

# **RESOURCE MANUAL**

## **Equal Opportunity Contract Compliance**



**Missouri Department of Transportation  
External Civil Rights  
Revised April 2011**

This Resource Manual is a guide to assist you on the requirements outlined in your Missouri Department of Transportation (MoDOT) federal-aid contracts. As a contractor, whether a prime or subcontractor, on a federal-aid project you are required to fulfill certain affirmative action requirements. Several authorities are applied to ensure non-discrimination and equal employment opportunity (EEO) on federal-aid projects. These authorities include the following laws, regulations and policies:

**Laws:**

- ❖ Title VI and VII of the Civil Rights Act of 1964
- ❖ Federal-Aid Highway Act of 1968 (23 USC 140, 324)
- ❖ Age Discrimination Act of 1975
- ❖ Civil Rights Restoration Act of 1987

**Regulations:**

- ❖ 23 CFR 200, 230, 635.117(d)(e)
- ❖ 49 CFR 21 and 26
- ❖ 41 CFR 60

**Contract Provisions:**

- ❖ FHWA 1273

**Policies:**

- ❖ FHWA Order 4710.8

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# **Definitions**

Affirmative Action (AA)- The efforts exerted towards achieving equal opportunity through positive, aggressive and continuous 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.

Affirmative Action Plan - A written statement by management asserting a total equal opportunity program. The plan must include the action steps for a contractor's organization, at all levels, to initiate and measure equal opportunity program progress and effectiveness. (The contract Special Provisions and area wide plans are Affirmative Action Plans.)

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

Commission - Missouri Highway and Transportation Commission

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

Compliance Review – An evaluation and determination of a non-exempt direct or federal-aid contractors or subcontractor's compliance with equal opportunity requirements.

Consolidated Compliance Review - A review and evaluation of all significant construction employment in a specific geographical area.

Corrective Action Plan (CAP) - A mandatory written and signed commitment, outlining specific actions the contractor has taken, or proposes, to correct the deficiencies cited in a finding of non-compliance. The statement must include time limits and goals to remedy each violation of the equal opportunity requirements as specified in the show cause notice.

Disadvantaged Business Enterprise (DBE) - A firm certified with the Missouri Regional Certification Committee (MRCC) as a company owned and controlled by a socially and economically disadvantaged individual.

Discrimination – An act or failure to act, whether intentional or unintentional through which a person in the United States, solely because of race, color, religion, sex, national origin, age or disability, has been subjected to unequal treatment under any program

or activity of a recipient, sub-recipient or contractor receiving financial assistance from FHWA under Title 23 U.S.C.

Equal Employment Opportunity (EEO) - The absence of partiality or distinction in employment treatment maintaining the right of all persons to work and advance on the basis of merit, ability and potential.

Equal Opportunity Requirements - A general term used to mean contract provisions relative to EEO, subcontracting and training.

Executive Order - An order prepared by the executive branch of the Federal Government and signed by the President of the United States to control the manner in which a law is to be implemented or enforced.

FHWA - Federal Highway Administration.

Form FHWA 1273 – The standard Federal form containing required contract provisions and proposal notices physically required to be incorporated in each federal-aid highway construction contract and subcontract at any tier.

Good Faith Effort – Affirmative action measures and actions designed to implement the established objectives of an Affirmative Action Plan and equal opportunity provisions of the contract.

Journey Worker - A person capable of performing all the duties within a given job classification or craft.

Noncompliance – A contractor can be found in non-compliance when there is sufficient information, data and evidence to make a determination that the contractor failed to effectively implement the Equal Opportunity requirements.

OFCCP - Office of Federal Contract Compliance Programs, Department of Labor.

Operating Policy Statement - The contractor's stated official position on employment and personnel administration policies covering, but not limited to, EEO This statement must include, as a minimum, the points contained in the "Operating Policy Statement" of the "Standard Federal Equal Employment Opportunity Contract Specifications".

Project Personnel - The Resident Engineer or designated representative monitoring the project site.

Show Cause Notice - A written notification finding the contractor in non-compliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and allows 30 days for an explanation as to why sanctions should not be imposed.

Supportive Services - Those services provided in connection with approved on-the-job training programs designed to increase the overall effectiveness of training programs. These functions are necessary but not generally considered as part of actual on-the-job training.

Trainee - A person receiving on-the-job training through a program approved or accepted by the, Department of Labor, Bureau of Apprenticeship and Training (BAT), MoDOT or the FHWA.

Voluntary Corrective Action Plan (VCAP) - A contractor's written and signed commitment, outlining specific actions taken, or proposed, to correct the deficiencies cited in a compliance review. Failure to submit an acceptable VCAP is grounds for a finding of non-compliance. (Sometimes called a conciliation agreement or a letter of commitment.)

## **General Requirements**

The FHWA requires that all federal-aid highway construction contracts include specific EEO requirements. In addition, all subcontracts and purchase orders exceeding \$10,000, not including contracts for supplying materials, must include the same requirements. This is accomplished by the inclusion or attachment of the Federal Aid Special Provisions. Those provisions include:

- (a) The contractor shall notify the Resident Engineer, in writing, of the name, address and telephone number of the contractor's EEO and DBE Liaison Officers.
- (b) The contractor must also require each subcontractor, with a subcontract exceeding \$10,000, to notify the Resident Engineer, in writing, of the name, address and telephone number of the subcontractor's EEO Officer. This is to be done at the time the subcontract is submitted for approval.
- (c) The contractor shall physically attach a copy of the following documents to the subcontractor's copy of each subcontract exceeding \$10,000:
  - (1) "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity".
  - (2) "Standard Federal Equal Employment Opportunity Construction Contract Specifications.
  - (3) Form FHWA 1273 (Required Contract Provisions Federal-Aid Construction Contracts).
- (d) The contractor is required to make a good faith effort to comply with any training requirements contained in the Training Special Provisions and must submit the required reports to the Resident Engineer.

# **Section I - EEO & Affirmative Action Requirements**

## **What is a Compliance Review?**

Compliance reviews are conducted in an effort to determine whether a federal contractor (prime or subcontractor) performing work on a federal-aid project is in compliance with its contractual non-discrimination and affirmative action requirements. This review consists of making an evaluation and determination of a contractor's compliance with those contract provisions relative to EEO, subcontracting, and training as outlined in 23 CFR Section 230.407(n).

The following is a brief description of each of the contract compliance components:

**Step 1 – Planning:** MoDOT reviews current and future projects to determine which projects will be reviewed.

**Step 2 – Preliminary Analysis:** This step involves review of the documentation (contract compliance EEO questionnaire) submitted by the contractor.

**Step 3 – On-site verification:** After completing the preliminary analysis of the data and information submitted, an on-site review is performed which includes conducting interviews, physical tour of job site, exit conference, etc.

**Step 4 – Compliance Determination:** All documentation and on-site information is reviewed to determine in the contractor is in compliance with the EEO provisions.

**Step 5 – Corrective Action:** A contractor found in non-compliance of minor deficiencies can develop and submit an acceptable Voluntary Corrective Action Plan (VCAP) within 15 days following the exit conference. Contractors who have major deficiencies which include underutilization of minorities and females, signs of discrimination, allowing DBE's not to perform a Commercially Useful Function (CUF), etc will be issued a show cause notice and will be required to enter into an Corrective Action Plan (CAP) in order to correct the deficiencies.

## **Conducting Compliance Reviews**

### **1. Purpose**

The purpose of a Compliance Review is to determine if the prime or subcontractors maintain nondiscriminatory hiring and employment practices and are taking affirmative action as outlined in the EEO Special Provisions and the Training Special Provisions, and to ensure applicants are employed and placed, trained, upgraded, promoted and otherwise treated equally during employment without regard to race, color, religion, sex, national origin or age. The review

provides a comprehensive evaluation of all aspects of employment practices and conditions.

The selection of a contractor for Compliance Reviews is based upon one or more of the following:

- Contractors or projects, which offer the greatest potential for employment and promotion of minorities and females, particularly to higher-skilled crafts or occupations.
- Contractors or projects in areas, which have a significant minority and female labor forces within a reasonable recruitment area.
- Contractors or projects that have the type of projects (grading, paving, bridge, etc.) as it relates to potential employment on the projects.
- Contractors or projects that have contracts that include training special provisions.
- Contractors who through a review of statistical data on past and/or current minority and females employment indicates a need.
- Contractors or projects that have had an employee complaint.

## **2. Authorities**

- A. Construction Contract Equal Opportunity Compliance Procedures, 23 CFR 230, Subpart D
- B. EEO Special Provision (23 CFR 230, Subpart A)
- C. 23 CFR 200, 6350117(d) and (e)
- C. Training Special Provision (23 CFR 230, Subpart A, Appendix B)
- D. 49 CFR Part 26, Disadvantaged Business Enterprise Program
- E. 49 CFR Part 21, Disadvantaged Business Enterprise Program
- F. FHWA 1273

## **3. Procedures**

- A. The contractor is to submit and post an updated EEO Policy on all federal aid job sites as well as any other areas where employees congregate as part of their employment with the company. This includes home office, shops and other work areas.
- B. A letter must also be submitted to each Resident Engineer Office designating the company's EEO Officer. The selected individual must have the authority, position and experience to carry out an effective EEO Program. This letter should also be posted on the bulletin board.

- C. The contractor's supervisors and employees must be advised (preferably in meetings) of the company's EEO policy before starting each project. Written instructions or record of the meeting will be documented and provided MoDOT upon request. Subsequent EEO meetings are to be held every six months thereafter during the period of construction on the project. Documentation should include date of meeting, items discussed, attendees, etc.
- D. The goals for minority and female employment are specified in the contract and have been developed by the Department of Labor. The Department of Labor is responsible in enforcing compliance with these goals. The special provisions (goals and timetables) are incorporated in all MoDOT federal-aid projects.
- E. The contractor must maintain employment records in a format, which identifies employees by race, sex, craft and work status and hours worked in each craft and apprentice/trainee level, if appropriate.
- F. All subcontracts over \$10,000 must include the same contract EEO provisions as contained in the contract with the prime contractor.
- G. All employee facilities are desegregated.
- H. Minorities and females are employed and integrated into the various crafts of the project area.
- I. When advertising for employment opportunities, the contractor must include they are "An Equal Opportunity Employer". This clause must be inserted in all newspapers or other publications having circulation among minority and female groups. Notations of the advertisements must be kept as well as any follow-up contact made. The contractors must make an effort to follow-up with the recruitment sources they utilize for hiring purposes.
- J. The contractor or authorized representative must periodically inspect or conduct reviews to ensure that discriminatory working conditions or employment practices do not exist on the project site. Documentation of the inspection must be maintained and made available upon request.
- K. The contractor's EEO officer periodically visits the project site and is known to state project personnel as well as the contractor's employees on the project site. Documentation must be maintained and available upon inspection. Please see example under contractor forms.

