enforcement proceedings for violation of this agreement may be initiated at any time after the 15 day period has elapsed (or sooner if irreparable injury is alleged) without issuance of a show cause notice.

It is recognized that where the Office of Federal Contract Compliance Programs and/or the Federal Highway Administration and/or the Arkansas State Highway Commission believes that \_\_\_\_\_ has breached this agreement, evidence regarding the entire scope of \_\_\_\_\_'s alleged non-compliance which gave rise to the show cause notice from which this agreement resulted, in addition to evidence regarding \_\_\_\_\_'s alleged violation of this agreement, may be introduced at the enforcement proceeding.

Violation of this agreement may subject \_\_\_\_\_ to sanctions pursuant to the Arkansas State Highway Commission contract administration procedures. It is further recognized that liability for violation of this agreement may also subject \_\_\_\_\_ to sanctions set forth in Section 209 of Executive Order 11246 as amended and/or appropriate relief.

---

Signature of Authorized Contractor Representative

---

Title

---

Date

---

Signature of AHTD External EEO Coordinator

---

Date

**ON-SITE REVIEW  
NO SHOW CAUSE**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: On-Site Review  
Job No.  
FAP No.

Dear :

As a result of the On-Site Review conducted by the Arkansas State Highway and Transportation Department on of your firm's equal opportunity program, the following areas were identified as deficient and recommendations for improvement are offered:

1. The goal established by the Department of Labor for minority utilization for each trade in County is % and 6.9% for females statewide. Project site payrolls for the period to revealed the following:

<u>Job Classification</u>	<u>Total Hours Worked</u>	<u>Hours As A % of Total</u>	
		<u>Minority</u>	<u>Female</u>



Based on the above information, there is an underutilization of minorities as \_\_\_\_\_ and an underutilization of females in all classifications except \_\_\_\_\_ and \_\_\_\_\_

During the period \_\_\_\_\_ to \_\_\_\_\_, a total of 70 individuals including four minority males and six females were hired. According to documentation submitted, contacts with minority and female referral sources have not been made when job opportunities were available since \_\_\_\_\_

Minority newspapers were not used when the company advertised for construction workers. It is recommended that contacts be made, oral and/or written, with minority and female recruitment organizations serving the company's recruitment area (25 mile radius of the project) when job opportunities are available or you are trying to build-up your company's applicant pool. A record of the organizations' responses should be maintained. Refer to Attachment \_\_\_\_\_. If the company advertises by newspaper, the minority newspapers listed on the above Attachment and within the job site area should be utilized.

2. A minority and female applicant roster was not maintained on the project.

A current file of the name, address and telephone number of each minority and female off-the-street applicant, and a list of minority or female referrals from a recruitment source, community organization, or applicants who seek employment by telephone, should be maintained. The file should reflect the action taken with respect to each individual. Refer to Attachment \_\_\_\_\_.

3. An EEO meeting has not been held with on-site employees at which the company's EEO policy and affirmative action obligations are discussed.

An EEO meeting should be held, as soon as possible, with supervisory personnel and employees where the company's EEO policy, training and promotional opportunities are discussed. A written record should identify the time and place of the meeting, persons attending, subject matter discussed and disposition of the subject matter. Refer to Attachment \_\_\_\_\_. Meetings should be held not less often than once every six months after the initial meeting.

Identified items may be addressed through submittal to this office of a voluntary corrective action plan in writing not later than \_\_\_\_\_. Enclosed is a sample corrective action plan with the appropriate language that can be used to prepare the written commitment. Please follow the format in submitting your plan. Should an acceptable voluntary corrective action plan be submitted within the specified time limit, the firm will be considered in compliance contingent upon satisfactory implementation of the plan.

Quarterly status reports should be submitted to the EEO Section of the Arkansas State Highway and Transportation Department regarding each action taken to improve the program. The initial report should cover the period \_\_\_\_\_ through \_\_\_\_\_. Subsequent reports should correspond to calendar year quarters. Submission dates should be on the 15th day of the month following the end of each quarter until construction on Job Number \_\_\_\_\_ is completed.

A commitment to correct the following items should be addressed in your cover letter:

1. Purchase Order Agreements (POA) to record purchases of material in excess of \$10,000 were not utilized. POAs should be used to record purchases of materials in excess of \$10,000. Refer to Attachment \_\_\_\_\_.
2. The company's application form requests information relative to an applicant's date of birth. Refer to Attachment \_\_\_\_\_ for information which can be used as a guide to revise the application and to provide some insight on the types of questions which can be asked during interviews.

A review of the project site bulletin board revealed the following corrective action should be taken by \_\_\_\_\_:

1. The company's EEO Policy Statement did not include a prohibition of discrimination on the basis of age and the word handicap was used instead of disability.

The EEO Staff is anxious to assist you in achieving compliance. Any questions concerning this matter should be addressed to: \_\_\_\_\_, Arkansas State Highway and Transportation Department, Human Resources Division, P. O. Box 2261, Little Rock, AR 72203, (501) 569-\_\_\_\_\_.

Yours truly,

James Moore, Jr.  
External EEO Coordinator

JMJ:lc

Enclosures

cc: District Engineer  
Resident Engineer

## **SAMPLE CORRECTIVE ACTION PLAN**

**Deficiency 1:** Payrolls revealed an underutilization of minorities as Superintendents, Heavy Equipment Operators and Laborers and an underutilization of females in all classifications. No documentation of contacts with minority and female referral sources.

**Commitment:** Minority and female referral sources provided by the Arkansas State Highway and Transportation Department will be contacted by letter on (Date) to solicit applicants for employment consideration. We will direct our efforts to hire individuals in job classifications where there is underutilization. If necessary, follow-up telephone calls will be made to each organization to request their assistance in locating qualified applicants for employment consideration. All contacts made by this company and all responses by referral sources will be documented on the Minority and Female Recruitment Source List. We will try to identify other organizations that may assist our company in locating applicants for employment consideration.

**Deficiency 2:** Failure to document meetings held with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations were discussed.

**Commitment:** An EEO meeting will be held on (Date) with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations will be discussed. A written record will be maintained identifying the time and place of the meeting, subject matter discussed and disposition of the subject matter. The record will be signed by each individual attending the meeting. Additional meetings will be held not less often than once every six months.

**Deficiency 3:** Very little effort to assure subcontractors have meaningful minority and female representation among their employees.

**Commitment:** We have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority and female representation. This meeting will be held on (Date) and we will provide you with a summary of the discussions and current posture of each subcontractor.

We will submit quarterly reports until construction on this project is completed.

The following appropriate language is included in our corrective action plan:

If, at any time in the future, the Office of Federal Contract Compliance Programs or the Federal Highway Administration or the Arkansas State Highway Commission or their successor(s) believe that \_\_\_\_\_ has violated any portion of this agreement,

\_\_\_\_\_ shall be promptly notified of the fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification shall provide \_\_\_\_\_ with 15 days to respond in writing to the notification except where the Office of Federal Contract Compliance Programs, the Federal Highway Administration or the Arkansas State Highway Commission alleges that such delay would result in irreparable injury. It is understood that enforcement proceedings for violation of this agreement may be initiated at any time after the 15 day period has elapsed (or sooner if irreparable injury is alleged) without issuance of a show cause notice.

It is recognized that where the Office of Federal Contract Compliance Programs and/or the Federal Highway Administration and/or the Arkansas State Highway Commission believes that \_\_\_\_\_ has breached this agreement, evidence regarding the entire scope of \_\_\_\_\_'s alleged non-compliance from which this agreement resulted, in addition to evidence regarding \_\_\_\_\_'s alleged violation of this agreement, may be introduced at the enforcement proceeding.

Violation of this agreement may subject \_\_\_\_\_ to sanctions pursuant to the Arkansas State Highway Commission contract administration procedures. It is further recognized that liability for violation of this agreement may also subject \_\_\_\_\_ to sanctions set forth in Section 209 of Executive Order 11246 as amended and/or appropriate relief.

---

Signature of Authorized Contractor Representative

---

Title

---

Date

---

Signature of AHTD External EEO Coordinator

---

Date

**ON-SITE REVIEW  
SHOW CAUSE**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: On-Site Review  
Job No.  
FAP No.

Dear :

As a result of the On-Site Review conducted on \_\_\_\_\_ by the Arkansas State Highway and Transportation Department (AHTD), it is our determination that \_\_\_\_\_ is not in compliance with the equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

1. The goal established by the Department of Labor for minority utilization for each trade in \_\_\_\_\_ County is \_\_\_\_\_ % and 6.9% for females statewide. Project payrolls for the period \_\_\_\_\_ to \_\_\_\_\_ revealed the following:

<u>Job Classification</u>	<u>Total Hours Worked</u>	<u>Hours As A % of Total</u>	
		<u>Minority</u>	<u>Females</u>

Based on the above information, there is an underutilization of minorities as . There is an underutilization of females in all classifications except

During the period to , a total of 16 individuals including one minority male and one non-minority female were hired. Contacts were not made by letter or telephone to minority and female referral sources when job opportunities were available. It is recommended that contacts be made, oral and/or written, with minority and female recruitment organizations serving the company's recruitment area (25 mile radius of the project) when job opportunities are available or you are trying to build-up your company's applicant pool. A record of the organizations' responses should be maintained.

2. Six employees were interviewed to determine if they have attended an on-site EEO meeting when the company's EEO policy and affirmative action obligations were discussed. Two of the six employees indicated that an EEO meeting was held.

A written record should be made and maintained concerning meetings with supervisory personnel and on-site employees where the company's EEO policy, training and promotional opportunities are discussed. The record should identify the time and place of the meeting, persons attending, the subject matter discussed and disposition of the subject matter. Meetings should be held not less often than once every six months.

3. A minority and female applicant roster was not maintained on the project.

A current file to include name, address and telephone number of each minority and female off-the-street applicant, and a list of minority or female referrals from a recruitment source, community organization, or applicants who seek employment by telephone, should be maintained. The file should reflect the action taken with respect to each individual.

A review conducted by the Department on revealed an underutilization of females in your workforce, failure to discuss the company's EEO Policy and promotional and training opportunities with on-site employees, and failure to maintain a minority and female applicant roster on the project. The company has not established systematic and direct recruitment procedures with referral sources nor demonstrated that EEO is a vital management function of the company.

4. The Disadvantaged Business Enterprise (DBE) goal has not been satisfied.
5. The employment application form requests information relative to an applicant's date of birth, marital status, military history and personal illnesses.

When equal opportunity deficiencies exist, it is necessary that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must include specific actions proposed to correct each deficiency and the projected date of completion. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. The written commitment must also provide for the submission of quarterly progress reports.

The initial report will cover the period \_\_\_\_\_ through \_\_\_\_\_. Subsequent reports should correspond to calendar year quarters. Submission dates should be on the 15th day of the month following the end of each quarter until construction on Job Number \_\_\_\_\_ is completed. Enclosed is a sample corrective action plan and the appropriate language which can be used to prepare your written commitment.

In order to assist you in developing your written commitment for submission by \_\_\_\_\_, a meeting will be held at the Arkansas State Highway and Transportation Department on \_\_\_\_\_ at \_\_\_\_\_ a.m. in Room \_\_\_\_\_. This office should be notified in writing by \_\_\_\_\_ if the time and date for the meeting are convenient.

The corrective action plan should be accompanied by a cover letter which addresses the following items:

A review of the project site bulletin board revealed that the following corrective action should be taken by \_\_\_\_\_:

1. The word disability should be used instead of handicap in your company's EEO Policy Statement.
2. The Notice Informing Employees of an available Training Program and the Entrance Requirements should be posted.
3. Notices and posters should not overlap.
4. Notice to Employees (WH 1321) poster was faded and should be replaced.
5. Workers' Compensation Commission (WCC) Form A-6 and WCC Form A-26-SID should be replaced with WCC Form AR-P and the label that has the Insurer's Name, Claim Office Address and Phone Number. If the company is self-insured, contact the administrator of the self-insured group for the necessary posting materials.



The EEO Staff is anxious to assist you in achieving compliance. Any questions concerning this matter should be addressed to: Arkansas State Highway and Transportation Department, Human Resources Division, P. O. Box 2261, Little Rock, AR 72203, 569-

Yours truly,

James Moore, Jr.  
External EEO Coordinator

JMJ:lc  
Enclosure

cc: Ms. Wilson  
Mr. Hall  
Mr. Wilson  
Mr. Holmes

## **SAMPLE CORRECTIVE ACTION PLAN**

**Deficiency 1:** Payrolls revealed an underutilization of minorities as Superintendents, Heavy Equipment Operators and Laborers and an underutilization of females in all classifications. No documentation of contacts with minority and female referral sources.

**Commitment:** Minority and female referral sources provided by the Arkansas State Highway and Transportation Department will be contacted by letter on (Date) to solicit applicants for employment consideration. We will direct our efforts to hire individuals in job classifications where there is underutilization. If necessary, follow-up telephone calls will be made to each organization to request their assistance in locating qualified applicants for employment consideration. All contacts made by this company and all responses by referral sources will be documented on the Minority and Female Recruitment Source List. We will try to identify other organizations that may assist our company in locating applicants for employment consideration.

**Deficiency 2:** Failure to document meetings held with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations were discussed.

**Commitment:** An EEO meeting will be held on (Date) with supervisory personnel and on-site employees where the company's EEO policy and affirmative action obligations will be discussed. A written record will be maintained identifying the time and place of the meeting, subject matter discussed and disposition of the subject matter. The record will be signed by each individual attending the meeting. Additional meetings will be held not less often than once every six months.

**Deficiency 3:** Very little effort to assure subcontractors have meaningful minority and female representation among their employees.

**Commitment:** We have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority and female representation. This meeting will be held on (Date) and we will provide you with a summary of the discussions and current posture of each subcontractor.

We will submit quarterly reports until construction on this project is completed.

The following appropriate language is included in our corrective action plan:

If, at any time in the future, the Office of Federal Contract Compliance Programs or the Federal Highway Administration or the Arkansas State Highway Commission or their successor(s) believe that \_\_\_\_\_ has violated any portion of this agreement,

\_\_\_\_\_ shall be promptly notified of the fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification shall provide \_\_\_\_\_ with 15 days to respond in writing to the notification except where the Office of Federal Contract Compliance Programs, the Federal Highway Administration or the Arkansas State Highway Commission alleges that such delay would result in irreparable injury. It is understood that enforcement proceedings for violation of this agreement may be initiated at any time after the 15 day period has elapsed (or sooner if irreparable injury is alleged) without issuance of a show cause notice.