#### **4. Good Faith Efforts – 16 Action Steps**

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. {41CFR 60-4.3(a)7a}
- 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 union have employment opportunities available, and maintain a record of the organizations' response. {41CFR 60-4.3(a)7b}
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-street applicant and minority or female referral from a union, a recruitment sources 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 therefore, along with whatever additional actions the Contractor may have taken. {41CFR 60-4.3(a)7c}
- d. Provide immediate written notification to the Directors 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. {41CFR 60-4.3(a)7d}
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minority 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 to these programs to the sources complied under b above. {41CFR 60-4.3(a)7e}
- 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. {41CFR 60-4.3(a)7f}
- 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 Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter. {41CFR 60-4.3(a)7h}
  - h. Disseminate the Contractor's EEO Policy and Affirmative Action Plan 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 and Affirmative Action Plan with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business. {41CFR 60-4.3(a)7h}
  - i. Direct its recruitment efforts, both oral and written record, 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 the employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by and 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. {41CFR 60-4.3(a)7i}
  - 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 workforce. {41CFR 60-4.3(a)7j}
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3. {41CFR 60-4.3(a)7k}
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotion opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities. {41CFR 60-4.3(a)7l}
  - 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 Affirmative Action Plan and the

- Contractor's obligations under these specifications are being carried out. {41CFR 60-4.3(a)7m}
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes. {41CFR 60-4.3(a)7n}
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and female construction constructors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations. {41CFR 60-4.3(a)7o}
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractors EEO policies and affirmative action obligations. {41CFR 60-4.3(a)7p}

## 5. Investigating Complaints

***Investigation Framework*** – This information is being offered as a sample investigation procedure. Under no circumstances should this information be used as comprehensive document or have legal sufficiency for contractors. You should follow all applicable laws and regulations in developing your investigation procedures to ensure compliance.

### Receiving and reviewing the complaint

Initial receipt and acknowledgement of the complaint  
 Complainant interview  
 Create an investigation file  
 Maintain privacy of records

### Determine Jurisdiction (Complaint/Issue Analysis/Timeliness/Standing to file)

Review and apply relevant State and Federal laws and regulations  
 Review and apply company policies  
 Allegations raised (Adverse act)  
 Identify the basis of the complaint (Protected classes)

### Creating an Investigation Plan

Review the file and try to answer these questions (at minimum)

- Can jurisdiction be verified?
- Can a prima facie case be established under the proper formula?
- Can the accused provide a defense to the prima facie case? Are there facts adequate to prove the underlying conduct supporting the cause of action and thereby prevail.?
- Can this defense be affirmed or rebutted?

Determine what records to request and questions to ask of witnesses

Before writing the plan, analyze the charge(s) and review any supporting material in an effort to answer, at a minimum, the four questions listed above. Creating an investigation plan allows the investigator to focus on the important questions, which need to be answered including the relevant legal theories. In this way, irrelevant questions or inquiries can be avoided. The plan should be revised as the investigation proceeds to account for new information or critical questions answered following interviews and/or document reviews. After constructing your plan, select the first person you would like to interview. This individual is likely to be interviewed first because he/she has been determined to have the most information. For this reason, the plan usually identifies the complaining party as the first person to be interviewed.

### Complaint Resolution

You may decide that it is appropriate to attempt settlement prior to a detailed investigation or at any time during an investigation. However, you should ensure that you have enough information when you do discuss settlement to be certain that the relief you are offering is sufficient for the case at hand.

### Conducting the Investigation

If a decision is made to conduct an investigation, you should provide written notice to the parties that you have accepted the complaint for investigation. In your letter to the parties indicate, 1) the basis for the complaint; 2) a brief statement of the allegation(s) over which your company has authority to investigate; 3) a brief statement of the company's authority to investigate the allegations brought against the respondent; 4) a statement that the investigation will be conducted in a confidential manner to the fullest extent possible; 5) an offer to engage in settlement discussions with the parties at any time during the process (*this may not be possible if the allegations are complex or involves a class of individuals*); and 6) an indication of when the parties will be contacted. Create an investigation file, which contains all information acquired or documented in relation to the complaint.

### Interviews

When interviewing keep in mind that you are looking for information, which refutes or supports the allegations. Explain the purpose of the interview, listen effectively, probe effectively with your questions, recognize the difference between factual information and opinions, take clear and precise notes, and deal with negative reactions by being professional and impartial at all times. Stress that interviews are confidential and generally should not be discussed outside the interview setting.

### Documents

Most investigations will depend upon documents or written information. The review of relevant documents during an investigation is critical to an effective investigation.

### Final Report

Once information from interviews and documents have been reviewed and analyzed relevant to the allegations, you should prepare a final investigative report. The final report summarizes the important facts found and the conclusions drawn from the investigation. It should be prepared in a manner, which can be easily read and understood by a reviewer/decision maker. Generally, the final report is not released to the complainant or the recipient except in conjunction with a judicial or administrative proceeding.

### Closure Letter

In preparing a closure letter, include a restatement of the authority under which the contractor to conducted the investigation. State the allegation(s), which were investigated, and the findings for each allegation (allegations supported or not supported). If the findings do not support the allegations, identify complainant's appeal rights in complainant's closure letter.

## **Affirmative Action Requirements**

### **1. Written EEO Policy** {230 CFR Subpart A, Appendix A (2)}

- A. The contractor must have a written EEO policy, which must be signed and dated by the company's chief officer. The policy should be periodically reviewed for updates and display a current date.
- B. The policy must identify actions that the contractor will take to ensure equal employment opportunity.
- C. The policy must contain the name and means of access to the company EEO officer.
- D. The policy must contain the following statement at a minimum:

"It is the policy of this company to assure that applicants are employed, and are treated during employment, without regard to their race, religion, sex, color, national origin, age, ancestry, veteran status or disability. Such action shall include employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, compensation, and training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

### **2. Dissemination of the EEO Policy** {FHWA 1273, Section II, (3)}, {230 CFR Subpart A, Appendix A (4)}

- A. The contractor must make the EEO policy known to all employees, applicants, unions, training program administrators and recruitment sources. The contractor should also request cooperation of its EEO obligation in employee meeting.
- B. 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.
- C. The contractor shall conduct a detailed review, at least semi-annually with employees. During this meeting, the EEO Policy and affirmative action requirements must be discussed with all employees. A separate EEO meeting should be held with foremen and supervisors, having any responsibility for hiring, assignment, layoffs, terminations or other employment decisions.

The EEO meeting must be documented including, the date and location of the meeting, subject matter discussed and disposition of the subject matter. A sample of review letters and forms are provided in the *contract compliance forms* section of this manual.

All persons attending the meeting should be required to sign an attendance roster. Minutes of the meeting must also be documented and made available for inspection. A copy of the signed documents should be retained in the company's EEO files. Copies of the documents must be forwarded to the appropriate contracting agencies, upon request. The meetings should also be conducted at the following times:

- At the time supervisory personnel are employed.
- At the beginning of each new construction project.
- At least semi-annually for all supervisory personnel.
- All personnel working on the project should be included in the EEO Policy Review.

- D. The contractor shall discuss and disseminate the EEO Policy with all employees at least semi-annually. It is suggested that the policy be reviewed prior to each project commencement. All new supervisors should also be educated within 30 days of being hired.
- E. The policy should be discussed at EEO meetings, reviewed with all officials annually, posted in the home office and at every job site and included in all company reports. Meetings will be held before the start of work and every six months thereafter. The EEO officer must conduct the meetings. If an employee is not in attendance, the EEO officer must meet individually with that person. Written documentation of the meeting must be maintained and include the date of the meeting, location, subject matters discussed and indicate those individuals in attendance.
- F. In written ads for employment the phrase "Equal Opportunity Employer" must be used. The contractor should use minority and female publications when possible and shall retain copies in the EEO files for three (3) years.
- G. The contractor shall include the EEO Policy in all policy manuals and collective bargaining agreements.
- H. The contractor shall publicize EEO Policy in the company newspaper, handbooks or other information booklets.
- I. The contractor shall send a copy of the EEO Policy to all subcontractors, vendors and suppliers with which business is anticipated.

- J. The contractor shall conduct a review of the company's overall compliance with the EEO requirements annually and maintain documentation of the results of that review.
- K. The contractor shall send copies of any EEO documentation to contracting agencies, upon request.

**3. Appointment Of EEO Officer** {FHWA 1273, Section II, (2)}, {230 CFR Subpart A, Appendix A (3)}

- A. The contractor must designate, in writing, a company official to monitor all employment related activity to ensure the company's EEO Policy is carried out, reports are submitted related to the contract provisions, and act as custodian of documentation and records. The EEO Officer must be delegated the power to carry out the policy and must be capable of effectively administering and promoting an active EEO program. The individual must have full authority to carry out all EEO responsibilities. The role must be designated to a person with authority to make decisions.
- B. The EEO Officer must have access to records for every employee including name, address, telephone, race, sex, classification, hours worked, rate of pay and work site.
- C. The EEO Officer must forward copies of the letter appointing them to all contracting agencies with which the contractor does business and ensure that it is posted on all company bulletin boards and at all job sites.
- D. The EEO Officer should be introduced to employees. Employees must be made aware that they can contact the EEO Officer. If an inquiry is made to an employee as to whom the EEO Officer is, the employee should be able to give the name of the EEO Officer.

**4. EEO Officer Responsibilities**

The EEO Officer's responsibilities must include but not necessarily be limited to:

- A. Review the contractor's EEO Policy for compliance with federal requirements.
- B. Develop an affirmative action program to meet the EEO requirements.
- C. Assist in identifying and resolving EEO problems.
- D. Design and implement audits and reports to track the effectiveness of the EEO Policy.

- E. Serve as a liaison between the contractor and MoDOT.
- F. Serve as liaison to the community organizations used for recruitment purposes.
- G. Inform management of all EEO matters and problems within the company.
- H. Audit training programs to determine effectiveness.
- I. Provide career counseling to all employees.
- J. Ensure equal access of all facilities operated by the company.
- K. Rate supervisors on how well they meet their EEO goals.
- L. Maintain all bulletin boards with EEO posters, wage rate order, letters, and other required documentation.
- M. Encourage minorities and women to participate in all company social activities and training.
- N. Instruct all new employees in regard to the EEO Policy.
- O. Capable of conducting investigations for the company regarding EEO and employment matters if the need arises. The investigation may include interviewing employees, maintaining confidentiality and submitting a finalized report as to the findings to the President of the company if need be.