It is recognized that where the Office of Federal Contract Compliance Programs and/or the Federal Highway Administration and/or the Arkansas State Highway Commission believes that \_\_\_\_\_ has breached this agreement, evidence regarding the entire scope of \_\_\_\_\_'s alleged non-compliance which gave rise to the show cause notice from which this agreement resulted, in addition to evidence regarding \_\_\_\_\_'s alleged violation of this agreement, may be introduced at the enforcement proceeding.

Violation of this agreement may subject \_\_\_\_\_ to sanctions pursuant to the Arkansas State Highway Commission contract administration procedures. It is further recognized that liability for violation of this agreement may also subject \_\_\_\_\_ to sanctions set forth in Section 209 of Executive Order 11246 as amended and/or appropriate relief.

---

Signature of Authorized Contractor Representative

---

Title

---

Date

---

Signature of AHTD External EEO Coordinator

---

Date

**ATTACHMENT C**

**Notification of Nonselection for Review**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: Desk Audit

Dear :

Documentation submitted by your organization in response to our letter dated has been reviewed and is acceptable to the Arkansas State Highway and Transportation Department. The audit is considered closed pending final determination by the Federal Highway Administration.

Your cooperation during the review is appreciated.

Yours truly,

James Moore, Jr.  
External EEO Coordinator

JMJ:lc

cc: OFCCP

**ATTACHMENT D**

**Desk Audit Report**

DESK AUDIT REPORT

1. State Arkansas

2. Review Report Number \_\_\_\_\_ (For Regional Office Use)

3. Review Authority: \_\_\_\_\_ 23 USC 140  
\_\_\_\_\_ Civil Rights Act of 1964, Title VI  
\_\_\_\_\_ 49 CFR Part 23  
\_\_\_\_\_ Other (Specify)

4. Date Audit Completed \_\_\_\_\_

5. Geographical Area Covered \_\_\_\_\_  
\_\_\_\_\_  
(SMSA, EA)

6. Time Period Covered: From \_\_\_\_\_ Through \_\_\_\_\_  
(mo., day, year) (mo., day, year)

7. Name and Address of Contractor \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Name and Title of Policy Officer \_\_\_\_\_  
\_\_\_\_\_

9. Name and Title of EEO Officer \_\_\_\_\_  
\_\_\_\_\_

10. Decision: \_\_\_\_\_ Acceptable patterns and practices indicated;  
no deficiencies found. No review scheduled.  
\_\_\_\_\_ Deficiencies identified; properly addressed in  
voluntary corrective action plan.  
\_\_\_\_\_ Deficiencies found; not adequately addressed.  
On-Site Review scheduled \_\_\_\_\_  
Compliance Data Report attached.  
Job Number(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





12. Subcontractors

Name and Address	DBE or Nonminority	Dollar Value of Contract Agreement

13. Purchase Order Agreements in excess of \$10,000.

Name and Address (Vendors, Suppliers, etc.)	DBE or Nonminority

14. Union Affiliations

Union	Local Number	Does Union have exclusive referral rights?		Does Union sponsor or participate in apprentice training programs?	
		Yes	No	Yes	No







16. Statewide Employment Data (Federal-aid Highway Projects Only).

JOB CATEGORIES	TABLE A												TABLE B						
	TOTAL EMPLOYERS		TOTAL MINORITIES		BLACK Not of Hispanic Origin		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin		APPRENTICES		ON THE JOB TRAINNEES		
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
OFFICIALS(MANAGERS)																			
SUPERVISORS																			
FOREMEN/WOMEN																			
CLERICAL																			
EQUIPMENT OPERATORS																			
MECHANICS																			
TRUCK DRIVERS																			
IRONWORKERS																			
CARPENTERS																			
CEMENT MASONS																			
ELECTRICIANS																			
PIPEFITTERS, PLUMBERS																			
PAINTERS																			
LABORERS, SEMI-SKILLED																			
LABORERS, UNSKILLED																			
TOTAL																			
APPRENTICES																			
ON-THE-JOB-TRAINNEES																			

17. Home Office Employment Data.

Home Office Address \_\_\_\_\_

OCCUPATIONS	MALE EMPLOYEES					FEMALE EMPLOYEES					TOTAL ALL EMPLOYEES	
	TOTAL MALES	MINORITY GROUPS				TOTAL FEMALES	MINORITY GROUPS					
		BLACK	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	HISPANIC		BLACK	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	HISPANIC		
OFFICIALS & MANAGERS												
PROFESSIONALS												
TECHNICIANS												
SALES WORKERS												
OFFICE & CLERICAL												
SUB-TOTAL (WHITE COLLAR)												
CRAFTSMEN (SKILLED)												
OPERATIVES (SEMI-SKILLED)												
LABORERS (UNSKILLED)												
SERVICE WORKERS												
SUB-TOTAL (BLUE COLLAR)												
TOTAL												
TOTAL EMPLOYMENT FROM PREVIOUS REPORT (IF ANY)												
THE DATA BELOW SHALL ALSO BE INCLUDED IN THE FIGURES FOR THE APPROPRIATE OCCUPATIONAL CATEGORIES ABOVE												
ON-THE-JOB TRAINERS												
WHITE COLLAR PRODUCTION												



18. Summarize new hires on the contractor's Federal-aid projects covered by the audit.

JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK No. of Hispanic Origin		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE No. of Hispanic Origin	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIAL(S/MANAGERS)														
SUPERVISORS														
FOREMEN/WOMEN														
CLERICAL														
EQUIPMENT OPERATORS														
MECHANICS														
TRUCK DRIVERS														
IRONWORKERS														
CARPENTERS														
CEMENT MASONS														
ENGINEERS														
WELDERS														
PAINTERS														
LABORERS, SEMI-SKILLED														
LABORERS, UNSKILLED														
TOTAL														

19. Home office hires covered by the Audit.

Total Employees		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

20. Summary Analysis of Employment Data.

21. List training programs contractor participates in. Discuss adequacy of training.



ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Mr. Kenneth A. Perret  
Division Administrator  
Federal Highway Administration  
3128 Federal Office Building  
Little Rock, AR 72201

Re: Desk Audit

Dear Mr. Perret:

Transmitted herewith are two copies of the Desk Audit of

A review of the report has been accomplished and the Department recommends that it be favorably accepted and that be considered in compliance with the Equal Employment Opportunity Program.

Yours truly,

Kay Crutchfield  
Section Head - EEO

KC:lc

Enclosure

cc: OFCCP

**ATTACHMENT E**

**Notification of EEO On-Site Review  
Following Desk Audit**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P.O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: On-Site Review  
Notification

Dear :

This office has recently completed a Desk Audit of documentation the firm submitted in response to the letter of . As a result, it necessary to conduct an on-site review(s) of the firm as indicated on the attached list.

The on-site review(s) has/have been scheduled for . The initial meeting has been set for at a place provided by your firm. Notify this office of the selected location not later than . The name(s), title(s), address(es), telephone number(s) and agency(ies) of the reviewing official(s) are provided below:

<b>Name 1:</b>	_____	<b>Name 2:</b>	_____
<b>Title</b>	_____		_____
<b>Agency</b>	_____		_____
<b>Address</b>	_____		_____
	_____		_____
	_____		_____
<b>Telephone</b>	_____		_____

In the interest of expediting the review(s), it would be appreciated if you provide the following items at the time of the review for each of the sites to be reviewed.

**SCOPE OF REVIEW**

\_\_\_\_\_ 1. The following project site(s) will be reviewed.

Project Number

Location

a.

b.

c.

d.

e.

\_\_\_\_\_ 2. Your home office workforce will be reviewed along with the project site(s) indicated above.

**Information**

\_\_\_\_\_ 3. Name, title and telephone number of each person representing your firm at this/these review(s).

\_\_\_\_\_ 4. Project site certified payrolls covering the period \_\_\_\_\_ to \_\_\_\_\_ for each project in Item 1. Annotate to show job classification, race or national origin and sex of each employee, at least once.

\_\_\_\_\_ 5. Prepare a Home Office Data Report based upon the last payroll period immediately preceding this review.

\_\_\_\_\_ 6. Appropriate certified payrolls used in preparing the Home Office Data Report required by Item 5. Annotate to show job classification, race or national origin, and sex of each employee.

\_\_\_\_\_ 7. Documentation of affirmative action steps taken to implement the specifications in paragraphs 7a through p of the Equal Employment Opportunity - Federal Standards Special Provision of your contract(s). Submit for each project in Item 1.

- \_\_\_\_\_ 8. List of all home office hires for the period \_\_\_\_\_ to \_\_\_\_\_ . Include a breakdown by source of referral, classification, total hired, sex and race or national origin. Submit for each project in Item 1.
- \_\_\_\_\_ 9. List of all new hires for the period \_\_\_\_\_ to \_\_\_\_\_ . Include a breakdown by source of referral, classification, total hired, sex and race or national origin. Submit for each project in Item 1.
- \_\_\_\_\_ 10. List of all persons enrolled in training programs on each of the projects in Item 1. Identify by name, race or national origin, sex and training status (i.e., Graduated, Terminated, In training).
- \_\_\_\_\_ 11. Provide information documenting the method used by your firm to apprise trainees of the number of hours accumulated in the training program.

The first phase of the on-site review will consist of an evaluation by the reviewing officer of the above listed material. Following the evaluation, questions relating to the material will be asked of the company's representative.

The second phase of the review consists of a physical inspection where the reviewing officer will interview selected employees and view employee facilities.

Cooperation and thoroughness in providing the above requested items will expedite the review. Should the date of the review not be convenient, or should you have questions in regard to the pending review, please advise.

Yours truly,

Kay Crutchfield  
Section Head - EEO

KC:lc

cc: District Engineer  
Resident Engineer



**ATTACHMENT F**

**Notification of EEO On-Site Review**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: On-Site Review  
Job No.  
FAP No.

Dear :

Equal employment opportunity is a national policy and all non-exempt direct Federal-aid contracts contain clauses which require affirmative action to achieve this goal.

Responsibility for monitoring implementation of the equal opportunity requirements of your contract has been assigned to the Arkansas State Highway and Transportation Department. Accordingly, your company has been selected for an equal opportunity on-site review.

The purpose of the review is to examine all phases of the Equal Employment Opportunity Program of the firm and all approved subcontractors performing on the subject project(s) at the time of this review, in keeping with the requirements of the applicable provisions of direct Federal or Federal-aid contract clauses, rules and regulations.

The On-Site Review will be conducted by \_\_\_\_\_ at \_\_\_\_\_ a.m. on \_\_\_\_\_ at a place designated by your company. It will be your responsibility to furnish adequate meeting space in



In the interest of expediting the review, prepare and submit the attached list of material to reach this office not later than . A prompt and complete response by you and your active subcontractors will be sincerely appreciated. It will be the responsibility of your organization to notify subcontractors of this requirement and request their attendance at this review.

The first phase of the On-Site Review will consist of an evaluation by the reviewing officer of the material submitted by the prime contractor and each active subcontractor. Questions relating to the material and to each company's Equal Employment Opportunity Program will be developed for discussion during the review.

The second phase of the review will consist of a physical inspection where the reviewing officer will interview selected employees and view employee facilities.

Should the date of the review not be convenient or should you have any questions in regard to the pending review, call at (501) 569- .

Yours truly,

Kay Crutchfield  
Section Head - EEO

KC:lc

Enclosure

cc: Construction - B File  
District Engineer  
Resident Engineer

## SCOPE OF REVIEW

1. The following project site(s) will be reviewed.

Project Number

Location

- a.
  - b.
  - c.
  - d.
  - e.
2. Name, title and telephone number of each person representing your firm at this/these review(s).
  3. Project site certified payrolls covering the period                      to                      for each project in Item 1. Annotate to show job classification, race or national origin and sex of each employee, at least once.
  4. Documentation of affirmative action steps taken to implement the specifications in paragraphs 7a through p of the Equal Employment Opportunity - Federal Standards Special Provision of your contract(s). Submit for each project in Item 1.
  5. List of all new hires for the period                      to                      . Include a breakdown by source of referral, classification, total hired, sex and race or national origin. Submit for each project in Item 1.
  6. Current Standard Form 100 (EEO-1), where applicable.
  7. A copy of your firm's equal opportunity policy.
  8. A copy of the letter appointing the EEO officer for your company's Equal Employment Opportunity Program.
  9. Documentation of employee referral sources which your firm has contacted in efforts to secure minority/female employees. Include name, contact person, date(s) of contact(s), addresses and telephone numbers.
  10. Blank copy of application for employment.

11. A summary of total applications for employment received during the period to on each project in Item 1. Include a breakdown by classification, sex and race or national origin.
12. A list of promotions, upgrades, transfers, demotions, layoffs and terminations effective during the period to on each project in Item 1. Include race or ethnic origin, sex, previous job held, job promoted into and wage rates of each employee.
13. A list of your company's employee benefit plans. Provide requirements for enrollment in each plan. List employee participation by race or ethnic origin and sex.
14. Documentation regarding any complaints alleging discrimination filed against your firm during the period to
15. Identify all on-site job training apprenticeship training programs. List all persons enrolled in training programs on each of the projects in Item 1 by name, race or national origin, sex and training status (i.e., Graduated, Terminated, In Training).
16. Provide information documenting the method used by your firm to apprise trainees of the number of hours accumulated in the training program.
17. Copies of bargaining agreements, if applicable.
18. List all subcontractors with whom you presently have an agreement in excess of \$10,000 to provide services on each project in Item 1.
19. List all vendors or suppliers with whom you presently have an agreement in excess of \$10,000 to provide equipment, materials or supplies on each project in Item 1. Attach at least one actual purchase order for each project.
20. A copy of the letter appointing the liaison officer for your company's Disadvantaged Business Enterprise Program.
21. List all Federal-aid contracts presently held in Arkansas. Include project number, location, dollar amount and estimated peak employment period for each contract.
22. Copies of EEO, Affirmative Action and/or DBE compliance determinations made by other agencies during the last two years.

**ATTACHMENT G**  
**Employee Interview Form**

**EMPLOYEE INTERVIEW FORM**

**Date:** \_\_\_\_\_

1. Contractor \_\_\_\_\_

2. Name of Employee \_\_\_\_\_

3. Address \_\_\_\_\_  
\_\_\_\_\_

4. Telephone (AC) (    ) \_\_\_\_\_

5. Race or Ethnic Origin \_\_\_\_\_  
(Determine Visually)

6. Sex \_\_\_\_\_

7. Classification \_\_\_\_\_

8. Salary \_\_\_\_\_

9. Length of Time in Current Classification \_\_\_\_\_

10. Length of Time with Contractor \_\_\_\_\_

11. Are you a union member? \_\_\_\_\_

12. What union do you belong to? \_\_\_\_\_

13. How did you obtain this job? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Have you attended meetings where the company's EEO policy and promotional and training opportunities were discussed?