**5. EEO Records** {FHWA 1273, Section II, (9)}, {230 CFR Subpart A, Appendix A (10)}

- A. The number of minority and non-minority group members and women employed in each work classification on the project.
- B. The progress and efforts made in locating, hiring, training, qualifying, and upgrading minority and female employees. Written documentation must be made verifying efforts.
- C. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees. Written documentation must be made verifying efforts.
- D. The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained

from a period of three (3) years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of MoDOT and FHWA.

## **6. EEO Issues**

If any of the following conditions are found within the company, the EEO Officer must take steps to correct them.

- A. Under-utilization of minorities or women in any work classification within the location of the federal-aid project.
- B. Lower promotion rate for minority or women employees.
- C. Hiring process that tends to eliminate minorities or women.
- D. Minorities or women not participating in company training activities.
- E. Non-support of EEO Policy by senior management or supervisors.
- F. Lack of formal techniques or benchmarks for evaluating effectiveness of the EEO program.
- G. Lack of cooperation by labor unions or subcontractors.
- H. Evidence of discrimination or harassment and the contractor's failure to address or properly investigate and remedy the matter.

## **7. Enhancing Affirmative Action Efforts**

- A. All personnel involved in recruiting, hiring, disciplining and firing should be trained and evaluated by the EEO Officer to ensure decisions are free of bias or prejudice. 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. Documentation must be maintained verifying this training. {FHWA 1273, Section II, (3)(b)}
- B. Develop a useful list of recruitment sources for minorities and women, and maintain follow-up contact with these sources. {230 CFR Subpart A, Appendix A (5)(b)}
- C. Minorities and women should be a part of the recruitment and hiring process.

## **8. Sexual Harassment Policy**

- A. The contractor must have a written Sexual Harassment Policy, which must be signed and dated by the company's chief officer.
- B. The policy must identify actions that the contractor will take to ensure an environment free of harassment.
- C. The policy must contain the name and means of access to the company EEO officer.
- D. The policy must be reviewed and updated annually, displaying a current revision date.
- E. An example policy can be found in the back of the manual.
- F. The contractor must have a written method in place outlining the steps the EEO Office must take in the event a sexual harassment complaint or any other complaint is filed. The process must be outlined in detail and the office must be aware of the process.

## **9. Recruitment** {FHWA 1273, Section II, (3)(b)}, {230 CFR Subpart A, Appendix A (5)}

- A. The contractor shall establish and maintain a current list of minority and women recruitment sources, provide written notification to minority and women recruitment sources and community organizations when the contractor, or its unions, have employment opportunities available, and maintain a record of the responses.
- B. The contractor shall maintain a log or file of the name, address, race, sex and telephone number for all off-the-street applicants, referrals from unions, referrals from any recruitment source and the action taken with respect to each individual.
- C. Union contractors must refer non-union minorities or women to the union and ensure follow-up contact was made and documentation of these efforts.
- D. The contractor shall encourage current employees to recruit other minority and female workers. In addition, the contractor shall, where reasonable, provide after school, summer and vacation employment to minority and women youth.

- E. The contractor must provide written notification to OFCCP and MoDOT when the union is unable to provide minority and women referrals or impedes the EEO Policy.
- F. The contractor should write and visit minority, women and community organizations, schools with minority and women students, and minority and women recruitment and training organizations to inform them of their firm's recruitment policy and the opportunity for minorities and women to receive on-the-job training. The contractor must document follow-up contact with these sources. Written documentation should include whom the contractor spoke to, date, discussion, and any information provided. When letters are sent to recruitment sources for vacant positions, follow-up contact must be made and documented. If a contractor simply sends out letters and does not follow-up with the sources, this will not be considered a GFE (good faith effort) to locate minority and female applicants.
- G. The contractor shall document all recruitment efforts and retain this documentation in the firm's EEO files.
- H. The phrase "An Equal Opportunity Employer" must be included in all written ads for employment. Ad can also include the statement that minority and females are encouraged to apply and are being actively recruited.

**10. Personnel Actions** {FHWA 1273, Section II, (5)},

- A. The contractor must ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by monitoring all employment related activities to ensure that the EEO Policy and contractor obligations are implemented.
- B. Documentation must be kept regarding training, referrals, lay-offs, terminations, transfers, hiring and other employment practices.
- C. The contractor shall conduct an annual inventory and evaluation of all personnel for promotional and training opportunities.
- D. The contractor must maintain documentation of the evaluation of all employees, including rationale for selection or non-selection for a promotion or raise.
- E. 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.

- F. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- G. The contractor will promptly investigate all complainants of alleged discrimination made to the contractor in connection with its obligation under the contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. The EEO Officer must be properly trained on how to conduct investigations.

## **11. Personnel Evaluations**

- A. The contractor must annually conduct an evaluation of all employees for promotions, raises and training opportunities.
- B. The evaluation must be documented, as well as efforts undertaken to prepare minority and women employees for promotion.
- C. Evaluations must also be conducted on supervisors to ensure they are carrying out Affirmative Action and the company's EEO policy requirements.

## **12. Training {FHWA 1273, Section II, (6)},**

- A. The contractor shall develop on-the-job training opportunities and/or participate in training programs that expressly include minorities and women. Programs, including union apprentice programs, must be approved by the Department of Labor, Bureau of Apprentice and Training, or MoDOT.
- B. Contractors may meet this requirement by actively participating in the AGC Missouri Manpower Development and Training Program or any other program that has been approved by the U.S. Department of Labor or MoDOT.
- C. Contractors must make a good faith effort to achieve the contractual trainee goals and to hire minorities and females who have successfully completed training.
- D. The contractor should provide notification to minority and women recruitment sources of their participation in training programs.
- E. Current employees should be notified of training opportunities in order to assist in recruitment.

- F. The contractor must contact recruitment sources in an effort to locate minority and female trainees. Letters, telephone journals, or any other methods can be used as documentation of these efforts.
- G. No trainee shall be paid less than 60% of the journey wage for the classification they are training in. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

**13. Unions** {FHWA 1273, Section II, (7)},

- A. The contractor shall provide immediate written notification to MoDOT and to the Director of the OFCCP if any union with which the contractor has a collective bargaining agreement has not referred a minority or female sent to the union by the contractor, or when the contractor has information that the union referral process has impeded the contractor's efforts to meet its obligations.
- B. 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 minority group persons and women. It shall be no excuse that the union with which the contractor has a collective bargaining agreement providing exclusive referral failed to refer minority and female employees.)
- C. The contractor will pursue 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, retaliation, sex, national original, age or disability.
- D. Employees of union contractors should have documentation showing their union status (permit or cards). This documentation may be requested by MoDOT personnel on a random basis.

**14. Working Environment**

- A. The contractor must maintain a working environment free of harassment, coercion and intimidation at all sites and facilities.
- B. Ensure that all supervisory personnel and workers are aware of the company EEO policy and that the policy is rigidly enforced. A contractor may be legally liable for any violation that may occur, even without the contractor's knowledge or consent.

- C. All supervisors must be aware of and must carry out the EEO and non-harassment policies. The company EEO Officer is responsible for ensuring compliance.
- D. All facilities and activities should be non-segregated.
- E. All employees should sign a statement that they are aware of the company EEO and non-harassment policies. The contractor should retain copies of these statements in the company EEO files.

## 15. Disadvantaged Business Enterprises

- A. Each Contractor must designate in writing a "Disadvantaged Business Enterprise Liaison (DBE) Officer". That person must have the authority to carry out the required duties. A letter needs to be sent to the DBE officer outlining their duties and responsibilities on a yearly basis.
- B. Notification of this appointment must be forwarded to all contracting agencies, posted on the company bulletin board, and retained.
- C. MoDOT requires that solicitation of certified DBE firms, and any responses or follow-up, be documented and records maintained for three (3) years.
- D. A directory of DBE firms may be obtained from MoDOT or found on the MoDOT website at:  
  
<http://www.modot.mo.gov/ecr/index.htm>
- E. Contractors must make a good faith effort in bidding and replacement of DBE firms. Contractors are responsible for ensuring that the DBE's perform a commercially useful function (CUF).

## 16. Written Affirmative Action Plan

- A. Every contractor/subcontractor must have a written Affirmative Action Plan if they have **50 or more employees or any contract over \$50,000.00**.
- B. In preparing an AAP, it should be customized to reflect an employer's organizational structure, policies, practices, programs, and data. In addition to the records an employer is required to compile and maintain to support the AAP [41 CFR 60-1.12 and 60-2.17(d)], the employer should also keep materials evidencing its affirmative action efforts. This may include items such as copies of collective bargaining agreements and other documents that indicate employment policies and practices; copies of letters sent to suppliers and vendors stating the EEO/affirmative action policy; copies of letters sent to recruitment sources and community

organizations; and copies of contract language incorporating the EEO clause.

- C. Reporting of complaints – Identify the employees rights and steps to be taken by an employee if they desire to file a complaint. Identify other all avenues employees have to file complaints including Missouri Human Rights Commission, OFCCP, EEO Commission, etc.
- D. The Affirmative Action Plan must be signed by the head of the company and be affirmed annually.
- E. A sample Affirmative Action Plan can be viewed on the Office of Federal Contract Compliance website.  
<http://www.dol.gov/esa/regs/compliance/ofccp/pdf/sampleaap.pdf>
- F. 41 CFR 60-2.10 – General purpose and contents of AAP

(a) Purpose.

(1) An affirmative action program is a management tool designed to ensure equal employment opportunity. A central premise underlying affirmative action is that, absent discrimination, over time a contractor's workforce, generally, will reflect the gender, racial and ethnic profile of the labor pools from which the contractor recruits and selects. Affirmative action programs contain a diagnostic component which includes a number of quantitative analyses designed to evaluate the composition of the workforce of the contractor and compare it to the composition of the relevant labor pools. Affirmative action programs also include action-oriented programs. If women and minorities are not being employed at a rate to be expected given their availability in the relevant labor pool, the contractor's affirmative action program includes specific practical steps designed to address this underutilization. Effective affirmative action programs also include internal auditing and reporting systems as a means of measuring the contractor's progress toward achieving the workforce that would be expected in the absence of discrimination.

(2) An affirmative action program also ensures equal employment opportunity by institutionalizing the contractor's commitment to equality in every aspect of the employment process. Therefore, as part of its affirmative action program, a contractor monitors and examines its employment decisions and compensation systems to evaluate the impact of those systems on women and minorities.

(3) An affirmative action program is, thus, more than a paperwork exercise. An affirmative action program includes those policies, practices, and procedures that the contractor implements to ensure that all qualified applicants and employees are receiving an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment. Affirmative action, ideally, is a part of the way the contractor regularly conducts its business. OFCCP has found that when an affirmative action program is approached from this perspective, as a powerful management tool, there is a positive correlation between the presence of affirmative action and the absence of discrimination.