\_\_\_\_\_

To what extent was EEO discussed? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Who conducted the meetings? \_\_\_\_\_  
\_\_\_\_\_

15. Who is your firm's EEO officer? \_\_\_\_\_

16. How often does the EEO officer visit the job site?  
\_\_\_\_\_

17. If you had a complaint or grievance, to whom would you take it? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. Do you feel tasks are assigned on a nondiscriminatory basis?  
\_\_\_\_\_  
If no, explain. \_\_\_\_\_  
\_\_\_\_\_

19. Do you feel the equipment assigned to you is in as good a condition as equipment assigned to others? \_\_\_\_\_  
If no, explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. Are employee facilities such as restrooms, eating facilities, etc., provided in a nondiscriminatory manner?  
\_\_\_\_\_  
If no, explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**ATTACHMENT H**

**Highway Construction Trainee Interview Form**

**HIGHWAY CONSTRUCTION  
TRAINEE INTERVIEW FORM**

Date: \_\_\_\_\_

1. Name \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_
2. Position/Classification \_\_\_\_\_
3. Employer \_\_\_\_\_
4. Training Status - In Training \_\_\_\_\_ Graduated \_\_\_\_\_
5. Present Salary \_\_\_\_\_ Journeyman Salary \_\_\_\_\_
6. Length of Time in Present Position \_\_\_\_\_
7. Previous Position \_\_\_\_\_  
Length of Time in Previous Position \_\_\_\_\_ Salary \_\_\_\_\_
8. Length of Time with Current Employer \_\_\_\_\_  
With Previous Employer \_\_\_\_\_  
Classification with Previous Employer \_\_\_\_\_
9. How did you obtain your present job? \_\_\_\_\_
10. How did you get into the training program?  

\_\_\_\_\_ New Hire  
\_\_\_\_\_ Upgrade
11. What other training have you received? Source?  
\_\_\_\_\_  
\_\_\_\_\_
12. What training courses have you completed?  
\_\_\_\_\_  
\_\_\_\_\_

13. Have you been trained by other employers? \_\_\_\_\_

If so, in what classifications? \_\_\_\_\_

\_\_\_\_\_

14. Who is primarily responsible for your training? \_\_\_\_\_

\_\_\_\_\_

15. Have you received any counseling or assistance on the job?

\_\_\_\_\_

If so, from whom? \_\_\_\_\_

\_\_\_\_\_

Was it helpful? \_\_\_\_\_

If so, how? \_\_\_\_\_

\_\_\_\_\_

16. Are you receiving adequate training? \_\_\_\_\_

If no, explain.

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT I**

**Superintendent Interview Form**

## SUPERINTENDENT INTERVIEW FORM

Date: \_\_\_\_\_

1. Contractor \_\_\_\_\_ (Prime or Sub)
2. Name \_\_\_\_\_
3. Address \_\_\_\_\_  
\_\_\_\_\_
4. Telephone (AC) ( ) \_\_\_\_\_
5. Race or Ethnic Group \_\_\_\_\_ (Determine Visually)
6. Sex \_\_\_\_\_
7. Discuss your knowledge of contract EEO requirements.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Discuss your knowledge of company's EEO Plan of Action.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Who is the company EEO officer? \_\_\_\_\_
10. How often does the EEO officer visit the job site?  
\_\_\_\_\_
11. How are employees hired? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. How are employees promoted? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. What is your involvement in training programs?

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14. Who handles training, if any? \_\_\_\_\_

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15. Have you had any complaints of discrimination?

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16. How were they handled? \_\_\_\_\_

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17. Have you held meetings where EEO, promotional and training opportunities were discussed? \_\_\_\_\_

If yes, how often? \_\_\_\_\_

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**ATTACHMENT J**

**Sample On-Site Inspection  
Letter of Findings**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: On-Site Inspection  
Job No.  
FAP No.

Dear :

On , an On-Site Inspection was conducted on the captioned project. The following areas were identified as deficient and recommendations for improvement are offered:

1. Based on interviews with the employees, an EEO meeting on the project has not been held at which the company's EEO policy and affirmative action obligations were discussed. The employees did not know that you are the company's EEO officer or how often you have visited the project.

EEO meetings should be held not less often than once every six months after the initial meeting. A written record should be made and maintained concerning meetings held with supervisory personnel and employees where the company's EEO policy, training and promotional opportunities are discussed. This record should identify the time and place of the meetings, persons attending, the subject matter discussed and disposition of the subject matter. Refer to Attachment .

Mr./Ms. was also interviewed to determine his/her knowledge of the company's affirmative action program and the contract EEO requirements. Based on the responses, he/she should receive an orientation of the company's affirmative action program and contract EEO requirements.



2. A minority and female applicant roster was not maintained on the project. A current file to include name, address and telephone number of each minority and female off-the street applicant, and a list of minority or female referrals from a recruitment source, community organization or applicants who seek employment by telephone, should be maintained. The file should reflect the action taken with respect to each individual. Refer to Attachment

A review of the project site bulletin board revealed that the following corrective action should be taken by :

1. The company's EEO Policy Statement should include a prohibition of discrimination on the basis of disability instead of handicap. Refer to Attachment . The company's EEO Policy Statement and notices should be typed on company letterhead.
2. Workers' Compensation Commission (WCC) Form A-6 should be replaced with WCC Form AR-P. The company's insurance carrier should provide Form AR-P and the label that has the Insurer's Name, Claim Office Address and Phone Number. If the company is self-insured, contact the administrator of the self-insured group for the necessary posting materials.

The goal established by the Department of Labor for minority utilization for each trade in County is % and 6.9% for females statewide. One minority male and one nonminority male were working the day of the On-Site Inspection. No females were working. It is recommended that contact be made, oral and/or written, with female recruitment organizations serving the company's recruitment area (25 mile radius of the project when job opportunities are available or you are trying to build-up your company's applicant pool. This should be done in order to improve the representation of females in the work force. Refer to Attachment . Maintain a record of the organizations' responses.

One of the notices on the project site bulletin board indicated you serve as the company's EEO officer. The Department should be notified of this appointment by letter. The name of the individual who will serve as the company's Disadvantaged Business Enterprise Program Liaison Officer should also be identified. Refer to Attachment

Based on my interview with Mr./Ms. and the employees, and the inspection of the project bulletin board, it appears that you should have an EEO briefing to discuss the Department's Special Provision, Equal Employment Opportunity - Federal Standards. You should contact me to schedule a briefing.

A commitment to correct the items identified should be prepared and submitted to reach this office by

The EEO Staff is anxious to assist you in achieving compliance. Any questions concerning this matter should be addressed to: \_\_\_\_\_, Arkansas State Highway and Transportation Department, Human Resources Division, P. O. Box 2261, Little Rock, AR 72203, (501) 569-\_\_\_\_\_.

Yours truly,

James Moore, Jr.  
External EEO Coordinator

JMJ:lc  
Enclosures

cc: Resident Engineer

**ATTACHMENT K**  
**COMPLIANCE DATA REPORT**

COMPLIANCE DATA REPORT

1. State Arkansas
2. Review Report Number \_\_\_\_\_ (For Regional Office Use)
3. Review Authority: \_\_\_\_\_ SEC. 22(A) Federal Highway Act 1968  
\_\_\_\_\_ 23 USC 140  
\_\_\_\_\_ Civil Rights Act of 1964, Title VI  
\_\_\_\_\_ 49 CFR Part 23  
\_\_\_\_\_ Other (Specify)
4. Job No. \_\_\_\_\_
5. FAP No. \_\_\_\_\_
6. Contract Value \_\_\_\_\_
7. Date(s) of Review \_\_\_\_\_
8. Date Review Completed \_\_\_\_\_
9. Contractor Identification (Identify if DBE)  
Prime Contractor \_\_\_\_\_  
Subcontractor \_\_\_\_\_  
Vendor \_\_\_\_\_  
Supplier \_\_\_\_\_  
Other (Specify) \_\_\_\_\_
10. Geographical Area Covered \_\_\_\_\_  
(SMSA, EA)
11. Time Period Covered: From \_\_\_\_\_ Through \_\_\_\_\_  
(mo, day, year) (mo., day, yr.)

12. Estimated Peak Employment Period \_\_\_\_\_  
(Month, Year)

13. Name and Address of Contractor \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Name and Title of Policy Officer \_\_\_\_\_  
\_\_\_\_\_

15. Name and Title of EEO Officer \_\_\_\_\_  
\_\_\_\_\_

16. Decision: \_\_\_\_\_ Acceptable patterns and practices indicated;  
no deficiencies found.

\_\_\_\_\_ Deficiencies identified; properly addressed  
in voluntary corrective action plan.

\_\_\_\_\_ Deficiencies found; not adequately addressed.

17. Subcontractors

Name and Address	DBE or Nonminority	Dollar Value of Contract Agreement

Name and Address	DBE or Nonminority	Dollar Value of Contract Agreement

18. Purchase Order Agreements in excess of \$10,000.

Name and Address (Vendors, Suppliers, etc.)	DBE or Nonminority



Name and Address (Vendors, Suppliers, etc.)	DBE or Nonminority

19. Union Affiliations

Union	Local Number	Does Union have exclusive referral rights?		Does Union sponsor or participate in apprentice training programs?	
		Yes	No	Yes	No

20. On-Site Construction Employment Data.

JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK NOT OF HISPANIC ORIGIN		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		APPRENTICES		ON-THE-JOB TRAINEES		
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
OFFICIALS(MANAGERS)																	
SUPERVISORS																	
FOREMEN/WOMEN																	
CLERICAL																	
EQUIPMENT OPERATORS																	
MECHANICS																	
TRUCK DRIVERS																	
IRONWORKERS																	
CARPENTERS																	
CEMENT MASONS																	
ELECTRICIANS																	
PIPEFITTERS, PLUMBERS																	
PAINTERS																	
LABORERS, SEMI-SKILLED																	
LABORERS, UNSKILLED																	
TOTAL																	
TOTAL EMPLOYMENT FROM PREVIOUS REPORT (IF ANY)																	
TABLE B																	
APPRENTICES																	
ON-THE-JOB-TRAINEES																	

21. Home Office Employment Data.  
Home Office Address

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	MALE EMPLOYEES				FEMALE EMPLOYEES				TOTAL ALL EMPLOYEES
	TOTAL MALES	MINORITY GROUPS			TOTAL FEMALES	MINORITY GROUPS			
		BLACK	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE		HISPANIC	BLACK	ASIAN OR PACIFIC ISLANDER	
OCCUPATIONS & MANAGERS									
PROFESSIONALS									
TECHNICIANS									
SALES WORKERS									
OFFICE & CLERICAL									
SUB-TOTAL (WHITE COLLAR)									
CRAFTSMEN (SKILLED)									
OPERATIVES (SEMI-SKILLED)									
LABORERS (UNSKILLED)									
SERVICE WORKERS									
SUB-TOTAL (BLUE-COLLAR)									
TOTAL EMPLOYMENT FROM PREVIOUS REPORT (IF ANY)									
THE DATA BELOW SHALL ALSO BE INCLUDED IN THE FIGURES FOR THE APPROPRIATE OCCUPATIONAL CATEGORIES ABOVE									
ON-THE-JOB TRAINERS	WHITE COLLAR								
	PRODUCTION								

22. Summarize new hires for six months.

JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK NOT OF HISPANIC ORIGIN		HISPANIC		AMERICAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE NOT OF HISPANIC ORIGIN	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS(Managers)														
SUPERVISORS														
FOREMEN/WOMEN														
CLERICAL														
EQUIPMENT OPERATORS														
MECHANICS														
TRUCK DRIVERS														
IRONWORKERS														
CARPENTERS														
CEMENT MASONS														
ELECTRICIANS														
PIPEFITTERS, PLUMBERS														
PAINTERS														
LABORERS, SEMI-SKILLED														
LABORERS, UNSKILLED														
TOTALS														

23. Home office hires covered by the Review.

Total Employees		Total Minorities		Black Not of Hispanic Origin		Hispanic		American Indian or Alaskan Native		Asian or Pacific Islander		White Not of Hispanic Origin	
M	F	M	F	M	F	M	F	M	F	M	F	M	F

24. Summary Analysis of Employment Data.

25. List training programs contractor participates in. Discuss adequacy of training.





ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: On-Site Review  
Job No.  
FAP No.

Dear :

The Federal Highway Administration has reviewed the subject On-Site Review submitted by the Arkansas State Highway and Transportation Department and concurs in the recommendation that the company be considered in compliance.

This does not preclude a future determination of noncompliance based on a finding that the organization's written commitments are not sufficient to achieve compliance or upon a finding that the organization's commitments are not being faithfully kept.

The Department appreciates your cooperation during the review.

Yours truly,

Kay Crutchfield  
Section Head - EEO

KC:lc

cc: OFCCP

## **ATTACHMENT L**

### **NOTIFICATION OF VERIFICATION REVIEW**

- 1. On-Site Review**
- 2. Desk Audit**

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: On-Site Review

Dear :

Participants in the Disadvantaged Business Enterprise Program must meet the eligibility standards established by the Department of Transportation in 49 CFR Part 23. The Arkansas State Highway and Transportation Department is responsible for monitoring program participants to ensure those eligibility standards are met. Accordingly, (firm name) has been selected for an On-Site Review.

The review will be conducted by \_\_\_\_\_ on \_\_\_\_\_, at \_\_\_\_\_ a.m. in your office. It will be your responsibility to furnish adequate meeting space in order for the reviewing officer to meet with representatives of the company. Please confirm the date and time of the review by letter. Confirmation should be prepared and submitted to reach this office not later than \_\_\_\_\_.

In the interest of expediting the review, prepare and submit the attached list of material to reach this office not later than \_\_\_\_\_. A prompt and complete response will be sincerely appreciated.

The first phase of the review will consist of an evaluation by the reviewing officer of the material submitted. Questions relating to the material will be developed for discussion during the review.

The second phase of the review will consist of a project site visit where the reviewing officer will interview employees.

Should the date of the review not be convenient or should you have any questions in regard to the pending review, call at (501) 569- .

Yours truly,

Kay Crutchfield  
Section Head - EEO

KC:lc

Enclosure

cc: Certification Committee

- \_\_\_\_\_ 1. Name, title and telephone number of each person representing your firm at this review.
- \_\_\_\_\_ 2. Most recent audited financial statements.
- \_\_\_\_\_ 3. Federal Tax returns for the last three (3) years including all schedules.
- \_\_\_\_\_ 4. Birth certificates of principals of your company.
- \_\_\_\_\_ 5. Resumes of work experiences of all owners and officers.
- \_\_\_\_\_ 6. Identify any owner and/or management official of this firm who is employed full-time or part-time by another agency, organization or contractor. Include the name of the employer, length of employment and number of hours worked each week by each owner and/or management official.
- \_\_\_\_\_ 7. Application for Arkansas Contractors License.
- \_\_\_\_\_ 8. Articles of Incorporation, including date approved by State and any subsequent amendments.
- \_\_\_\_\_ 9. Corporation By-Laws.
- \_\_\_\_\_ 10. Partnership Agreements.
- \_\_\_\_\_ 11. Copies of issued stock certificates.
- \_\_\_\_\_ 12. Copies of all shareholder agreements including voting trusts, employment contracts and other agreements involving you and your company.
- \_\_\_\_\_ 13. Stock ledger.
- \_\_\_\_\_ 14. Proof of stock purchase.
- \_\_\_\_\_ 15. Submit all agreements relating to stock options, ownership options, stockholder agreements, buy-out rights, stockholders voting rights, restrictions on the disposal of stock, stock loan agreements, facts pertaining to the value of shares and ownership of voting securities.

- \_\_\_\_\_ 16. Minutes of all organizational meetings held in the last two (2) years.
- \_\_\_\_\_ 17. Contributions of capital, titles to equipment or other proof of property ownership.
- \_\_\_\_\_ 18. One copy of each of the following: rental agreement, loan agreement, service agreement, contract (signature page), insurance policy (signature page), performance bond.
- \_\_\_\_\_ 19. If you share office facilities or equipment with any other company, submit copies of these agreements.
- \_\_\_\_\_ 20. Copies (front and back) of at least two (2) canceled checks for purchases on each highway project currently under contract.
- \_\_\_\_\_ 21. A copy of one payroll check to one employee of the company.
- \_\_\_\_\_ 22. Provide the name, official title and address of the person primarily responsible for preparation of the foregoing data. Include telephone number where this person can be reached by the reviewing officer, if necessary.

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone ( ) \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Dan Flowers  
Director  
Telephone (501) 569-2000



P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
Telefax (501) 569-2400

Re: Desk Audit Notification

Dear :

Participants in the Disadvantaged Business Enterprise Program must meet the eligibility standards established by the Department of Transportation in 49 CFR Part 23. The Arkansas State Highway and Transportation Department is responsible for monitoring program participants to ensure those eligibility standards are met. Accordingly, (firm name) has been selected for a Desk Audit.

This audit will not require your presence. However, it will require submission of the information requested on the attached list to the following address not later than

Arkansas State Highway  
& Transportation Department  
EEO Section  
P. O. Box 2261  
Little Rock, AR 72203

In the interest of expediting the audit, a prompt and complete response will be sincerely appreciated. Should you have any questions regarding the information requested, please call at (501) 569-

Yours truly,

Kay Crutchfield  
Section Head - EEO

KC:lc  
Enclosure

cc: Certification Committee

- \_\_\_\_\_ 1. Name, title and telephone number of each person representing your firm at this review.
- \_\_\_\_\_ 2. Most recent audited financial statements.
- \_\_\_\_\_ 3. Federal Tax returns for the last three (3) years including all schedules.
- \_\_\_\_\_ 4. Birth certificates of principals of your company.
- \_\_\_\_\_ 5. Resumes of work experiences of all owners and officers.
- \_\_\_\_\_ 6. Identify any owner and/or management official of this firm who is employed full-time or part-time by another agency, organization or contractor. Include the name of the employer, length of employment and number of hours worked each week by each owner and/or management official.
- \_\_\_\_\_ 7. Application for Arkansas Contractors License.
- \_\_\_\_\_ 8. Articles of Incorporation, including date approved by State and any subsequent amendments.
- \_\_\_\_\_ 9. Corporation By-Laws.
- \_\_\_\_\_ 10. Partnership Agreements.
- \_\_\_\_\_ 11. Copies of issued stock certificates.
- \_\_\_\_\_ 12. Copies of all shareholder agreements including voting trusts, employment contracts and other agreements involving you and your company.
- \_\_\_\_\_ 13. Stock ledger.
- \_\_\_\_\_ 14. Proof of stock purchase.
- \_\_\_\_\_ 15. Submit all agreements relating to stock options, ownership options, stockholder agreements, buy-out rights, stockholders voting rights, restrictions on the disposal of stock, stock loan agreements, facts pertaining to the value of shares and ownership of voting securities.



- \_\_\_\_\_ 16. Minutes of all organizational meetings held in the last two (2) years.
- \_\_\_\_\_ 17. Contributions of capital, titles to equipment or other proof of property ownership.
- \_\_\_\_\_ 18. One copy of each of the following: rental agreement, loan agreement, service agreement, contract (signature page), insurance policy (signature page), performance bond.
- \_\_\_\_\_ 19. If you share office facilities or equipment with any other company, submit copies of these agreements.
- \_\_\_\_\_ 20. Copies (front and back) of at least two (2) canceled checks for purchases on each highway project currently under contract.
- \_\_\_\_\_ 21. A copy of one payroll check to one employee of the company.
- \_\_\_\_\_ 22. Provide the name, official title and address of the person primarily responsible for preparation of the foregoing data. Include telephone number where this person can be reached by the reviewing officer, if necessary.

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone ( ) \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT M**  
**VERIFICATION REVIEW PROCEDURE**

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

DISADVANTAGED BUSINESS ENTERPRISE

VERIFICATION REVIEW

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Purpose

The purpose of this On-Site Review is to solicit information from representatives of \_\_\_\_\_ to determine whether the ownership and control by minorities or women is real, substantial, and continuing and exceeds the pro forma ownership reflected in the certification form.

The following persons are the owners or representatives of the owners:

Name \_\_\_\_\_ Title \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

For the record, please examine this file and respond to whether the information contained constitutes all documents submitted to the Department for the purpose of obtaining certification as a Disadvantaged Business Enterprise.

Response:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



1. State the month, day and year the company was established.

\_\_\_\_\_

2. Identify the owner(s) by name, title and percentage of ownership.

Name	Title	Percentage
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Specify the race and sex of the owner(s).

Name	Race	Sex
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. The officers of the company are:

	Name	Date Elected
President:	_____	_____
Vice-President:	_____	_____
Secretary:	_____	_____
Treasurer:	_____	_____
Other:	_____	_____

5. Current Board of Directors

Name	Minority or Female	Date Elected	Home Address
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Is the company a partnership, corporation, sole proprietorship, or other business entity?

7. Has the company ever made a change in ownership?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, specify the name(s) of the previous owner(s).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Specify the reason(s) this change in ownership took place.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Specify the nature of agreements made in the transfer of ownership. Include financial, equipment, personnel, space, etc.

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10. Is the company currently operating under the license of the previous owner?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, specify the nature of the agreement for such an arrangement.

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11. Is the company currently operating under a license?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, specify the type and name in which the license was obtained.

Type

Name

_____	_____
_____	_____
_____	_____

12. Does the company own or lease its present location? If leasing, identify the owner and state the nature of the lease agreement.

Own \_\_\_\_\_ Lease \_\_\_\_\_ Owner: \_\_\_\_\_

Nature of Agreement:

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13. Specify the particular tasks carried out by each owner of the company.

Owner: \_\_\_\_\_ Tasks: \_\_\_\_\_

---

Owner: \_\_\_\_\_ Tasks: \_\_\_\_\_

---

Owner: \_\_\_\_\_ Tasks: \_\_\_\_\_

---

14. Identify the last employer of each of the owners and include the title under which tasks were performed.

Name

Title

---

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15. Identify any owner and/or management official of this firm who is employed full-time or part-time by another agency, organization or contractor. Include the name of the employer, length of employment and number of hours worked each week by each owner and/or management official.

Name of Employee	Length of Employment	Number of Hours	Name of Employer

16. State the contributions of capital, equipment, space, expertise, etc., of each owner, to acquire his/her interest in the company.

Owner \_\_\_\_\_

Contributions \_\_\_\_\_

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Owner \_\_\_\_\_

Contributions \_\_\_\_\_

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Owner \_\_\_\_\_

Contributions \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Owner \_\_\_\_\_

Contributions \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

17. State the major items of equipment owned by the company.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

18. What is the approximate dollar value of the items of equipment owned by the company?

\$ \_\_\_\_\_

19. Under whose signature were the major items of equipment obtained?

\_\_\_\_\_

20. Who determines the jobs to bid?

\_\_\_\_\_

21. Who prepares the estimates?

\_\_\_\_\_

22. Who subcontracts the work?

\_\_\_\_\_

23. State the number of employees currently employed by the owners.

Full-Time \_\_\_\_\_ Part-Time \_\_\_\_\_

24. State the approximate dollar amount of work completed or presently underway for the Arkansas State Highway and Transportation Department.

\$ \_\_\_\_\_

25. Identify the company's bonding source and bonding limit.

Source \_\_\_\_\_ Limit \_\_\_\_\_

26. Does any owner of the company have an ownership interest in another company?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, identify the company and state the percentage of ownership held.

Company	Percentage
_____	_____

27. Is the company being assisted financially or otherwise by anyone other than the owners?

Yes \_\_\_ No \_\_\_\_\_

If Yes, identify the source and nature of assistance being provided.

Source \_\_\_\_\_ Assistance \_\_\_\_\_

\_\_\_\_\_

Source \_\_\_\_\_ Assistance \_\_\_\_\_

\_\_\_\_\_

Source \_\_\_\_\_ Assistance \_\_\_\_\_

\_\_\_\_\_

28. Who negotiates financing for the company?

\_\_\_\_\_

29. Who obtained bonding and insurance for the company?

\_\_\_\_\_

30. Who signs the payroll?

\_\_\_\_\_

31. Under whose signature are creditors paid?

\_\_\_\_\_

32. Detail any limitations on authority of any official to sign checks, including amount of check and multiple signature requirement.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

33. What is the approximate dollar value of the company?

\$ \_\_\_\_\_

34. What is the approximate net worth of the company.

\$ \_\_\_\_\_

35. Identify three (3) major creditors with whom you purchase, lease and/or presently owe.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

36. Identify the company's banking and/or loan institution.

\_\_\_\_\_  
\_\_\_\_\_

37. Is the company certified as a Disadvantaged Business Enterprise in another city, county or state?

Yes \_\_\_\_\_ No \_\_\_\_\_ Pending \_\_\_\_\_

If Yes or Pending, identify the certifying authority and state.

Authority \_\_\_\_\_

State \_\_\_\_\_

Authority \_\_\_\_\_

State \_\_\_\_\_

38. Has the company been denied certification as a Disadvantaged Business Enterprise in another city, county or state?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, identify the certifying authority and state the circumstances of the denial.

Authority \_\_\_\_\_

Circumstances \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Comments:

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_



**ATTACHMENT N**  
**DBE OWNER INTERVIEW FORM**



## OWNER INTERVIEW FORM

Date \_\_\_\_\_

1. Company \_\_\_\_\_
2. Name \_\_\_\_\_
3. Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Telephone Number (AC) ( \_\_\_\_\_ ) \_\_\_\_\_
5. Race/Sex \_\_\_\_\_
6. As a majority owner of the company, describe your authority, duties and responsibilities.  
\_\_\_\_\_  
\_\_\_\_\_
7. Explain and describe the day-to-day operations of the company.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Who makes the financial decisions for your company?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. When your firm organized, what resources did you contribute?
  - a. Money \$ \_\_\_\_\_
  - b. Equipment \_\_\_\_\_
  - c. Real Estate \_\_\_\_\_
  - d. Expertise \_\_\_\_\_

10. How did you acquire those resources? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. What resources did the other owners contribute?
- a. Money \$ \_\_\_\_\_
  - b. Equipment \_\_\_\_\_
  - c. Real Estate \_\_\_\_\_
  - d. Expertise \_\_\_\_\_

12. What resources did non-owners contribute?
- a. Money \$ \_\_\_\_\_
  - b. Equipment \_\_\_\_\_
  - c. Real Estate \_\_\_\_\_
  - d. Expertise \_\_\_\_\_

13. Have there been additional contributions of resources?  
Explain. \_\_\_\_\_  
\_\_\_\_\_

14. Who signs checks for your company? \_\_\_\_\_  
\_\_\_\_\_

15. How many signatures are required for payroll and other checks?  
\_\_\_\_\_

16. Who are the managers in your company? \_\_\_\_\_  
\_\_\_\_\_

17. Who selected them and how were they selected?

---

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18. How many supervisors are employed by the company?

---

Explain each of their duties and responsibilities.

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19. When was the last time you hired an employee?

---

Explain the procedure.

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20. When was the last time you fired an employee?

---

Explain the procedure.

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21. What employee benefits does your company offer?

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Who determines those benefits?

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22. Explain and describe your firm's bidding and estimating process.

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23. Who selects projects to bid and how is the selection made?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

24. Who does the estimating? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

25. Who prepares the bid for your firm? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

26. Explain how you get your bid to contractors. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

27. On a typical project you are bidding, how many contractors do you submit bids to?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

28. Explain how your firm performs its contracts and describe how you obtain the following:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

a. Equipment \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Materials \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

29. Explain the process for solving field construction problems.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

30. Explain the process used to monitor jobs. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

31. Have you ever subcontracted any portion of your company contracts?  
\_\_\_\_\_  
If so, to whom? \_\_\_\_\_  
Why? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dollar value? \_\_\_\_\_ Percentage? \_\_\_\_\_

32. Does your firm carry insurance? \_\_\_\_\_  
Explain. \_\_\_\_\_  
\_\_\_\_\_

33. Does your firm have any permits? \_\_\_\_\_  
Explain. \_\_\_\_\_

**ATTACHMENT O**  
**DBE EMPLOYEE INTERVIEW FORM**

## EMPLOYEE INTERVIEW FORM

Date \_\_\_\_\_

1. Company \_\_\_\_\_
2. Name of Employee \_\_\_\_\_
3. Classification \_\_\_\_\_
4. Social Security Number \_\_\_\_\_
5. Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Telephone Number (AC) ( ) \_\_\_\_\_
7. Race/Sex \_\_\_\_\_
8. How long have you worked for the company?  
\_\_\_\_\_  
\_\_\_\_\_
9. How did you obtain the job? \_\_\_\_\_  
\_\_\_\_\_
10. Who hired you? \_\_\_\_\_
11. Who owns this company? \_\_\_\_\_
12. How often does the owner visit the project site?  
\_\_\_\_\_  
\_\_\_\_\_
13. Have you ever worked for more than one company during the same week and/or month? \_\_\_\_\_  
If yes, explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Which company's name appeared on your payroll check(s) during this period?  
\_\_\_\_\_

Who signed the payroll check(s)? \_\_\_\_\_

**SUPERINTENDENT/FOREMAN ONLY**

15. How often do you discuss the project activity with the owner?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 22**

**Contractor Employment Data Analysis**



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

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Subject: **State Highway Agency Employment  
1995 EEO-4 Reports** Date: **July 1, 1996**

From: **Director  
Office of Civil Rights  
Fort Worth, Texas** Reply to **HCR-06**  
Attn of **4722 Gen**

To: **Division Administrators W. D. Richardson,  
W. A. Sussmann, R. S. Thomas,  
J. K. Erickson, and C. D. Reagan**

We have completed our review and analysis of the subject reports which are prepared by the State highway agencies in this Region. The analysis of these reports is reflected in the documents which are attached and are applicable to Regionwide employment and employment in your State. Each of the documents is explained below.