(b) Contents of affirmative action programs.

(1) An affirmative action program must include the following quantitative analyses:

- (i) Organizational profile--Sec. 60-2.11;
- (ii) Job group analysis--Sec. 60-2.12;
- (iii) Placement of incumbents in job groups--Sec. 60-2.13;
- (iv) Determining availability--Sec. 60-2.14;
- (v) Comparing incumbency to availability--Sec. 60-2.15; and
- (vi) Placement goals--Sec. 60-2.16.

(2) In addition, an affirmative action program must include the following components specified in the Sec. 60-2.17 of this part:

- (i) Designation of responsibility for implementation;
- (ii) Identification of problem areas;
- (iii) Action-oriented programs; and
- (iv) Periodic internal audits.

(c) Documentation. Contractors must maintain and make available to OFCCP documentation of their compliance with Secs. 60-2.11 through 60-2.17.

## **17. Workforce Analysis**

A contractor's workforce is analyzed to determine if there is a reasonable representation (number of people) and utilization (work hours) of minorities and women in each craft, classification or occupation, given their availability in the relevant labor market. The contractor will be required to demonstrate a good faith effort (GFE) if the representation (number of people) or utilization (work hours) of minorities and women is less than their availability in the contractor's workforce. Form letters are not considered as a productive activity. In the absence of reasonable representation in any craft, the contractor will be required to provide proof of having requested referrals of minorities and women (i.e., records of telephone requests, including dates and times, person talked with, specific crafts for which minorities and women were requested. It shall be no excuse by the contractor that a union, that the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority and female employees (23 CFR 230.411).

The contractor shall utilize data obtained from Civil Labor Force Data or other similar data that shows the availability of minorities and females to determine the availability of those individuals in the area in which the federal-aid project is located. MoDOT or FHWA **do not** enforce timetables or goals on projects. The OFCCP is responsible for ensuring the timetables and goals are enforced on projects.

## **18. Commercially Useful Function (CUF)**

A prime contractor will be given credit, towards the applicable DBE contract goal, for the amounts paid to the DBE firm only if that firm performs a commercially useful function. Failure to fulfill this obligation will be considered a breach of contract and liquidated damages will be assessed by the Department. The Department will determine compliance with the commercially useful function requirement through application of the following principals:

- (a) the DBE is responsible for the performance, management and supervision of a distinct element of the work, in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations and these guidelines)
- (b) the firm receives compensation, as agreed upon, for the work performed, regardless as to whether or not the agreement is standard industry practice. If the agreement erodes the ownership, control or independence

of the DBE firm or does not meet the commercially useful function requirements, the contractor will not receive credit towards the contractual goal.

The following situations are examples of a DBE firm that is not performing a commercially useful function under the definition above.

- (a) the work to be performed by the DBE is outside of the DBE's known experience or capability
- (b) the DBE provides little or no supervision of the work, the DBE superintendent is not a regular employee of that firm or supervision is performed by personnel associated with the prime contractor, another business or personnel not under the control of the DBE firm
- (c) the DBE's workforce is not under the DBE firm's control and direction or work is performed by personnel normally employed by the prime contractor or another business
- (d) any part of the work designated to be performed by a DBE subcontractor is performed by the prime contractor
- (e) a substantial portion of the equipment used by the DBE firm belongs to the prime contractor or another contractor with no formal lease agreement or the equipment signs and markings cover another owner's identity, usually through the use of magnetic signs. The Division office will determine "substantial portion" on a case by case basis
- (f) materials or supplies, necessary for the DBE firm's performance, are delivered to, billed to or paid by another business
- (g) the DBE firm subcontracts or assigns any portion of work to another firm
- (h) the DBE firm is working without a subcontract agreement approved by the Department, except in the case of trucking
- (i) a DBE trucking business utilizes trucks owned by the prime contractor
- (j) a DBE prime contractor subcontracts more than 50% of the contract value
- (k) a DBE prime contractor only purchases materials while performing little or no work

- (l) the agreement between the prime contractor and DBE firm artificially inflates the DBE participation or erodes the ownership, control or independence of the firm
- (m) a DBE firm works for only one prime contractor
- (n) employees work for the DBE firm and the prime contractor or mentor
- (o) the volume of work is beyond the capacity of the DBE firm
- (p) inquiries by Department or FHWA representatives are answered by the prime contractor or mentor
- (q) the DBE firm's owner is not aware of the status of the work or the performance of the business.

Additional guidance and instruction can be located on MoDOT's website at:  
[http://epg.modot.org/index.php?title=Main\\_Page](http://epg.modot.org/index.php?title=Main_Page).

## **19. Notice To OFCCP**

- A. The contractor must provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under a federal-aid contract. {41 CFR 60-4.2d(3)} The following is contact information for local OFCCP office in Missouri:

U.S. Department of Labor  
 ESA – OFCCP  
 2300 Main Street, Room 1030  
 Kansas City, MO 64105  
 (816)-502-0370 -phone

U.S. Department of Labor  
 ESA – OFCCP  
 Robert A. Young Building  
 1222 Spruce St, Room 10-207  
 St. Louis, MO 63103  
 (314)-539-6394

- B. The notification must list the name, address, telephone number, 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.
- C. A sample letter is provided in the back of the manual. It is recommended that a copy of this letter be kept in the EEO file.

## **Section II - Wage Rates and Payrolls**

Contractors must conform to all Labor and Equal Employment Opportunity provisions included therein. The following information has been compiled as an aid in fulfilling the requirements for each area:

### **1. Wage Rates**

- A. All construction contracts entered into by MoDOT contain provisions and regulations governing the employment and payment of persons engaged to perform work by contractors, subcontractors and others.
- B. The prevailing rate of wages, overtime, and fringe benefits for the locality of the work, as determined by the Federal Wage Rates, Department of Labor and Industrial Relations of Missouri, or by any court decision is contained in the proposal by special provision. The contractor and all subcontractors must pay not less than the prevailing rate of wages, overtime, and fringe benefits for all work performed under the contract.
- C. In the event of a conflict between any prevailing wage rate, overtime, or fringe benefits as determined by the Department of Labor and Industrial Relations and any minimum rate of wages, overtime, or fringe benefits as determined by the Secretary of Labor, where the latter is applicable, the greater of the two applies.

### **2. Payrolls {FHWA 1273, Section V},**

- A. The prime contractor, and each subcontractor, is required to submit one original certified copy of payrolls for each week that work is in progress. If work is temporarily suspended, the last payrolls should be appropriately marked to note that it will be the last payroll until work is resumed. The payroll records shall contain the name, last four digits of the social security number (or another indentifying number), and address of each employee; his or her classification; hourly rates of wages paid (fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
- B. An original certified copy of each weekly payroll must be submitted by the prime contractor within 7 days of the payment date of the payroll. The certification may be attached to the payroll or may be on the payroll itself. The prime contractor will be considered responsible for submittal of payrolls and certifications for all subcontractors on the project.
- C. Failure to submit the payrolls within the 7-day period will result in delay in submittal of the engineer's payment estimates for each project involved.

Estimates not submitted by the established date are withheld until the next estimate period. In addition, the contractor's performance rating may be negatively impacted.

- D. The statement of compliance form must accompany all certified payrolls. The statement of compliance form must describe each deduction listed on the certified payroll and be described under Section 1 of the Statement of Compliance form. An original statement of compliance and certified payroll must be submitted to the Resident Engineer (RE) Office within 7 days. The RE Office must received the original documents from the prime and subcontractor
- E. Contractor's payrolls, certifications, and statements of compliance are not required on Railroad or other Utility Adjustments, or on Maintenance funded projects.
- F. Wage rate interviews are conducted by project personnel as follows:
  - One wage rate interview on each Interstate Project per week
  - One wage rate interview on each Federal-aid Primary or Federal-Aid Urban Project every two weeks
  - One wage rate interview on Supplementary and 100% State Financed Projects every four weeks

Labor interviews are not required on Railroad and other Utility Adjustments.

- G. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratio and wage rates prescribed in the applicable programs. Documentation of the enrollment shall be provided to MoDOT prior to the individual commencing work on the project.
- H. The correct employee work classifications must be shown. The classification shown on the payroll should coincide with the classifications shown on the Wage Rate Decision in the contract. Employees must be paid for the specific craft they are working on the project.
- I. Hourly wage rates, including fringe benefits where applicable, and overtime hourly rates must be shown for each employee, for each craft worked.
- J. Daily and weekly hours worked in each classification, including actual overtime hours, worked must be shown.

#### **4. Truck Drivers**

- A. The names of owners/drivers of owner-operated trucks must appear on applicable payrolls. The name and classification "Owner-Operator" is all that is necessary. No other information, such as hours worked, amount paid, etc., needs to be shown.
- B. Davis-Bacon wage rates do not apply to owner/operator trucking transactions. However, if the individual spends a significant amount of time on the project they will be required to be paid prevailing wage on the project. For example, an individual driving a water truck on the project and spends a significant amount of time on the project will be required to be paid prevailing wage for those hours on the project.
- C. If the work involves hauling done on the actual site where the construction in the contract will remain when work has been completed, the truck drivers are covered by the Davis-Bacon Act and are subject to prevailing wage rates.
- D. If the work involves hauling from an adjacent or nearby property dedicated exclusively, or nearly so, to performance of the contract or project, and the site is located in proximity to the actual construction location so that it would be reasonable to include them, the truck drivers are covered by the Davis-Bacon Act and subject to prevailing wage rates.
- E. If the work involves hauling from an off-site location, such as permanent home offices, branch plant establishments, fabrication plants, and/or tool yards of a contractor or subcontractor, whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project, the truck drivers are not covered by the Davis-Bacon Act and are not subject to prevailing wage rates.
- F. The Fabrication plants, batch plants, borrow pits, job headquarters, etc., of a commercial supplier, established by a supplier of materials before opening of bids and not on the project site, are not part of the site of work.
- G. Determinations of Davis-Bacon coverage must be based solely on the location of the truck drivers' job site, rather than the employment status of the driver. These determinations must occur on a case-by-case basis. It is important that the contractor indicate as early as possible how the trucking and hauling operations will occur on the project.

#### **5. Employment Of Trainees**

- A. A subcontractor can be used to meet the training requirement, however, the contractor must determine how many of the trainees are to be trained

by the subcontractor and the contractor shall retain the primary responsibility for meeting the training requirements. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in the first year of apprenticeship or training.