## **Net Changes in State Employment**

This document shows changes in employment Regionwide and Statewide between 1994 and 1995. It also identifies the EEO-4 occupational categories which have less percentage representation of minorities and females than the civilian labor force.

## **Minority and Female Trends Graphs**

The first graph shows nonminority, minority and female actual numbers and percentage representation for the baseline year (1978), 1994, and 1995. As such, it illustrates trends in the minority and female representation during the 17-year period between 1978 and 1995 Regionwide and Statewide. The second graph portrays minority and female critical trades also for the baseline year (1978), 1994, and 1995. The critical trades listed are for 1995. A Regionwide critical trade is defined as a job category of 100 or more employees where underrepresentation of minorities and females exists in relation to their availability in the civilian labor force (CLF). Critical trades within each State would include all those job categories of 30 or more employees. Critical trades will vary for females and minorities as noted in each graph.

The occupational category titles are abbreviated as follows:

Off/Adm	-	Officials/Administrators
Prof	-	Professionals
Tech	-	Technicians
Prot Serv	-	Protective Service

<b>Para Prof</b>	-	<b>Para Professionals</b>
<b>Adm Supp</b>	-	<b>Administrative Support</b>
<b>Sk Craft</b>	-	<b>Skilled Craft</b>
<b>Serv Maint</b>	-	<b>Service Maintenance</b>

The attached package contains both Regionwide and your particular State's statistics and graphs. Please provide one set of the attached documents to the State for its information and use in implementing its Affirmative Action Program. Call us if you have any questions.

  
Humberto R. Martinez

**Attachments**



U.S. Department  
of Transportation

**Federal Highway  
Administration**

# Memorandum

---

Subject: **State Highway Agency Employment  
1995 EEO-4 Reports** Date: **July 1, 1996**

From: **Director  
Office of Civil Rights  
Fort Worth, Texas** Reply to  
Attn of **HCR-06  
4722 Gen**

To: **Mr. Edward W. Morris, Jr., Director  
Office of Civil Rights (HCR-10)  
Washington, D.C.**

We have completed our review and analysis of the subject reports which are prepared by the State highway agencies in this Region. The analysis of these reports is reflected in the attached documents. Each of the documents is explained below.

### **Net Changes in State Employment**

This document shows changes in employment Regionwide and Statewide between 1994 and 1995. It also identifies the EEO-4 occupational categories which have less percentage representation of minorities and females than the civilian labor force.

### **Minority and Female Trends Graphs**

The first graph shows nonminority, minority and female actual numbers and percentage representation for the baseline year (1978), 1994, and 1995. As such, it illustrates trends in the minority and female representation during the 17-year period between 1978 and 1995 Regionwide and Statewide. The second graph portrays minority and female critical trades also for the baseline year (1978), 1994, and 1995. The critical trades listed are for 1995. A **Regionwide critical trade** is defined as a job category of 100 or more employees where underrepresentation of minorities and females exists in relation to their availability in the civilian labor force (CLF). Critical trades within each State would include all those job categories of 30 or more employees. Critical trades will vary for females and minorities as noted in each graph.

The occupational category titles are abbreviated as follows:

Off/Adm	-	Officials/Administrators
Prof	-	Professionals
Tech	-	Technicians
Prot Serv	-	Protective Service

- Para Prof - Para Professionals
- Adm Supp - Administrative Support
- Sk Craft - Skilled Craft
- Serv Maint - Service Maintenance

We have provided the attachments to the Region 6 States for their use in implementing their Affirmative Action Programs. Call us if you have any questions.

  
Humberto R. Martinez

Attachments

FHWA Region 6  
 Regionwide Net Changes in State Highway Agency Employment  
 1994 - 1995

Total employment increased from 29,287 to 29,423 or 0.5%. Minority employment increased from 7,783 to 8,110 or 4.2%. Female employment increased from 5,689 to 5,933 or 4.3%. Minority percentage representation increased from 27% to 28%. Female percentage representation increased from 19% to 20%. Net changes by occupational categories were as follows:

	TOTAL EMPLOYMENT			MINORITY EMPLOYMENT		
	1994	1995	Change	1994	1995	Change
Officials/Administrators	668	755	+ 87 or 13.0%	176	207	+ 31 or 17.6%
Professionals	5856	6094	+238 or 4.1%	1164	1289	+125 or 10.7%
Technicians	6774	6708	- 66 or 1.0%	1484	1537	+ 53 or 3.6%
Protective Service	450	422	- 28 or 6.2%	74	64	- 10 or 13.5%
Para Professionals	855	875	+ 20 or 2.3%	166	191	+ 25 or 15.1%
Administrative Support	2116	2047	- 69 or 3.3%	592	599	+ 7 or 1.2%
Skilled Craft	9802	9876	+ 74 or 0.8%	3318	3422	+104 or 3.1%
Service Maintenance	2766	2646	-120 or 4.3%	809	801	- 8 or 1.0%
<b>Total</b>	<b>29287</b>	<b>29423</b>	<b>+136 or 0.5%</b>	<b>7783</b>	<b>8110</b>	<b>+327 or 4.2%</b>

Minority Underrepresentation

Minority availability in the Region 6 civilian labor force is 26.6%. The following categories fall below that percentage.

Professionals	21%
Technicians	23%
Protective Service	15%
Para Professionals	22%

	TOTAL EMPLOYMENT			FEMALE EMPLOYMENT		
	1994	1995	Change	1994	1995	Change
Officials/Administrators	668	755	+ 87 or 13.0%	99	120	+ 21 or 21.2%
Professionals	5856	6094	+238 or 4.1%	1800	1951	+151 or 8.4%
Technicians	6774	6708	- 66 or 1.0%	891	902	+ 11 or 1.2%
Protective Service	450	422	- 28 or 6.2%	78	72	- 6 or 7.7%
Para Professionals	855	875	+ 20 or 2.3%	533	556	+ 23 or 4.3%
Administrative Support	2116	2047	- 69 or 3.3%	1719	1666	- 53 or 3.1%
Skilled Craft	9802	9876	+ 74 or 0.8%	221	261	+ 40 or 18.1%
Service Maintenance	2766	2646	-120 or 4.3%	348	405	+ 57 or 16.4%
<b>Total</b>	<b>29287</b>	<b>29423</b>	<b>+136 or 0.5%</b>	<b>5689</b>	<b>5933</b>	<b>+244 or 4.3%</b>

Female Underrepresentation

Female availability in the Region 6 civilian labor force is 41.3%. The following categories fall below that percentage.

Officials/Administrators	16%
Professionals	32%
Technicians	13%
Protective Service	17%
Skilled Craft	3%
Service Maintenance	15%
<b>Total</b>	<b>20%</b>

Texas Department of Transportation  
 Net Changes in Employment  
 1994 - 1995

Total employment increased from 14,409 to 14,742 or 2.3%. Minority employment increased from 3,899 to 4,160 or 6.7%. Female employment increased from 3,075 to 3,244 or 5.5%. Minority percentage representation increased from 27% to 28%. Female percentage representation increased from 21% to 22%. Net changes by occupational categories were as follows:

	TOTAL EMPLOYMENT			MINORITY EMPLOYMENT		
	1994	1995	Change	1994	1995	Change
Officials/Administrators	256	282	+ 26 or 10.2%	38	41	+ 3 or 7.9%
Professionals	3724	3954	+230 or 6.2%	752	859	+107 or 14.2%
Technicians	3115	3139	+ 24 or 0.8%	714	768	+ 54 or 7.6%
Protective Service	12	11	- 1 or 8.3%	6	7	+ 1 or 16.7%
Para Professionals	612	633	+ 21 or 3.4%	130	154	+ 24 or 18.5%
Administrative Support	816	789	- 27 or 3.3%	249	267	+ 18 or 7.2%
Skilled Craft	5368	5478	+110 or 2.0%	1780	1848	+ 68 or 3.8%
Service Maintenance	506	456	- 50 or 9.9%	230	216	- 14 or 6.1%
<b>Total</b>	<b>14409</b>	<b>14742</b>	<b>+333 or 2.3%</b>	<b>3899</b>	<b>4160</b>	<b>+261 or 6.7%</b>

Minority Underrepresentation

Minority availability in the Texas civilian labor force is 29.7%. The following categories fall below that percentage.

Officials/Administrators	15%
Professionals	22%
Technicians	24%
Para Professionals	24%
<b>Total</b>	<b>28%</b>

	TOTAL EMPLOYMENT			FEMALE EMPLOYMENT		
	1994	1995	Change	1994	1995	Change
Officials/Administrators	256	282	+ 26 or 10.2%	35	40	+ 5 or 14.3%
Professionals	3724	3954	+230 or 6.2%	1304	1425	+121 or 9.3%
Technicians	3115	3139	+ 24 or 0.8%	447	469	+ 22 or 4.9%
Protective Service	12	11	- 1 or 8.3%	1	1	No Change
Para Professionals	612	633	+ 21 or 3.4%	493	513	+ 20 or 4.1%
Administrative Support	816	789	- 27 or 3.3%	675	649	- 26 or 3.9%
Skilled Craft	5368	5478	+110 or 2.0%	88	108	+ 20 or 22.7%
Service Maintenance	506	456	- 50 or 9.9%	32	39	+ 7 or 21.9%
<b>Total</b>	<b>14409</b>	<b>14742</b>	<b>+333 or 2.3%</b>	<b>3075</b>	<b>3244</b>	<b>+169 or 5.5%</b>

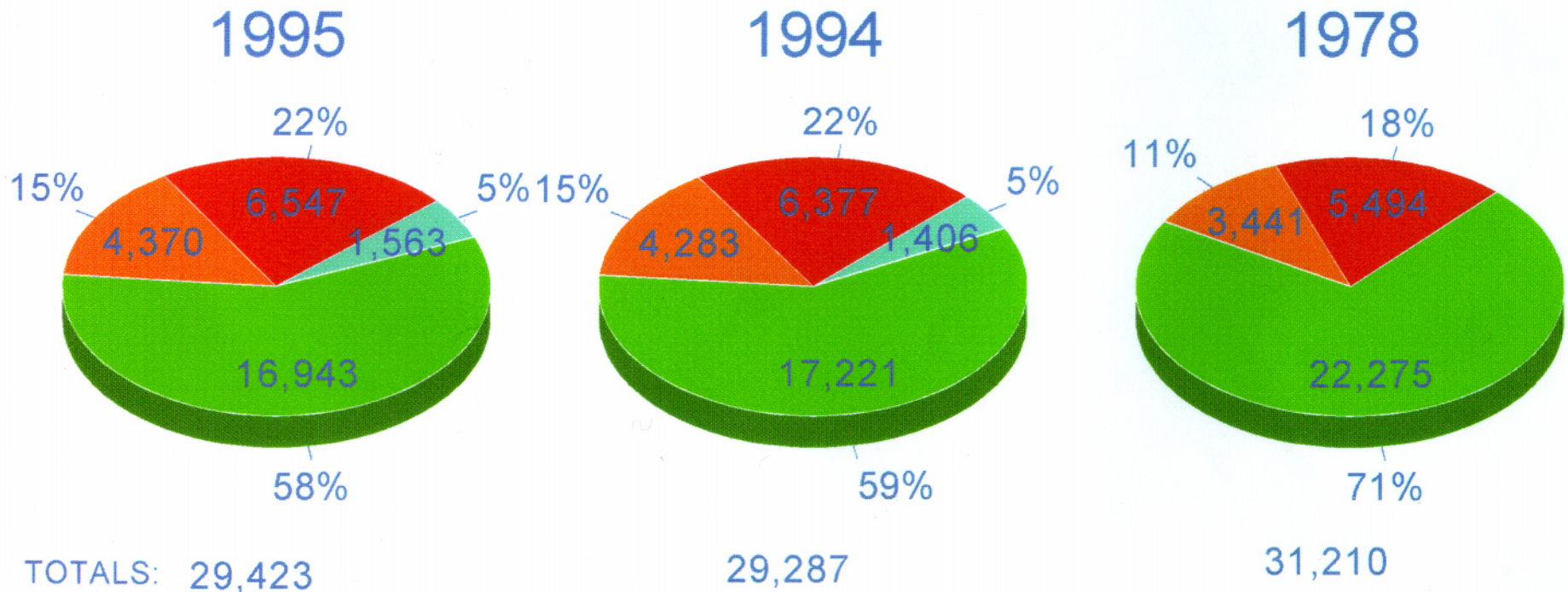
Female Underrepresentation

Female availability in the Texas civilian labor force is 41.4%. The following categories fall below that percentage.