- B. The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journey workers in the various classifications within a reasonable area of recruitment. **Prior** to commencing construction on the project, the contractor must submit to MoDOT the number of trainees to be trained in each classification and the training program to be used for approval. The ECR Unit will approve all trainee notifications submitted by the contractor.
- C. Training and upgrading of minorities and women to journey status is a primary objective of the On the Job Training requirement. The contractor shall make every effort to enroll minorities and women. The contractor is responsible for demonstrating the steps taken to illustrate that a "good faith effort" was made to meet the training requirements.
- D. No employee shall be employed as a trainee in any classification in which that employee has successfully completed a training course leading to journey status, or has been employed as a journey worker. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means.
- E. The minimum length and type of training for each classification must be established in the training program selected by the contractor and approved by MoDOT. MoDOT may approve a training program if it is reasonably calculated to meet the equal employment opportunity obligations and to qualify the trainee for journey status in the classification at the end of the training period.
- F. 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 Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval from MoDOT must be secured prior to proceeding.
- G. MoDOT must approve any training program **prior** to the trainee/apprentice commencing work in the classification covered by the program. It is the intention of these provisions for training to be provided in the **construction crafts** rather than clerk-typists or secretarial positions. Training is permissible in lower level management positions such as office

engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications, however, these requests will be strictly scrutinized. Training in the laborer classification may be permitted provided significant and meaningful training is provided. Limited off site training is permissible if the training is an integral part of an approved training program and does not comprise a significant part of the overall training. If a trainee is denied by the ECR Office on a project, it does not exclude the contractor from using the individual on the project; however, any hours completed will not count towards the goal on the project.

- H. Reimbursement may be made for training hours in excess of the number specified in the contract. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the contractor from receiving other reimbursement. Requests for approval must be submitted in writing to the Resident Engineer and forwarded to the External Civil Rights Administrator for final approval.
- I. It is expected that a trainee will begin working on a project as soon as feasible after the start of work utilizing the skill involved, and will remain on the project as long as training opportunities exist in the work classification, or until they have completed the training program. It is not required that all trainees work the entire length of the contract.
- J. Trainees must be paid at least 60 percent of the appropriate minimum journey worker'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 or enrolled as trainees on this project. In that case, the appropriate rates set out in the approved program shall apply to all trainees being trained for the same classification covered in the contract.
- K. A trainee/apprentice must be pre-approved by MoDOT ECR Office prior to the trainee/apprentice beginning work on the project. Trainee goals are assigned in 1,000 hour increments or 1 slot (person). Only one trainee can be utilized to meet the 1,000 hour goal on the project. If the trainee goal is 2,000 hours, no more than 2 trainees can be used to meet the goal. The only exception would be if a trainee quits and must be replaced on the project.  
1,000 – 1 trainee; 2,000 – 2 trainees; 3,000 – 3 trainees; 4,000 – 4 trainees
- L. A copy of the most recent trainee special provision (TSP) can be found at: [http://www.modot.mo.gov/business/contractor\\_resources/External\\_Civil\\_Rights/jobtraining.htm](http://www.modot.mo.gov/business/contractor_resources/External_Civil_Rights/jobtraining.htm)

## **6. Working Foreman**

- A. An individual performing work of a supervisory nature is exempt from Davis-Bacon wage rates. However, if over 20 percent of the individual's time is spent performing duties that are covered under classifications included in the prevailing wage publication(s), including overtime that time is subject to the appropriate wage classification pay rate. The number of hours worked, hourly rate paid and other applicable data must be reflected in the certified payrolls.

## **Section III – Bulletin Boards**

### **Information to be Posted**

Department personnel will regularly inspect the project site bulletin board to ensure compliance with the requirements contained in the special provisions. Those requirements include:

- (a) Form FHWA 1273, and addendum, contained in all current Federal-Aid contracts, requires placement of notices and posters setting forth the contractor's EEO Policy. These should be placed at the project trailer or the area on the project where employees regularly congregate. The required notices include:
  - (1) Contractor's signed EEO Policy
  - (2) Notice of contractors and subcontractors EEO Officer, including the name, address and telephone number
  - (3) Federal and State Wage Rate Notices
  - (4) Notice to Labor Unions of Contractor's commitment to EEO
  - (5) Notice requesting Minority and Female referrals from present employees
  - (6) Notice to employees and applicants of available training programs and entrance requirements

The required posters include and bulletin board checklist are located at:  
[http://www.modot.mo.gov/business/contractor\\_resources/forms.htm](http://www.modot.mo.gov/business/contractor_resources/forms.htm)

- (b) The board is in good condition.
- (c) No items may be posted on the back of the board.
- (d) The board has weatherproof protection. Weatherproof protection is not a contractual requirement, however it is desirable. Any faded or blurred material must be replaced immediately.
- (e) If the project is a federal aid project it must include both federal aid and state posters.
- (f) Bulletin boards must be placed on the project site and in a location accessible to all employees and potential applicants.
- (g) Binder style bulletin boards are not acceptable unless the project is an overlay project where the project will be completed in a short time frame.

If there is no project specific site for the bulletin board, which may include, for an example, near a portable john, which has been established along the roadside, then the bulletin board may be kept in a foreman's vehicle, as long as it contains all of the standard requirements, and it is made accessible to all workers.

## **Section IV – Data Reports and Subcontractors Lists**

### **Guide To The Required Employment Data Reports**

#### **1. Who Is Required To Fill Out The Forms?**

- A. Prime contractors who have a federal-aid contract with the MoDOT with a value amount equal to or greater than \$10,000 are required to submit Employment Data Reports quarterly throughout the year. Prime contractors who have a federal-aid contract with MoDOT with a value amount equal to or greater than \$10,000 are required to submit subcontractor Lists quarterly throughout the year. Suppliers, consultants and surveyors are not required to complete the reports and subcontractor lists.
- B. During each reporting period the contractor is required to submit one employment data report per project as well as one company-wide data report. The contractor may be required to submit more than one project specific data report depending on the number of active federal-aid projects the contractor is working on during the reporting period. During the Annual Data Reporting Period the contractor will only be required to complete the company-wide data report and not project specific data reports.

The front cover of all MoDOT contracts indicates whether or not the job is federally funded. These projects could include construction projects, off-systems projects, etc.

#### **2. What Subcontractor Lists Are Required, And When Are They Due?**

- A. Prime contractors are required to submit a subcontractor list for each of the four reporting periods. The list should contain the name of each subcontractor that worked on any MoDOT federally funded project as well as the job number of the project. The subcontractor lists are due as follows:

<b><u>Subcontractor List</u></b>	<b><u>Due Date</u></b>
Annual Subcontractor List	January 10 <sup>th</sup>
Pre-Season Subcontractor List	April 10 <sup>th</sup>
1391 Contractor List	August 10 <sup>th</sup>
Post-Season Subcontractor List	October 10 <sup>th</sup>

\*The subcontractor list is required as referenced in the FHWA 1273, required contract Provisions Federal-Aid Construction Contracts, included in each MoDOT federal-aid contract. Although reminder notices sent out

by MoDOT are a courtesy, it is the contractor's responsibility to complete and submit the subcontractor list by the above due date.

- B. The subcontractor list does not have to be submitted on a certain form. The subcontractor list is simply a typed list of what subcontractors were used during the appropriate reporting period. For further details, review the question and answers at the end of this section.

### **3. What Data Forms Are Required, And When Are They Due?**

- A. The four reports due include the Annual Employment Data Report, Pre-Season Employment Data Report, 1391, and the Post-Season Employment Data Report. Each data report must be submitted, as required in the FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts, included in each MoDOT Federally Funded contract, including off-systems projects. The contractor is required to submit one data report per federal-aid project worked on during the reporting period and one company-wide data report for the reporting period. The contractor may be required to complete more than one project specific data report depending on the number of federal-aid projects worked on during the reporting period. During the Annual Reporting period the contractor is only required to submit the company wide data report.

Again, you are required to complete two sets of data reports reflecting employment during the reporting period. One form is titled "Federal-aid Contractor's Employment Report on Projects Let by the Missouri Department of Transportation" and is to be used to report the breakdown of the employees utilized on each individual federal-aid projects only. If you worked on more than one MoDOT federally funded project you will be required to submit one form for each project you worked on. If you had an employee that worked on more than one federal-aid project during the reporting period do not list the employee on both reports, only list the employee on the project in which the employee worked a majority of their time on. Each report must reflect the number of employees who worked on that specific project only.

The second form is titled "Company Wide Report of Total Employment on All Federal and Non-Federal Projects let by the Missouri Department of Transportation" and is to be used to report the breakdown of the total employees utilized on federal-aid and non-federal projects.

- 1. The *Annual Employment Data Report* is due on February 1st of each year. The data reported must set out the company wide employment during the entire previous year. If the company did not work on any MoDOT federally funded projects during that entire

year, the report does not need to be filled out, however, the company must submit a letter to that effect.

2. The *Pre-Season Employment Data Report* is due on May 1st of each year. The data reported must set out the company wide employment for the payroll period for the last week of March. In addition, the contractor must complete one employment data report per project the contractor worked on during the reporting period. If the company did not work on any MoDOT federally funded projects during that week, the report does not need to be filled out, however, the company must submit a letter to that effect.
3. The *1391* report is due on September 1st of each year. The data reported must set out the company wide employment for the payroll period during the last week of July. In addition, the contractor must complete one employment data report per project the contractor worked on during the reporting period. If the company did not work on any MoDOT federally funded projects during that week, the report does not need to be filled out, however, the company must submit a letter to that effect.
4. The *Post-Season Employment Data Report* is due on November 1st of each year. The data reported must set out the company wide employment for the payroll period for the last week of September. In addition, the contractor must complete one employment data report per project the contractor worked on during the reporting period. If the company did not work on any MoDOT federally funded projects during that week, the report does not need to be filled out, however, the company must submit a letter to that effect.

\*The data reports are required in the FHWA 1273, required contract Provisions Federal-Aid Construction Contracts, included in each MoDOT Federally Funded contract. Although reminder notices sent out by MoDOT are a courtesy, it is the contractor's responsibility to complete and submit the data reports by the above due date. If MoDOT does not receive the data reports or subcontractor lists by the due date, the contractor's name will be submitted to FHWA as non-responsive.

The information reported must be obtained from the certified payrolls for the time period to be reported. An original of each of these forms is included in this manual. If you would like to obtain an electronic Microsoft Excel version copy of the forms, please e-mail Missy.Stuedle@modot.mo.gov. It is the responsibility of the EEO Officer to submit these reports and subcontractor lists by the due date. MoDOT will not provide the contractor with a reminder to submit the reports or the subcontractor list by the deadline. Incomplete reports will be returned to the contractor for re-submission. If your payroll system or other computer program will allow you to create a document similar to the

data report, please contact our office at 573-751-1216 and we will review the document to determine if the report can be submitted in lieu of the data reports.

#### **4. Completing The Required Employment Data Reports**

- A. In the column titled "Company Name" enter the name and mailing information for your company.
- B. Company-wide reports: In the column titled "Number of Projects" enter the total number of federally funded contracts worked on during the time period being reported as well as the Job Numbers. If a contract is being worked on over a number of years, the contract should be counted each year on the Annual Employment Data Report. Project-specific reports: In the column titled "Job Number" enter the specific job number for the federal-aid project you are reporting on.
- C. Company-wide reports: In the column titled "Total Dollar Value" enter the total dollar value of all federally-aid contracts worked on during the time period being reported. Project-specific reports: In the column titled "Total Dollar Value" enter the total dollar value of the specific project being reported on. If a contract is being worked on over a number of years, the full contract value should be counted each year on the Annual Employment Data Report. Subcontractor should only include the total dollar value they were awarded on the contract, not the full contract amount.
- D. Table A is to include the number of employees divided by job classifications, sex and ethnicity. Miscellaneous job classifications should be incorporated in the most appropriate category listed. Contractors must report white females as white females not minorities.
- E. In Table A, the columns titled Apprentice and Trainees must include the individuals in training by job category and sex. Any individual included in these columns should not be included in any other columns in Table A.
- F. Table B must include any apprentices or trainees reported in Table A. These employees should be divided by sex and ethnicity. The trainee and apprentice column in Table A should equal the total number in Table B.
- G. On the forms, the columns titled Total Emp. must equal the sum of the columns titled Total Minority and Non-Minority. In addition, the columns titled Total Minority must equal the sum of the columns titled African Amer., Hispanic, Native Amer., and Asian Amer. This is true for both male and female columns.
- H. The person who completed the report is to sign in the column titled "Prepared By".

**Submit the Completed Reports To:**

External Civil Rights  
P.O. Box 270  
Jefferson City, MO 65102

Phone – 573-751-1216  
Fax – (573) 526-0558  
Email – Missy.Stuedle@modot.mo.gov

## **5. Frequently Asked Questions**

### **Who is required to submit the Subcontractor List?**

All contractors who are considered the Prime Contractor on any MoDOT Federally Funded Projects.

### **What is the purpose of the Subcontractor List?**

The purpose of the Subcontractor List is to give MoDOT an accurate list of what subcontractors actually performed work during the reported week.

### **Is there a certain form the Subcontractor List is to be filled out on?**

There is no certain form, however, MoDOT requests that the list to be submitted on the company letterhead, unless the list is submitted electronically.

### **Should I submit a list of all of the Subcontractors that we have a subcontract with during that week, or just the Subcontractors that actually performed work during that week?**

Only the Subcontractors that actually performed work during the reported week.

### **If we didn't have Subcontractors that week, do I have to submit a letter indicating that fact?**

Yes, you are required to submit a letter indicating that you didn't have any subcontractors that worked on any MoDOT Federally Funded projects during the reported period.

### **Is it necessary to include suppliers in the Subcontractor List?**

No, Suppliers are not included.

**What if we didn't receive the MoDOT reminder notice until after the due date, and still have not submitted our subcontractor list?**

In this situation, the prime contractor must submit the subcontractor list as soon as possible. Although MoDOT reminds the contractor of the requirement, it is the contractor's responsibility to complete and submit the subcontractor list by the required due dates.

**If we didn't perform work during the week reported, do I have to submit a letter indicating that fact instead of the Data Report?**

Yes, you are required to submit a letter indicating that you didn't perform any work on any MoDOT Federally Funded Projects during the reported period in place of the Data Report required at that time.

**If we claim that we didn't perform work during the week reported, but MoDOT indicates that a Prime Contractor listed me as working that week, what do I do?**

If MoDOT receives a letter or a 1391 from you indicating that you didn't perform during the reported week, but a Prime Contractor listed you as a subcontractor that did perform work, MoDOT will return your letter or 1391 form. MoDOT will include a letter informing you of the problem, and let you know what contractors listed you as working.

After checking, if you find that you did not work during the week, you will need to contact the Prime Contractor regarding this error. The Prime Contractor that listed your company must notify MoDOT that you did not work. If you find that you erroneously filed the report, and that you really did work, complete the 1391 report and submit it to MoDOT.

**Is the 1391 form different than the Annual Data Report, the Pre-Season Data Report, and the Post Season Data Report?**

No, all reporting forms request the same information.

**If there was a change order on the job, what dollar figure do I use?**

The dollar amount used should be the original amount of the contract.

**How do we know if a project is federally funded?**

The front cover of each MoDOT contract should indicate which types of funds are used for the project. If you are a Sub-contractor, you may have to contact the Prime contractor for the project to obtain this information. It may be wise for the EEO Officer to track the necessary information throughout the year.

### **Where do I obtain the information requested in tables A and B?**

The information can be obtained from certified payrolls.

### **What if we have a job classification that is not listed on your form?**

If a job classification is not listed on the form, that employee is included with whichever job classification it most closely relates to.

### **How is Table A to be completed?**

The first column is Total Employees, which are the figures of the company's entire workforce broken out by craft. This column should be equal to the sum of the Total Minority Column and the Non-Minority Column. The Total Minority Column contains the figures of the entire minority workforce broken out in craft, and should be equal to the sum of the following columns: African American, Hispanic, Native American, and Asian American. The Apprentice and Trainee Columns should be the apprentices and trainees worked, broken out by craft.

### **How is Table B to be completed?**

Table B is the Apprentice and Trainee workforce of the entire company, broken out by ethnicity. The Total Employee column in Table B must be the same as the Total of the Apprentice and Trainees column in Table A.

### **In Table A on the 1391, do we count Apprentices and Trainees in the total Employee Column and Total Minority Column?**

In Table A, Apprentices and Trainees are not counted in the total Employment Column or the Total Minority Column.

### **Do we count the entire workforce, or just the employees that worked on MoDOT projects?**

The report will just reflect employees that worked on the particular project. The company wide report will reflect company-wide employment figures.

### **If we work out of state, do we include only Missouri Projects, or the entire workforce in table A and B?**

If a contractor is based in Missouri, but does some out of state work, the entire workforce should be provided. If a contractor has an office in Missouri, but also has offices in other states, the information should include the workforce that was used in Missouri alone.

### **Are past employees counted if they worked on projects that we worked on during the reporting periods?**

Yes. As long as the person was employed during the time of the reporting period, they should be counted. The entire workforce during the reporting period is counted.

**Do we count an employee even if they only worked for one or two days during the time period?**

Yes.

**Do we have to make any contact to our prime contractors or subcontractors for the completion of these reports?**

No.

**If we submit an incorrect report, what do we do?**

If an incorrect report is submitted, MoDOT will return the report to the contractor with a letter indicating the problem. The contractor is expected to complete the report correctly and re-submit to MoDOT. Should the contractor realize that the report was submitted incorrectly, MoDOT asks that you re-submit the corrected report with a brief letter indicating the reason for re-submission.

**Can I submit the reports and the subcontractor list electronically?**

Yes, submit the reports to [Missy.Stuedle@modot.mo.gov](mailto:Missy.Stuedle@modot.mo.gov)

**If we have submitted the required report, but receive a letter from MoDOT indicating they did not receive the report, what should we do?**

If MoDOT claims the report wasn't received, it could be because of several reasons. One common reason is that the report and letter crossed in the mail, meaning that MoDOT hadn't received the report before they sent out the letter.

In this case, e-mail MoDOT informing them of the error, and ask them to verify that the report was received. If we indicate that we haven't received the report, please re-submit the report, indicating that it is the second submittal. In any case, it is always a good idea to keep a copy of the original report that was submitted.

**Can I check to make sure that MoDOT received the report?**

Yes, send an e-mail to [Missy.Stuedle@modot.mo.gov](mailto:Missy.Stuedle@modot.mo.gov). In this e-mail, ask the specialist to respond to your e-mail, with indication to whether or not MoDOT has received your report. In this e-mail, be sure to inform the specialist of the contractor's name and the date the report was sent.

**What if we didn't receive the MoDOT reminder notice until after the due date, and still have not submitted our data reports?**

In this situation, the prime contractor must submit the data reports as soon as possible. Although MoDOT reminds the contractor of the requirement, it is the contractor's responsibility to complete and submit the data reports by the required due dates.

## **Section V – Contract Compliance Sample Forms**

### **COMPANY LETTERHEAD**

Current Date

Name

Address

City, State Zip

Dear \_\_\_\_\_:

This is to advise you that in addition to other company duties, you have been appointed EEO Officer for this company. You will be expected to enforce the company's policies and to receive any complaints regarding EEO matters. You will also be required to thoroughly investigate any complaints received from employees including discrimination, sexual harassment, etc.

<Company> gives you the authority to implement the EEO Policy and to take affirmative action as needed.

Sincerely,

Company Official

**Notification to EEO Officer**

# **COMPANY LETTERHEAD**

Current Date

Name

Address

City, State Zip

Dear \_\_\_\_\_:

This is to advise you that in addition to other company duties, you have been appointed DBE Officer for this company. You will be expected to solicit the use of minority and women owned construction firms, when a subcontractor is going to be used to complete a project.

<Company> gives you the authority to handle any concerns that may arise regarding the Disadvantaged Business Enterprises.

Sincerely,

Company Official

**Notification to DBE Officer**

# COMPANY LETTERHEAD

## Announcement

As EEO Officer, I recognize the following as my duties;

1. Maintain a good dissemination of the EEO Policy, so that all concerned will be familiar with our company's commitment to the policy.
2. Recruit and employ minority and female employees in all positions.
3. Investigate, in depth, any claims of discrimination or unfair treatment.
4. Make periodic inspections of job sites for any signs of discrimination, coercion, or intimidation.
5. Maintain all records pertaining to the EEO matters.
6. Conduct at least annual EEO meeting with all employees to educate on all matters involving EEO, discrimination, sexual harassment or any other employment matters.
7. Conduct at least annual EEO meetings with all supervisory personnel.

Any complaints or comments regarding employment the EEO policies or any other employment matters should be directed to me at:

<Name>  
<Address>  
<City>, MO <zip>  
555-5555 Residence  
444-4444 Business  
333-3333 Fax  
Email -

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Signature

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Date

**Posting of EEO Officer**

# COMPANY LETTERHEAD

A pre-job meeting was held on this date with supervisory personnel.

At this time, I explained our EEO policy and its implementation. Our obligations under the contract special provisions and federal law were covered. The need and procedure for locating, recruiting and hiring minority and female employees was emphasized. The supervisors were instructed to review wages and classifications periodically to ensure against discrimination. In addition, they were instructed to review the promotional potential of all employees without regard to race, creed, sex, national origin, ancestry or age. They were advised to make every effort to guard against any type of discrimination or harassment and if any was observed to report to me.