Officials/Administrators	14%
Professionals	36%
Technicians	15%
Skilled Craft	2%
Service Maintenance	9%
<b>Total</b>	<b>22%</b>

# REGION 6 STATE EMPLOYMENT

## MINORITY & FEMALE TRENDS

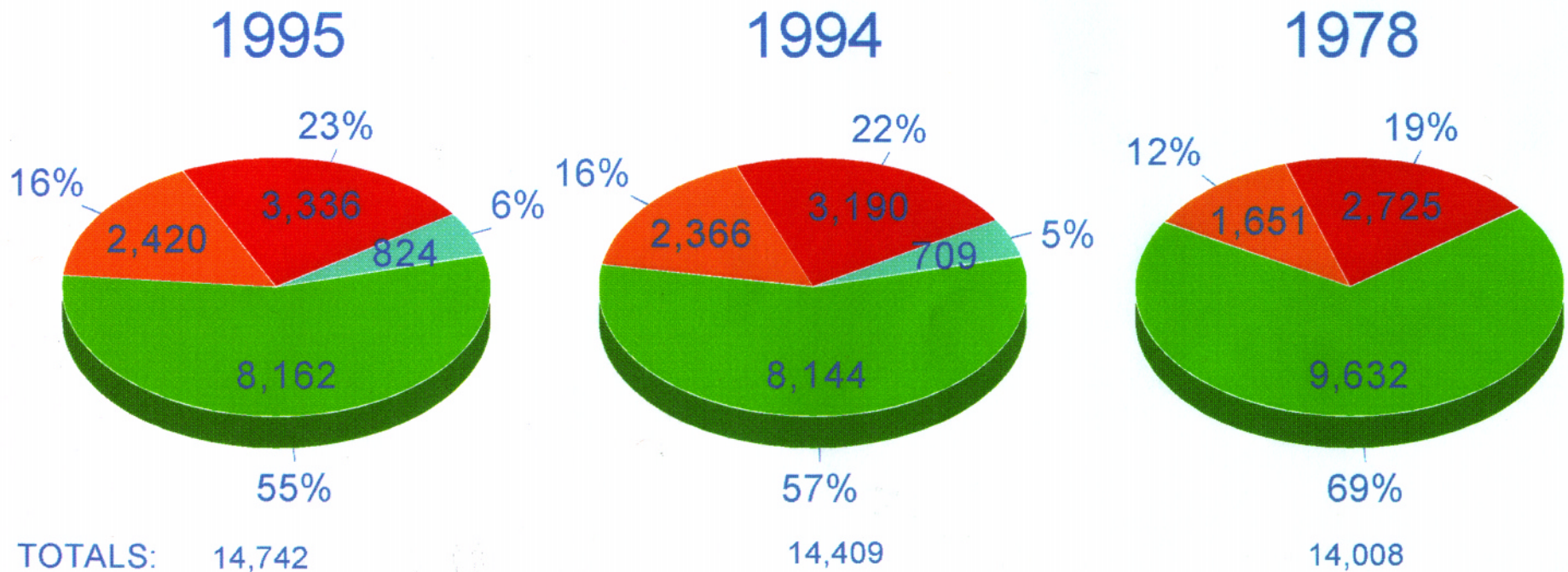
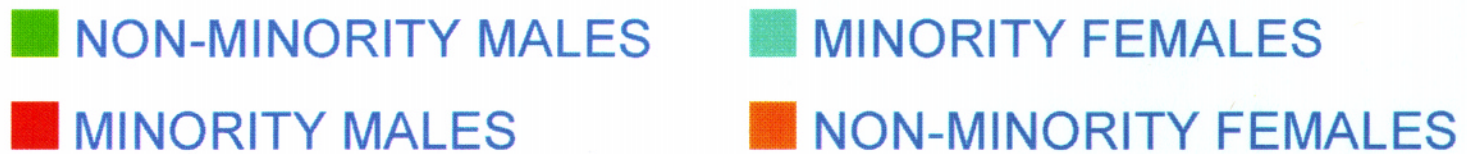


1978-NO GENDER BREAKDOWN AVAILABLE



# TEXAS STATE EMPLOYMENT

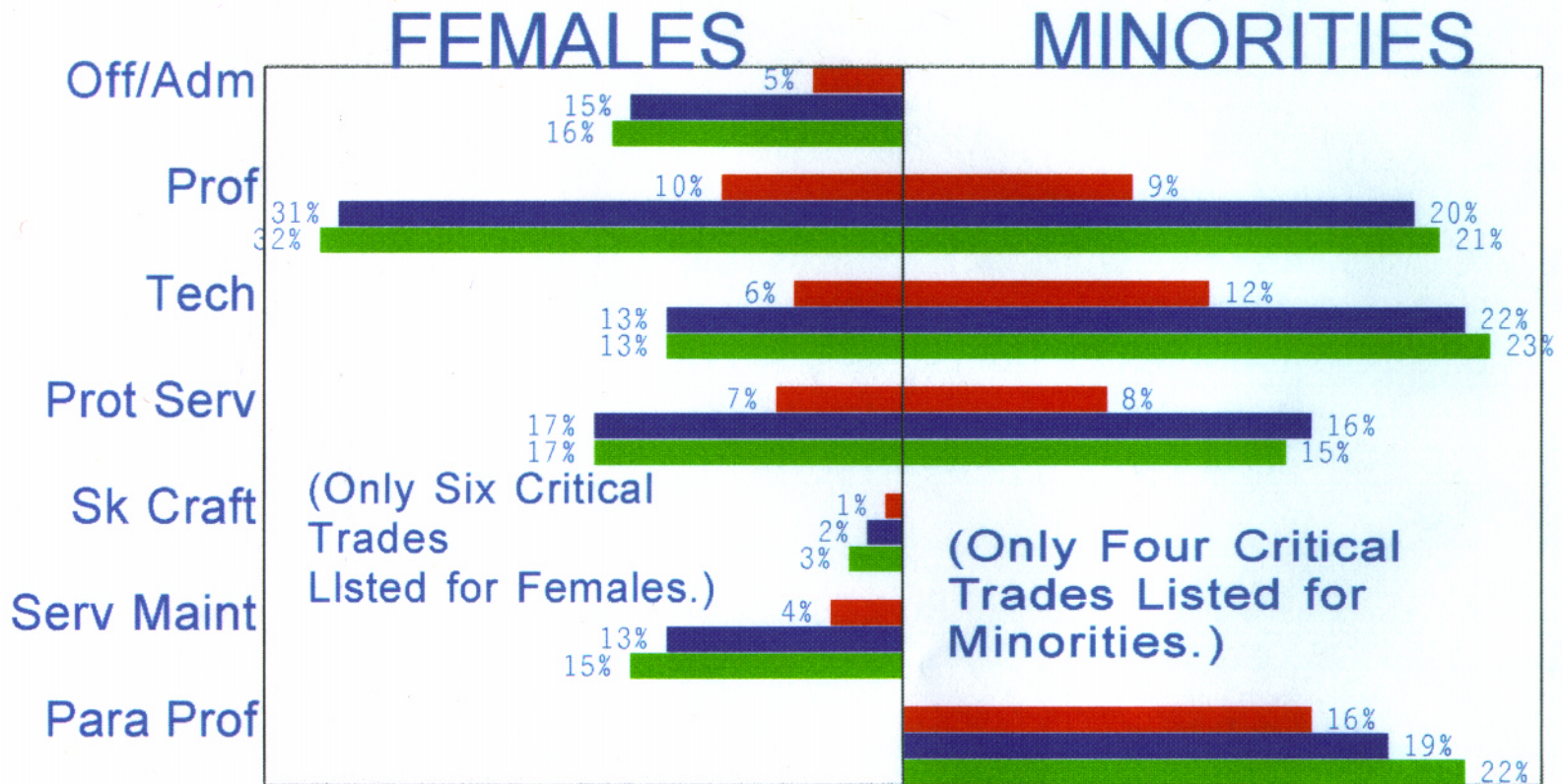
## MINORITY & FEMALE TRENDS



1978-NO GENDER BREAKDOWN AVAILABLE

# REGION 6 STATE EMPLOYMENT

## MINORITY & FEMALE CRITICAL TRADES



Critical Trades Listed are for 1995.

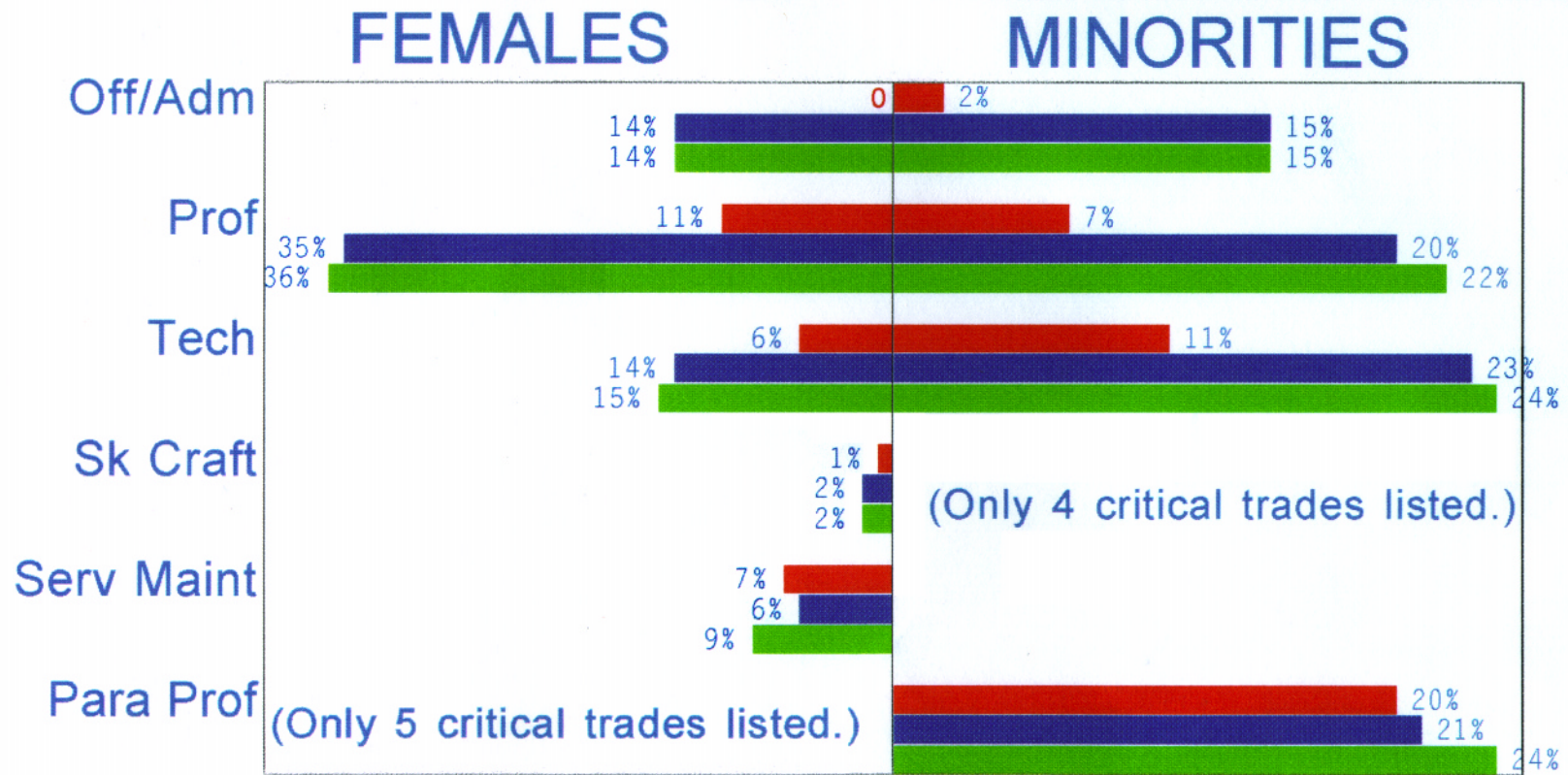


CLF: MINORITY 26.6% FEMALE 41.3%



# TEXAS STATE EMPLOYMENT

## MINORITY & FEMALE CRITICAL TRADES



Critical trades listed are for 1995.

1978 1994 1995

CLF: MINORITY 29.7% FEMALE 41.4%

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 23**

**Correspondence From Texas Division To TxDOT**

1994 Contract Compliance Review Reports

December 13, 1994

HCR-TX

Ms. Cassie Carlson Reed  
Deputy Executive Director, Administrative Services  
Texas Department of Transportation  
Austin, Texas 78701

Dear Ms. Reed:

We have completed our review of subject reports and find that we cannot concur in the determinations made by your staff that the contractors are in compliance with the EEO provisions of the contracts. The reasons for our nonconurrence are set forth below. Our comments address each project separately and each contractor/subcontractor that participated in the review. An enclosure to this letter is a discussion of the statutes and regulations that pertain to the deficiencies cited.

**PROJECT BR 92(37), NUECES COUNTY**

**o F & E Erection Company, Prime Contractor**

The contractor's workforce does not meet the requirements of Executive Order 11246 regarding the employment of women and minorities. Since the contract was only 29% complete at the time of the review, the contractor should have been required to provide a voluntary corrective action plan (VCAP), setting forth plans to recruit and hire women and minorities. In addition, the contractor should have been required to provide TxDOT with a PR-1391 for the duration of the contract period.

The contractor's employment application provides for the collection of consumer credit information, the results of which may be used as a condition of employment. Unless the contractor is able to show that the information is a valid job-related requirement, the application should be revised to eliminate this section.

**o Asphalt Paving & Construction Co., Subcontractor**

The contractor's workforce does not meet the requirements of Executive Order 11246 regarding the employment of minorities and women. Since the contract was only 29% complete at the time of the review, the contractor should have been required to provide a voluntary corrective action plan (VCAP), setting forth plans to recruit and hire women and minorities. In addition, the contractor should have been required to provide TxDOT with a PR-1391 for the duration of the contract period.

**NH 93(72)M, BRAZORIA COUNTY**

**o Brown & Root, Inc., Prime Contractor**

The review was conducted approximately four months after the peak period; the contract was 56% complete.

Female representation was 2.3% rather than 7% at the time of the review. Women were 57.6% of job applicants, 0% of hires.

Blacks were 14.8% of job applicants, 10.5% of hires.  
How does this compare to their representation in the area population?

Hispanics were 32% of job applicants, 73.7% of hires.  
When compared to the application and hire rates of Blacks and women, the rate of hire is significantly disproportionate.

Contractor should have been required to provide a voluntary corrective action plan (VCAP), setting forth plans to hire women. In addition, the contractor should have been required to provide TxDOT with a PR-1391 for the duration of the contract period.

**o Vernor Material & Equipment Company, Subcontractor**

The review was conducted after the peak activity period; the contract was 99% complete.

The reviewer used company-wide employment analysis to determine the contractor's compliance with hiring goals for minorities and women on this project.

The reviewer indicated that the requirement for the FHWA-1273 did not apply, without any explanation of the determination.

Although the contractor provided a VCAP, the plan is meaningless for performance on this contract.

**NH 93(95)M, ANDERSON COUNTY**

**o Concho Construction, Prime Contractor**

Contractor's recruitment efforts did not yield applications from Blacks and women.

Although the contractor's workforce is 62.5% Hispanic, 60% are employed in unskilled/semi-skilled occupations.

Since the project was only 40.9% complete at the time of the review, and the contractor had no female employees, the contractor

should have been required to submit a VCAP, indicating plans to recruit/hire women, and provide a PR-1391 monthly for the duration of the project.

o **A. H. Beck Company, Subcontractor**

Since this contract was only 45% complete at the time of the review and the contractor had no women employees, nor had recruitment efforts yielded any women applicants for employment, the contractor should have been required to submit a VCAP, indicating plans to recruit/hire women, with a further requirement of a PR-1391 monthly submission for the duration of the project.