\_\_\_\_\_  
EEO Officer

Date\_\_\_\_\_

Project\_\_\_\_\_

Route\_\_\_\_\_

County\_\_\_\_\_

Signatures of those present:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Pre-Job EEO Meeting-Supervisors**

# **COMPANY LETTERHEAD**

Current Date

Name

Address

City, State Zip

Dear \_\_\_\_\_;

We currently have a contract with the Missouri Department of Transportation and request your assistance in the recruiting and hiring of minority and female applicants.

At the present time, we are seeking to hire the following personnel to work in \_\_\_\_\_ County, Missouri on Route \_\_\_\_\_.

One (1) Carpenter  
One(1) Ironworker  
One (1) Truck Driver

The job will start on \_\_\_\_\_ and continue for approximately \_\_\_\_\_ months.

We would be pleased if your agency would refer qualified personnel to our firm for possible employment. Your assistance in filing the above position vacancies will be greatly appreciated. Please contact me at (555) 555-5555 should you have any available candidates to fill the positions.

Sincerely,

\_\_\_\_\_  
Company Official

**Sample Recruiting Letter**

## **COMPANY LETTERHEAD**

The contract documents for this project include the provision for On the Job training. Training and upgrading of minorities and women toward journey status is a primary objective of this program. This company is committed to these goals and will make every effort to see that these objectives are met.

This company will conduct job training for classification of \_\_\_\_\_.  
New applicants and present employees are encouraged to apply. For more information, contact \_\_\_\_\_ at 555-5555.

\_\_\_\_\_  
Project

\_\_\_\_\_  
County-Route

**Trainee Program**

# **COMPANY LETTERHEAD**

On this date, I inspected the jobsite for this project to determine if there was any evidence of discrimination, coercion, intimidation harassment or unfair treatment.

I found the following:

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I inspected the payroll records for this project and found the following:

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I <did or did not> find evidence of discrimination:

Explanation: \_\_\_\_\_

I <did or did not> receive verbal or written complaints from the project personnel.

Explanation: \_\_\_\_\_

\_\_\_\_\_  
EEO Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Project

\_\_\_\_\_  
Route-County

**Payroll/Job Site Inspection**

# COMPANY LETTERHEAD

Current Date

Missouri Department of Transportation  
<Address>  
<City>, MO <Zip>

Attn: \_\_\_\_\_ R.E.

RE: EEO Officer  
Project  
Route, County

Dear \_\_\_\_\_:

This is to inform you that the following individual has been appointed EEO Officer for this company. They have full authority to carry out all EEO related matters.

<Name>  
<Address>  
<City>, MO <zip>  
555-5555 Residence  
444-4444 Business  
333-3333 Fax  
Email -

Sincerely,

\_\_\_\_\_  
Company Official

**Notification-Resident Engineer**

# **COMPANY LETTERHEAD**

Current Date

On \_\_\_\_ day of \_\_\_\_\_, 200\_, the annual review of all personnel for promotion and training opportunities was conducted. This review was conducted on \_\_\_\_\_

Results were as follows:

1. Mr. John Doe (Cement Mason) was promoted to Cement Foreman.
2. He is performing all duties as assigned.
3. He needs improvement in the following areas: \_\_\_\_\_
4. Attendance is \_\_\_\_\_

\_\_\_\_\_  
EEO Officer

\_\_\_\_\_  
Employee

**Evaluation of Employees**

Acme Construction Co.  
123 America Avenue  
Anywhere, US 54321  
Phone: (573) 634-5555

<p><b>Acme Construction Co.</b> hereafter referred to as "the Company" or "this Company" has adopted this policy and plan. Date: 4/1/07 By: John Doe, President</p>
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EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION (EEO/AA)  
POLICY AND PLAN

EEO/AA Policy Statement

**It is the policy of this company to comply and cooperate to the fullest extent with all applicable regulations of the Equal Employment Opportunity Provisions of the Civil Rights Act of 1964, Executive Order 11246, the Rehabilitation Act of 1973 (29 U.S.C. 793), the Americans with Disabilities Act (ADA) of June 26, 1990 and the Vietnam Era Veterans Readjustment Assistance Act of 1972, all as amended. This policy pertains, as far as the responsibility of this Company is concerned, to any arrangement under which employees, including trainees, are selected for work.**

**It is the policy of this Company not to discriminate against any employee or applicant for employment because of race, religion, color, age, sex and national origin, disabilities or Vietnam Era and Special Disabled Veterans status.**

**This Company will take affirmative action to assure an equal employment opportunity to all qualified persons, and that employees are treated equally during employment without regard to their race, religion, color, age, sex, national origin, disabilities, or Vietnam Era and Special Disabled Veteran's status. Such action shall include but not be limited to:**

- 1. Employment, upgrading, demotion, or transfer**
- 2. Recruitment and recruitment advertising**
- 3. Layoff or termination**
- 4. Rate of pay of other forms of compensation**
- 5. Selection for training, including apprenticeship, pre-apprenticeship and/or on-the-job training**

EEO Officer Duties

**It is the policy of this Company to continuously maintain the appointment of an Equal Employment Opportunity Officer (EEO Officer). The name and contact information for the EEO Officer will be communicated along with this policy. The EEO Officer has responsibility for effectively administering and promoting an active program of equal employment opportunity. The EEO Officer will coordinate the EEO efforts of superintendents, supervisors, foremen and others in the position of hiring personnel.**

**This Company's EEO Officer has the responsibility for effectively administering and promoting an active program of equal employment opportunity within the Company. The EEO Officer will make recommendations, where appropriate, to correct any deficiencies found in the Company's program. The EEO Officer will ensure that this policy and plan are being carried out.**

## EEO/AA Plan

**It is the policy of this Company that there is not any discrimination by virtue of race, religion, color, age, sex, national origin, disabilities or Vietnam Era and Special Veterans status, in the functions of hiring, placement, up-grading, transfer or demotion. In addition, there shall not be any discriminatory practices in recruitment, advertising, or solicitation for employment, rates of pay or other forms of compensation, selection for training including apprenticeship, layoff or termination, or treatment during employment. The Company has affirmative action obligations in the hiring of minorities, females, disabled and veteran's applicants.**

**We will not use goals, timetables or affirmative action standards to discriminate against any person because of their race, religion, color, age, national origin, disabilities, or Vietnam Era and Special Disabled Veteran's status. The Company will not transfer minority or female employee or trainees from one Company to another or from project to project for the sole purpose of meeting goals.**

**This Company shall take specific affirmative actions to ensure equal opportunity. Our compliance with this policy and plan shall be based upon our efforts to achieve maximum results from our actions and we shall document our efforts fully. This Company will implement specific affirmative actions steps, at least as extensive as the following actions to ensure equal employment opportunity:**

- 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all times and in all facilities at which our employees are assigned to work. We shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out our obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.**
- 2. 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 we have employment opportunities available, and maintain a record of the organization's responses.**
- 3. Maintain a current file of the names, addresses and telephone number of each minority and females off-the-street applicant or female referral from a union and minority or female referrals 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 Company by the union or, if referred, not employed by the Company, this shall be documented in the File with the reason therefore, along with whatever additional actions the Company may have taken.**
- 4. Provide immediate written notification to the Director when the union or unions with which we have a collective bargaining agreement have not referred to us a minority person or woman sent by us, or when we have other information that the union referral process has impeded our efforts to meet our obligations.**
- 5. 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 Company's employment needs, especially those programs funded or approved by the**

Department of Labor. We shall provide notice of these programs to the sources compiled under “2” above.

6. Disseminate the Company EEO policy notice by providing notice to the unions and training programs and requesting their cooperation in assisting us in meeting our 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.
7. 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 construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
8. Disseminate the Company EEO policy externally by including it in any advertising in the new media, specifically including minority and female news media and providing written notification to and discussing the Company EEO policy with other contractors and subcontractors with whom the Company does or anticipates doing business.
9. Direct our recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to female recruitment and training organizations serving our recruitment area and our 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, we shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. We will 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 female youth, both on the site and in other areas or our workforce.
11. Validate all test and other selection requirements where there is an obligation to do so under 41 CFP Part 60-3.
12. Conduct at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to prepare for, through appropriate training, etc. such opportunities.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory affect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and our obligations under these specifications are being carried out.
14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.

15. 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.
16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Company EEO policies and affirmative action obligations.

Records

This Company will keep records to monitor all employment related activity to ensure that the company's EEO policy is being carried out. 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 and changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed.

Reporting of Complaints

If at any time anyone feels he or she has been discriminated against because of sex, race, religion, color, age, national origin, disabilities or Vietnam Era and Social Disabled Veteran status, they should report this matter to the company EEO Officer whose name and contact information is communicated along with this policy.

The EEO Officer will investigate all complaints of alleged discrimination made to the company in connection with its contractual obligations. The EEO Officer will attempt to resolve such complaints, corrective actions to be taken and will then follow up on actions taken and their effect. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective actions shall include such other persons. Upon completion of each investigation, the EEO Officer will inform every complainant of all of their avenues of appeal. The following are the addresses for avenues for appeals:

<p><b>Company EEO Officer</b></p> <p>See name and contact information subsequently shown or posted.</p>	<p><b>Missouri Commission on Human Rights</b>  <b>P.O. Box 1129</b>  <b>Jefferson City, MO 65102-1129</b></p> <p><b>(573) 751-3325</b></p>
<p><b>U.S. Dept. of Labor, Regional Director</b>  <b>Office of Federal Contract Compliance</b>  <b>1100 Main Street, Room 860</b>  <b>Kansas City, MO 64105</b></p> <p><b>(816) 502-0370</b></p>	<p><b>U.S. Dept. of Labor, Regional Director</b>  <b>Robert E. Young Building</b>  <b>1222 Spruce Street, Room 10.207</b>  <b>St. Louis, MO 63103</b></p> <p><b>(314) 539-6394</b></p>
<p><b>U.S. Equal Employment Opportunity</b>  <b>Commission</b>  <b>Gateway Tower, II</b>  <b>4<sup>th</sup> Street Ave, 8<sup>th</sup> floor</b>  <b>Kansas City, KS, 66101</b></p> <p><b>(800) 669-4000</b></p>	<p><b>U.S. Equal Employment Opportunity</b>  <b>Commission</b>  <b>Robert E. Young Building</b>  <b>1222 Spruce Street, Room 8.100</b>  <b>St. Louis, MO 63103</b></p> <p><b>(314) 669-4000</b></p>

Acme Construction Co.  
123 America Avenue  
Anywhere, US 54321  
Phone: (573) 634-5555

**Acme Construction Co.** has made the following designation in regard to  
EEO/AA policy and plan.  
Date: 4/1/07 By: John Doe, President

EQUAL EMPLOYMENT OPPORTUNITY OFFICER:

**EEO OFFICER**

Name: Jane Doe  
Address: Acme Construction Co.  
123 America Avenue  
Anywhere, US 54321  
Phone: (573) 634-5555

**EEO Policy/Affirmative Action Plan**

# COMPANY LETTERHEAD

## Sexual Harassment Policy

<contractor> is committed to equal opportunity and affirmative action, and is dedicated to fairness in all personnel management transactions including recruiting, hiring, training, development, job assignments, promotions, transfers, personnel policy administration, and discipline. Discrimination, harassment or retaliation based on race, creed, color, religion, gender, age, national origin, or disability is against policy and will not be tolerated. Any employee found to have engaged in discrimination, harassment, or retaliation will be subject to a disciplinary action that could include termination.