The reviewer indicated that the FHWA-1273 was not applicable to this contract, yet gave no acceptable explanation for that determination.

o **Southern States Equipment Corporation, Subcontractor**

The reviewer indicated that the FHWA-1273 was not applicable to this contract, yet gave no acceptable explanation for that determination.

**STP 93(155)RM, BRAZOS COUNTY**

o **Glenn Fuqua & Glenn-Wade, Joint-Venture, Prime Contractor**

Although the contractor asserts that "low workload/low turnover" limits hiring opportunities and recruitment efforts, there were 23 hires from 29 applications during the six months preceding the review.

Contractor's recruitment efforts yielded no female applicants; contractor had no female employees.

Applicant pool consisted of 20.1% Blacks--resulted in 17.4% of the hires; 17.2% Hispanic--resulted in 34.8% of the hires.

Although the contractor was required to submit a VCAP, there is no requirement for the PR-1391 submission. The contract was 36% complete at the time of the review.

Contractor explained the collection of date of birth (DOB) data as a requirement for insurance purposes. The contractor may collect DOB data after the individual has been hired, but this information should not be collected as part of the application for employment.

o **J. W. Paving, Subcontractor**

The review was conducted at a time when the contract was 0% complete--too early to assess the contractor's hiring practices. Assessment was made based on company-wide employment, rather than on a project specific workforce.

The EEO goals are intended for the employment of women in construction trades. The one female considered by the reviewer is the owner of the company.

The contractor has no women employees, and is not in compliance with the hiring goals for minorities.

Since significant work had not begun on this contract, the contractor should have been required to submit a VCAP, setting forth plans to recruit/hire minorities and women in sufficient numbers to satisfy the EEO goals assigned to this contract. Contractor should have been required to submit a PR-1391 monthly for the duration of the project.

**BH 93(389)O, NUECES COUNTY**

o **Boh Brothers Construction, Prime Contractor**

Separate policy statements regarding discrimination on the bases of religion/national origin and sex (gender) are not requirements of EO 11246 and are inappropriate.

Separate policy statements regarding sex discrimination contains language that potentially violates the Age Discrimination in Employment Act (ADEA); i.e., "upon reaching a certain age" and "mandatory or optional retirement age".

Policy statement regarding sex discrimination contains language that conflicts with affirmative action guidelines, and provides for the consideration of gender as a bona fide occupational qualification (BFOQ).

Language also potentially violates provisions of the Family and Medical Leave Act of 1993.

In the Employment Data section of the report, the compliance specialist refers to white women as "minorities". Although white females are members of a specific EEO group, they are not minorities as defined by Congress in the 1964 Civil Rights Act. It is therefore inappropriate to consider the employment of white women as satisfying minority hiring goals.



o **Koontz Electric Company, Inc., Subcontractor**

Review was conducted 8 months prior to the firm's projected peak activity period (contract was 5% complete at the time of the review).

The report indicates that the firm is based in Morrilton, Arizona, yet hires through the Arkansas State Employment Security Division for work to be performed in South Texas.

Although the report indicates that the contractor lists a specific woman-owned employment agency as its recruiting source, there were no female applicants for jobs to be filled.

This review should have been delayed until the contractor was closer to the projected peak activity period when a more meaningful assessment could be made; or a VCAP should have been prepared with a commitment to provide a PR-1391 monthly for the duration of the contract.

Since the review is project specific, it is inappropriate to include the contractor's overall workforce in the comparison data.

**IR 35-3(163)198, HAYS COUNTY**

o **Roadway Specialties, Inc., Subcontractor**

There is no explanation for the reviewer's determination that the FHWA-1273 requirement does not apply.

o **Schmidt Construction Co, Inc., Subcontractor**

The review was conducted 13 months after the peak activity period when the contract was 76% complete. The VCAP requirement appears to be pro forma.

There is no explanation for the reviewer's determination that the FHWA-1273 requirement does not apply.

**BH 93(9), JEFFERSON COUNTY**

o **Midwest Foundation Corporation, Prime Contractor**

The contract was 57% complete at the time of review. The contractor's explanation that he/she relied on an out-of-state labor union for referrals does not relieve the contractor of its responsibility to meet the hiring goals for minorities and women. Since a VCAP was submitted, and it appears that there is sufficient time left on the contract to allow for recruiting and hiring women,

the determination should be delayed until the contract is nearer completion, and the contractor has had an opportunity to demonstrate whether there were opportunities to hire and the results of those opportunities.

o **J. L. Steel, Subcontractor**

This project is located in a geographic area with a significant African-American population; yet there were no women or African-Americans employed by the contractor at the time of the review.

The report indicates that the contractor uses recruiting sources based in Dallas and Austin to fill jobs on a project located in Jefferson County.

Since the contract was only 30% complete at the time of the review, the contractor should have been required to submit a VCAP, setting forth plans to recruit/hire women and providing a monthly PR-1391 for the duration of the contract.

The use of company-wide data to determine compliance is inappropriate for a project-specific review.

**STP 93(157)MM, HARRIS COUNTY**

o **Beyer Construction, Inc., Prime Contractor**

Reviewer's determination that "minorities and women are well represented in all job categories" is inaccurate.

The report indicates that although the contractor's workforce is 96% minority (Hispanic), 85% are concentrated in the semi-skilled/unskilled laborer categories.

Although the project is located in a geographic area with a significant African-American population, the contractor employs none, and there is no evidence in the record that the contractor seeks to recruit African-American applicants.

The female trainees are not enrolled in training for skilled crafts.

The contractor should have been required to submit a VCAP, setting forth plans to recruit/hire women and African-Americans and to submit a PR-1391 monthly for the duration of the project.

o **Houston Curb Co., Inc., Subcontractor**

Review was conducted four months after the peak activity period. The contract was 75% complete.

Contractor's recruitment statements do not indicate that the

contractor is seeking minority and women applicants.

Contractor should have been required to submit a PR-1391 monthly for the duration of the contract.

There is no explanation for the reviewer's determination that the FHWA-1273 requirement did not apply.

o **Spivey Construction, Inc., Subcontractor**

The contract was 90% complete at the time of the review.

The "VCAP" is merely a reiteration of the deficiencies cited by TxDOT.

In a geographic area with a significant African-American population, the contractor had no African-American employees.

Contractor had no women employed in the trades.

The recruitment sources offered by the contractor (professional women's organizations) are not likely to yield applications from females seeking work in construction trades.

There is no explanation for the reviewer's determination that the FHWA-1273 requirement did not apply.

o **Lee Marion, Inc., Subcontractor**

The project was 65% complete at the time of the review. Although the contractor submitted a VCAP, it is perfunctory, as there is little potential for meaningful employment opportunities.

There is no explanation for the reviewer's determination that the FHWA-1273 requirement did not apply.

**MAUNH 92(101)M, WASHINGTON COUNTY**

o **Young Contractors, Inc., Prime Contractor**

Reviewer used company-wide data to determine compliance on this federal-aid project. Since the project was only 46% complete at the time of the review, a VCAP should have been required, including the submission of a monthly PR-1391.

There is no evidence that the contractor has a vigorous recruiting program for minorities and women.

Report shows that the contractor has 6.25% representation of women in the workforce; however, the project employment data form shows no female employees.

o **Fuqua Construction, Inc., Subcontractor**

Although project was only 45% complete and contractor had no female employees, contractor was not required to submit a VCAP.

The record indicates that the contractor does not actively recruit female workers.

Reviewer does not indicate whether the contractor's assertion that "unemployment is low in Bryan-College Station" was verified.

Contractor's explanation that he relies on others to refer workers is not an acceptable explanation for failure to meet the hiring goals assigned to the contract.

**STP 93(221)MM, BRAZORIA COUNTY**

o **Hassell Construction Co, Inc., Prime Contractor**

93.6% of the workforce is minority; 81.0% of the minority workers are classified as unskilled.

85% of the workforce is Hispanic; 73% of these workers are classified as unskilled.

Contractor has no female workers; recruiting efforts did not yield female applicants.

The solicitation of consumer credit information as a part of the application process needs to be justified as being job-related.

The contractor also has a 75 pound lifting requirement on all job advertisements. This requirement needs to be validated as a bona fide occupational qualification.

o **Forde Construction Co., Inc., Subcontractor**

Review was conducted after peak activity period; the contract was 50% complete.

There was no on-site review to verify information submitted.

There was no explanation for the reviewer's determination that the FHWA-1273 requirement did not apply.

o **Breda Company, Inc., Subcontractor**

Contractor's hiring practices, despite a vigorous recruiting program that was initiated as a result of an OFCCP finding of noncompliance, appear to exclude women and African-Americans.

The VCAP appears to be perfunctory and language implies that the contractor is being forced to commit to hiring unqualified individuals.

There is no explanation of the reviewer's determination that the FHWA-1273 requirement does not apply to this contractor.

o **Traffic Maintenance and Construction, Subcontractor**

There is no explanation of the reviewer's determination that the FHWA-1273 requirement does not apply to this contractor.

o **Coastal Concrete Corporation, Subcontractor**

Review was conducted before any significant work was in progress (0% complete).

This appears to be a five-month contract, and as such would provide limited employment opportunities.

There is no explanation of the reviewer's determination that the FHWA-1273 requirement does not apply to this contractor.

o **Pate and Pate Enterprises, Subcontractor**

Review was conducted after the peak activity period; the contract was 75% complete.

Contractor employs a 100% minority workforce; however, 67% of these workers are classified as unskilled laborers.

Since this program area has been transferred to the Construction and Maintenance Division, we have met with the individuals with program responsibility, and agreed to provide training on the contract compliance review process. We are discussing the training scheduling and anticipate it taking place in early January 1995.

If we may be of assistance as you consider the reports discussed in this letter, please let us know.

Sincerely,

LaJuana C. Glaze  
Equal Opportunity Specialist

Enclosure

cc: Victor Garcia, TxDOT/CMD (bcc: HCR-06) File: CR-4.8

**PROJECT-SPECIFIC CONTRACT COMPLIANCE REVIEWS**

**DISCUSSION OF STATUTORY & REGULATORY REQUIREMENTS**

**FHWA Form 1273 Requirement**

On a number of projects the Compliance Specialist indicated that the requirements of FHWA Form 1273 did not apply as the contractor either had open-ended purchase orders or purchased indefinite quantities. OFCCP's regulation, promulgated pursuant to Executive Order 11246 provides:

Sec. 60-1.5(a)(1). Transactions of \$10,000 or under.....No agency, contractor, or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: Provided, that where a contractor has contracts or subcontracts in a 12-month period...**which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding \$10,000, the \$10,000 or under exemption does not apply, and the contracts are subject to the order and regulations issued pursuant thereto regardless of whether any single contract exceeds \$10,000.**

Sec. 60-1.5(a)(2): Contracts and subcontracts for indefinite quantities. With respect to contracts and subcontracts for indefinite quantities (including, but limited to open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included **unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed \$10,000.....Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.**

**VOLUNTARY CORRECTIVE ACTION PLANS (VCAP)**

In most cases, where the contractor's workforce is deficient in minority and/or women employees, the Compliance Specialist has accepted a rather perfunctory explanation for the deficiencies; in several cases no voluntary corrective action plan (VCAP) has been required. In those cases where the contractor submitted a VCAP, the substance of the plan is pro forma, and merely a reiteration of the regulatory and/or contractual requirements without any degree of specificity.

Sec. 60-1.20(b): Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. **Before the contractor can be found in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion.**

#### **MINORITY EMPLOYMENT GOALS**

In previous years we have discussed the Department's failure to consider the representation of all minority groups in the contractor's workforce. The Department has questioned our requirement that all groups should be considered when the contractor has met the aggregate goal for minority employment on the project.

In regard to the requirement that all minority groups should be provided equal employment opportunity, we are providing relevant language from Executive Order 11246 and 23 CFR 230.

#### **Sec. 60-4.3. Equal Opportunity Clauses.**

#### **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

Paragraph 9: A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.)

23 CFR 230.409(e)(6): The Compliance Specialist shall determine, and the report shall indicate the following:

- (i) Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?
- (ii) What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

- (iii) Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?
- (iv) Is there impartiality in treatment of minorities and women?
- (v) Are affirmative action measures of an isolated nature or are they continuing?
- (vi) Have the contractor's efforts produced results?

In determining compliance, the Compliance Specialist should consider the demographics of the geographic area in which the project is located as well as the geographic area from which the contractor recruits employees; i.e., reasonable recruitment area. Although several projects are located in areas where there is a significant representation of African-Americans in the population (Harris County, Chambers County, Brazoria County, Brazos County), in most cases little or no consideration was given to the absence of this minority group in the contractor's workforce.

#### CONTRACTORS' USE OF UNIONS AS RECRUITMENT SOURCES

In some reports, the reviewer indicated that the contractors' failure to hire women and minorities was due to a union's or employment agency's failure to refer them. Paragraph 5 of the contract EEO Special Provision applies:

"Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto."

In addition, 23 CFR 230.411(e)(iii) prescribes:

"Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligation, these contractors must be found in noncompliance."



## PROJECT SELECTION & REVIEW SCHEDULE

A number of the projects selected for review appear to have little or no potential for the contractor to augment an existing workforce for the purpose of employing women and/or minorities due to either contract size or contract duration. Five of the projects ranged in size from \$15,443 to \$79,460; the term of one contract was five months. 23 CFR 230.409 prescribes as follows:

- o Projects selected for review should hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations). Several projects were 90 percent complete at the time of review, leaving little potential of the employment of minorities and women in meaningful work.

Several projects were reviewed at a time when either the prime contractor(s) or subcontractor(s) had passed the peak employment period. Others were reviewed before substantial work had begun on the project and there was no provision to collect PR 1391 data or schedule another on-site visit during the peak employment period. 23 CFR 23.409(b)(6) prescribes that "reviews should be conducted prior to or during peak employment periods."

## WORKFORCE DATA TO BE CONSIDERED DURING PROJECT REVIEWS

Compliance reviews under 23 CFR 230 are contract specific. In determining compliance, reviews should be limited to consideration of the contractor's employees on the project being reviewed and should not extend to the contractor's employment activity on other projects, unless special circumstances support a company-wide or area-wide review.

On several projects where the Compliance Specialist found that the contractor did not have a representative number of minorities and/or women in the workforce, the Compliance Specialist indicated that consideration was given the Contractor's workforce on other projects. This is not acceptable.

EEO Contract Compliance Review Report:  
Project STP 92(97)RM, Montgomery County  
Gulf Coast Asphalt & Paving, Subcontractor

December 21, 1994

HCR-TX

Ms. Cassie Carlson Reed  
Deputy Executive Director, Administrative Services  
Texas Department of Transportation  
Austin, Texas 78701

Dear Ms. Reed:

We have completed our review of subject report and find that we cannot concur in the Department's determination that the contractor is in compliance with the requirements of Executive Order 11246 and our regulation 23 CFR 230 regarding the employment of minorities and women on federally-assisted highway construction contracts. The reasons for our nonconcurrence are set forth below.

- o Although the project is located in a geographic area with a significant African-American population, the contractor employed no African-Americans.
- o The contractor employed no women.
- o The report shows that 25% of the applicants for employment were female; another 25% were African-American. Contractor's hires were all Hispanic males.

The Federal Highway Administration participated in the on-site review of this contractor in October 1993. During the review the contractor expressed opinions regarding the employability of African-Americans and women that were not in the spirit of Title VII, 1964 Civil Rights Act, as amended, or Executive Order 11246:

"Women can't do the work."

"Blacks and Hispanics cannot work together. I hired a Black one time and the Hispanics refused to work, so I had to let him go."

In regard to the ability of women to perform the work of this subcontract, we were informed by the prime contractor that the requirements for asphalt lay-down should not preclude the employment of women.

The contractor had nine months from the date of the on-site review to make a good faith effort to comply with the EEO special provisions of the contract. The on-site review was conducted in October 1993; the report was prepared in June 1994. The contractor stated in the report that she persuaded her daughter to quit her job at a restaurant and go to work for her in order to satisfy the requirement for hiring women. There is no information regarding what position the daughter held nor the length of time she was employed on the project.

Prior to issuing a show-cause notice to this contractor, we recommend that the Department identify other federal-aid highway construction projects on which the contractor holds subcontracts and conduct EEO compliance reviews of those projects. The purpose of the reviews would be to determine whether the employment situation on subject project is an exception to the contractor's usual employment practices as they pertain to the recruiting and hiring of minorities and women. If it is determined that the contractor routinely make goods faith efforts to recruit and hire minorities and women, the show-cause notice for subject project will not be necessary. Although the contractor may satisfy the OFCCP's aggregate goal for employment of minorities, the contractor may be in violation of Executive Order 11246 if a particular group of minorities or women is employed in a substantially disparate manner.

If the reviews reveal that the contractor is not making good faith efforts to recruit and hire minorities, the Department should proceed with the issuance of a show-cause notice in compliance with 23 CFR 230.409(h).

We ask that you provide the results of the reviews on or before February 28, 1995.

Sincerely,

LaJuana C. Glaze  
Equal Opportunity Specialist

cc:  
Victor Garcia, TxDOT/CMD  
Labor Compliance Section

**CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE PROGRAMS REFERENCE MANUAL**

**Tab 24**

**Handouts**

**CONTRACTOR EEO COMPLIANCE PROGRAM**  
**Handout 2-1**  
**Required Contract Provisions -- Consultant Contracts**

The question has been raised with respect to the applicability and incorporation of Federal EEO and DBE contract provisions to engineering and design related service contracts financed with Federal-aid highway funds. The specific case in question concerns the State's contracting with a firm to provide engineering and management services throughout the development (design and construction) of a multiple number of highway improvement projects in a geographical area of the State. The contract provisions referenced concern those clauses found in highway construction contract requirements under Title 23, Title 41 or other related Federal laws and regulations.

In accordance with Title 23 CFR part 172 engineering and design services are defined as inclusive of program management, construction management, preliminary engineering, design, engineering, surveying, mapping or architectural related services. The applicability of the DBE program and its contract provisions is covered by Title 23 CFR Part 172.7 in which the contracting agency shall give consideration to DBE firms in the procurement of such services.

The Executive Order 11246 directs the DOL to adopt such rules and regulations necessary and appropriate to achieve the purposes of such Order in ensure nondiscrimination in employment by government contractors and subcontractors. Under Part III Section 301 each agency which administers a program involving Federal financial assistance shall require as a condition of approval of any program which may involve a construction contract, such applicant for these Federal funds to incorporate or cause to be incorporated into all construction contracts the provisions prescribed for government contracts under Section 202 of said Order.

The DOL, OFCCP's regulation under Title 41 CFR 60 promulgated to implement this Order for promoting and insuring equal opportunity specifies under Part 60-1.1 that such provisions applies to all agencies of the government administering programs involving Federal financial assistance which may include a construction contract, and to all contractors and subcontractors performing under construction contracts which are related to any such programs. Under these same regulations there is a definition for construction. The definition includes "the supervision, inspection, and other on-site functions incidental to the actual construction." With respect to site of construction, the regulation covers construction work at which a contractor, subcontractor, "or other participating party" meets a demand or performs a function relating to the contractor or subcontract.

Title 23 U.S.C. Section 101 provides that the term "construction" means among other things the supervising, inspecting, actual construction, and all expenses incidental to the construction. The definition as applied to the Federal-aid highway program authorized under Title 23 U.S.C. having the same meaning as that specified by the E.O. and DOL's implementing regulations. In furtherance of this position, Section 140(a) sets forth that prior to approving any programs for projects, the State shall assure that employment in connection with the proposed projects will be prepared without regard to race, etc. This section also specifies that "the State shall include in the advertised specifications of the specific equal employment opportunity responsibilities of the successful bidder." The FHWA in its implementing regulations under Title 23 CFR Part 633.207 stipulates that the provisions of Title 23 U.S.C., Title VI of the 1964 Civil Rights Act, and the implementing regulations in 49 CFR 21 "thereof relative to employment shall be applicable to all types of contracts listed in Appendix A." The types of contracts listed include construction, planning, research, engineering, etc. In addition under Title 23 CFR Subpart D – Construction Contract Equal Opportunity Compliance Procedures and specifically Part 230.47, the term construction again "shall have the meanings set forth in 41 CFR 60-1.3 and 23 U.S.C. 101(a). References in both definitions to expenses or functions incidental to construction shall include preliminary engineering or engineering services performed by or for a SHA."

Therefore, it is the position of FHWA that by inference, definition and association there is sufficient grounds to require SHAs in incorporate the standard equal opportunity contract provisions such as those contained in FHWA 1273 into all contracts let by SHAs for the delivery of preliminary engineering and services and all other services incidental to construction.

**CONTRACT EEO COMPLIANCE**  
**Handout 2-2**  
**Contract Compliance Review Report Checklist**

Under 23 CFR 230 and 23 USC 140, State Transportation Agencies (STA) are required to conduct contract compliance reviews of contractors to ensure compliance with the Equal Employment Opportunity contract provisions. To ensure compliance by STAs contract compliance review reports may be reviewed and approved by the Division Office or at the Division Administrator's discretion handled under a process review approach.

In reviewing the report the Division Office should determine:

- \_\_\_ Is the report complete and accurate (All items on the review report form must be completed, workforce calculation correct and signed by the reviewer)?
- \_\_\_ Does the report include workforce data by number of employees, and/or number of work hours?
- \_\_\_ Does the report clearly identify the reporting period for the workforce data?
- \_\_\_ Does the report include specific information on new hires, terminations, and trainees for the reporting period?

Compliance Determinations

- A. If the finding of the review report indicates that the contractor is in compliance, the following areas need to be reviewed:
- \_\_\_ Did the contractor have an adequate representation of minorities and females in each construction trade in relation to their availability in the relevant labor pool?
  - \_\_\_ If underrepresentation exists, review the good faith efforts exerted by the contractor. Good faith efforts are all those intense, aggressive, sincere, and result oriented actions taken by the contractor designed to meet the minority/female utilization goals required under the contract. Examples of good faith efforts include, but are not limited to:
    1. Actions to Ensure Nondiscrimination in Employment Opportunities
      - o Issue company's Equal Employment Opportunity (EEO) Policy.
      - o Implement company's Affirmative Action Plan.
      - o Develop and disseminate discrimination complaint procedure.
      - o Show evidence of holding managers and supervisors accountable.

- o Have frequent EEO meetings with employees and trainees as standard operating procedure.
- o Provide EEO related training to field superintendents.

2. Actions Taken to Recruit Minorities and Women

- o Establish relationship with specific result oriented recruitment sources such as:
  1. Minority and Women Employment and Training Programs.
  2. Trades women groups.
  3. Organizations receiving funds through the Job Training Partnership Act (Private Industry Councils).
  4. Government service agencies (e.g., job service, public welfare/social service offices).
  5. Community colleges/vocational education schools.
  6. Job Corps Centers.
  7. YMCA's and YWCA's.
  8. Military bases.
  9. Armed Services transition centers.
  10. Correctional facilities.
  11. Displaced homemaker programs and Women's Centers.
  12. Churches/community groups, particularly those serving minorities and women groups.
- o Provide adequate information regarding wage rates, working conditions, tools and equipment, and available training and support efforts.
- o Produce and disseminate recruitment flyers aimed at minorities and women.



- o Contact the U. S. Department of Labor Women's Bureau office.
- o Provide transportation to and from job sites.
- o Encourage current employees to refer family members and friends.
- o Encourage female employees in clerical/administrative positions to consider a career in highway construction.

3. Actions Taken to Retain Minorities and Women

- o Provide dependent care information/services.
- o Acquisition/modification of tools and special equipment.
- o Provide copy of training program to trainees.
- o Provide opportunity for employee feedback.
- o Provide timely response to employee concerns/complaints.
- o Keep State Transportation Agency informed of potential problem areas.
- o Maintain a harassment-free work place.
- o Take steps to reduce the feeling of isolation among minorities and women to curb hostile attitudes and behavior (e.g., have several minorities and women at the job site, provide access to a support group/system).
- o Target minorities and women in the first wave of hires for a job.
- o Establish system to get urgent messages to workers on the job.
- o Design benefits package responsive to family needs.
- o Provide adequate and appropriate toilet facilities for women.

B. If the review report indicates a finding of noncompliance by the contractor, the following areas need to be reviewed:

\_\_\_ Are the workforce deficiencies clearly identified?

\_\_\_ Does the review report include the copy of the show cause notice? If not, what other corrective action was required?

\_\_\_ Is there a letter requiring a conciliation conference and a corrective action plan?

\_\_\_ The corrective action plan should be attached to the report and should include specific actions to be taken by the contractor with time frames.

\_\_\_ Does the documentation submitted with the review report indicate when a follow-up review will be conducted, or reports required from the contractor?

\_\_\_ The authority for making the compliance determination should have no reference to E.O. 11246 (Reference 23 USC 140 and 23 CFR 230).

**CONTRACT EEG COMPLIANCE**

**Handout 2-3**

**Memorandum Dated 6/18/98 from Edward W. Morris Jr.**

**Memorandum** Federal Highway Administration U.S. Department of Transportation 

Subject: **INFORMATION:** FHWA Form PR-1391

Date: June 18, 1998

From: Director, Office of Civil Rights

Reply to: HCR-20

To: Mr. William K. Fung  
Division Administrator (HDA-WI)  
Madison, Wisconsin

Recently, our office reviewed a proposal by the Wisconsin Department of Transportation (WisDOT) to establish a 1391 Company Wide Reporting Pilot Program. The proposal introduced an innovative concept in data collection that would reduce the amount of paperwork associated with the reporting of Federal-aid highway employment data. A copy of WisDOT's proposal is attached for your information. The objectives were to reduce the number of burden hours associated with the preparation of both PR-1391 and PR-1392 forms and respond to some concern with the potential duplication of workforce numbers by the current practice of contractors submitting a separate report for each covered contract and subcontract. Specifically, it was proposed that a contractor be allowed to submit one consolidated PR-1391 inclusive of all Federal aid projects.

While the proposal may be a deviation from the provisions of Title 23 Code of Federal Regulations, Part 230.121(a)(2), we believe the regulations provide sufficient latitude to allow the use of equal, if not better, alternative mechanisms for reporting a contractor's work force on board during all or any part of the last payroll period preceding the end of the month of July. We believe that Company Wide Reporting may be a more effective and efficient means of collecting Federal-aid highway employment data. It would seem important, however, that a contractor have sufficient documentation on file that would effectively show its work force on a project-by-project basis in support of the data submitted to the State in the consolidated PR-1391 report.

We have approved this proposal on a pilot basis. You may wish to share this information with your respective State Transportation Agencies (STAs) and, if upon review of this concept the STA expresses an interest in pursuing a similar approach, the region/division office may approve such a proposal on a pilot basis. If you have questions regarding this matter, please feel free to contact Mr Charles Klemstine or Ms. Aretha Carr (HCR-20) at (202) 366-2925.

(Original signed by  
Edward W. Morris, Jr.)

Attachment  
cc: Regional Offices

## **1391 COMPANY WIDE REPORTING PILOT**

### **INTRODUCTION**

The FHWA 1391 and 1392 Federal Aid Highway Construction Contractor's Annual EEO Report as it currently exists requires contractors (primes and subs) to report annually their employment on each Federal aid contract over \$10,000 during the last week worked in July. This data is to be compiled by the State and submitted to FHWA annually.

Currently each WisDOT District collects this data from contractors in their District. Because of the mobility of the contractor's workforce a contractor's employee could easily work on several different project in the reporting period and be counted numerous times and in several Districts. This results in inaccurate workforce representation data being reported to FHWA, and ultimately Congress. In addition, contractors were confused by the reporting period stated on the 1391.

### **OBJECTIVE**

Inaccuracy of data has been identified as the primary issue to be addressed by this Pilot. Our proposal is to collect the 1391 data for all employees on the contractor's payroll as of July 15, and on a company wide basis.

- 1) To accurately reflect each contractor's EEO profile;
- 2) Reduce project by project efforts, paperwork and costs, both to the contractor and to WisDOT;
- 3) Eliminate duplicate reporting of contractor's employees;
- 4) Build a statewide contractor's EEO profile database;
- 5) Maintaining a historical database would allow WisDOT to evaluate whether the contractor has achieved a balanced workforce per Executive Order 11246; and
- 6) Minimize contractor's confusion regarding the reporting period for the 1391.

### **IMPLEMENTATION**

Central Office will mail the 1391 to every contractor on the "All Contractor" list. Contractors will be asked to complete the data for all employees on the payroll as of July 15. Because we are asking for a company wide, rather than a contract specific profile, this date was chosen to help

clarify the reporting parameters. Contractors will be requested to return the form to one central location rather than nine locations throughout the State. The data will be compiled and entered on the 1392 to be submitted to FHWA by August 25.

### **PROGRAM EVALUATION**

This Pilot will be evaluated annually, necessary changes made and achievements identified.