Discrimination means to treat an individual or group differently because of race, creed, color, religion, gender, age, national origin, or disability.

Harassment includes sexual harassment, or harassment based on race, creed, color, religion, sex, age, national origin, ancestry, veteran status or disability.

- A. Sexual harassment is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.
- B. Harassment includes, but is not limited to, verbally or physically abusive, insulting, hostile, or intimidating behavior or conduct toward another individual on the basis of race, creed, color, religion, gender, age, national origin, or disability.

Retaliation is adverse job action taken against an employee and includes, but is not limited to disciplinary action, work assignment, performance evaluation or promotion denial as a direct result of an employee's opposition to unlawful employment practices, or as a direct result of the employee's participation in an investigation proceeding or litigation regarding unlawful employment practices.

Any one who believes they have been discriminated against or harassed in any form should contact the company EEO Officer. The EEO Officer <Name> can be reached at:

<Name>  
<Address>  
<City>, MO <zip>  
555-5555 Residence  
444-4444 Business  
333-3333 Fax  
Email -

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EEO Officer <Company>

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Date  
**Sexual Harassment Policy**

# COMPANY LETTERHEAD

Current Date

\_\_\_\_\_, Inc. is morally and legally committed to nondiscrimination in employment. Any person who applies for a job with this company will not be discriminated against because of age, race, religion, sex, color, disability, veteran status, national origin or ancestry.

It is also the policy of this company to maintain a working environment free of harassment, intimidation and coercion at all times, at all sites and facilities at which our employees are assigned with specific attention given to minorities and women working at such sites. Your efforts to enforce this policy are required and appreciated.

Please be advised that our company must make additional efforts to meet the minority and female employment availability in each county where the federal-aid project is located. When additional employees are needed on your project, the following procedure must be applied:

1. When referral sources (public and private) are contacted, specifically ask if they have qualified minorities and females available. Make sure written documentation as to the responses given.
2. Request employees on your project to refer minorities and females that they know are available.
3. Document all contacts made with current employees and submit to this office for review and filing.

It is the duty of each project manager, superintendent and supervisor to exert every care in being fair in the administration of this policy.

Periodic meetings with personnel under your supervision should be held to ensure that there is no discrimination and that the working environment is free of harassment, intimidation and coercion. A written record of such meetings should be made and given to the EEO Officer or project manager. All complaints of discrimination will be investigated by the EEO Officer.

Signatures of those present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Yearly Notice to Supervisors**

# **COMPANY LETTERHEAD**

Current Date

Topics of Discussion:

1. There is to be no harassment, intimidation, or coercion of any employees at any worksite. It is the superintendent's responsibility to maintain an environment free from these elements and to see that all employees are aware of this. Employees that do not abide by this rule are subject to dismissal.
2. The superintendent is to ensure that work assignments and overtime hours are not given in a discriminatory manner.
3. All persons applying for employment at the jobsite are to be given an employment application. A log of all female and minority applicants is to be maintained and given to the EEO Officer. If no hiring is being done at this jobsite, the applicant should be forwarded to the main office so that the person can be considered for job openings at other sites.
4. Any complaints, verbal or written, must be forwarded to the EEO Officer. The employee should be informed how the EEO Officer can be contacted. All complaints should be thoroughly investigated.
5. Superintendents are to hold jobsite meetings with employees to inform them of the above policies. Any additional items discussed should be noted and each employee present should sign the report.

Signatures of Superintendents,  
Supervisors and Managers present:

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**Supervisors Meeting Environment**

# **COMPANY LETTERHEAD**

## **Notice**

Current Date

To All Employees

This is to advise that we welcome all applicants, regardless of race, creed, ancestry, national origin, religion, sex disability, veteran status or age.

If you know of a minority or female interested in learning a new skill and working with this company, please refer them to our Personnel Officer or the EEO Officer.

<Name>  
<Address>  
<City>, MO <zip>  
555-5555      Residence  
444-4444      Business  
333-3333      Fax  
Email -

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EEO Officer <Company>

**Posting Regarding Minority and Female Referrals**

# COMPANY LETTERHEAD

Current Date

Name

Address

City, State Zip

RE: Project \_\_\_\_\_

County \_\_\_\_\_

Route \_\_\_\_\_

Dear \_\_\_\_\_:

We have been awarded the prime contract on the above referenced federal-aid highway project. Under the contract special provisions we are required to award subcontracts to qualified DBE firms for \_\_\_\_\_% of the contract value.

If you are interested in participating as a subcontractor on this project, the plans are available at our office for your review.

Sincerely,

\_\_\_\_\_  
Company Official

**Solicit DBE Subs**

Company: \_\_\_\_\_

Project: \_\_\_\_\_

Meeting Date: \_\_\_\_\_

Place of Meeting: \_\_\_\_\_

Subjects discussed and disposition:

1. Company EEO Policy and Affirmative Action Plan
2. Recruitment of Minorities and Women for employment and training opportunities
3. Identification of EEO Officer
4. Workforce diversity and recruitment
5. Wages and Payroll
6. Bulletin Boards
7. Training Opportunities
8. Complaints

Suggestions: \_\_\_\_\_

\_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTENDEES**

<b>Printed Name and Title</b>	<b>Signature</b>

**EEO Meeting - Employees**

On \_\_\_\_\_, 200\_\_, \_\_\_\_\_ conducted a review of all persons with any responsibility for employee decisions with \_\_\_\_\_.  
(company)

Factors considered were:

- ( ) Efforts to recruit and /or hire minorities and females.
- ( ) Equal treatment of all employees.
- ( ) Dispute resolution.

The following individuals are doing an excellent job:

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The following individuals are doing an adequate job:

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The following individuals must improve their performance:

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## Evaluation of Supervisors

# **COMPANY LETTERHEAD**

Current Date

Name

Address

City, State Zip

Re: Job Number \_\_\_\_\_

This letter provides notice that <Company Name> received a contract on <Date>, in the amount of \$\_\_\_\_\_. The following subcontractors are also scheduled to perform work on the project:

Subcontractor X

\$XX,XXX

This contract is federally funded, and work begins on <Date>. Completion is expected to conclude on <Date>. The project is located at \_\_\_\_\_.

If you have any questions or comments regarding this or other contracts, please feel free to give me a call at 555-555-5555.

Sincerely,

EEO Officer

**Letter to OFCCP for Contracts over \$10,000.00**

# **COMPANY LETTERHEAD**

Current Date

Name

Address

City, State Zip

Dear \_\_\_\_\_:

Enclosed is our current Equal Employment Opportunity (EEO) Policy. It is the policy of this company to assure that applicants and employees are treated fairly and work in an environment free of harassment of any kind. As a supervisor of this company, you are expected to report any knowledge of discrimination, harassment, or intimidation that is experienced by any of our employees to the company EEO Officer.

\_\_\_\_\_, Inc. is committed to nondiscrimination and equal opportunity in employment. Any complaints or comments regarding employment or the EEO policies should be directed to me at 555-555-5555. All complaints are confidential.

Sincerely,

Company Official

Enclosure

**Letter to Supervisors with EEO Policy**

# **COMPANY LETTERHEAD**

Current Date

Name

Address

City, State Zip

Dear \_\_\_\_\_;

Enclosed is our current Equal Employment Opportunity Policy. It is the policy of this company to assure that applicants and employees are treated fairly and work in an environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which employees are assigned to work.

\_\_\_\_\_, Inc. is committed to nondiscrimination and equal opportunity in employment. Any complaints or comments regarding employment or the EEO policies should be directed to me at 555-555-5555. All complaints are confidential.

Sincerely,

Company Official

Enclosure

**Letter to Employee's With EEO Policy**

# **COMPANY LETTERHEAD**

Current Date

Name

Address

City, State Zip

Dear \_\_\_\_\_:

Enclosed is our current Equal Employment Opportunity Policy. It is the policy of this company to assure that applicants and employees are treated fairly and work in an environment free of harassment of any kind.

\_\_\_\_\_, Inc. is committed to nondiscrimination and equal opportunity in employment. As a vendor, subcontractor or supplier to this company your firm is required to comply with all federal EEO and nondiscrimination requirements. Any complaints or comments regarding employment or the EEO policies should be directed to me at 555-555-5555. All complaints are confidential.

Sincerely,

Company Official

Enclosure

**Notice to any Subcontractor, Vender or Supplier, with EEO Policy**

## **Minority & Women Recruitment Response Register**

**Agency Contacted**

**Date**

**Response**

**Recruitment Responses**

# **COMPANY LETTERHEAD**

This firm does not maintain or provide for its employees any segregated facilities at any of our offices, work areas or job sites. This firm does not permit its employees to work at any location where segregated facilities are maintained.

This firm agrees that any breach of this certification is a violation of the equal opportunity provision of federally assisted highway contracts.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms, portable toilets, time clocks, drinking fountains, eating areas, transportation and housing facilities provided for employees which are segregated by explicit directive, habit, local customs or otherwise.

Any breach of these clauses may be grounds for debarment as provided in 29 CFR 5.6(b).

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Name of Company

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Company Official

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Date

**Certificate of Non-segregated Facilities**

## **APPLICANT LOG**

<b>DATE</b>	<b>Name, Address, Phone</b>	<b>Minority Sex</b>	<b>Craft</b>	<b>Hired/Sent to Union</b>	<b>Reason if No Hire</b>	<b>Request From Union</b>

**Applicant Log**

## **Section VI – Training Requirements/Special Provisions**

The intent of the OJT Program is to train and upgrade minority, female and economically individuals into the industry. Those individuals identified as minorities include African Americans, Native Americans, Asians and Hispanics. Non-minority males may be enrolled if the contractor is meeting workforce goals in all crafts on the project or if they can show they are economically disadvantaged.

### **Reimbursement**

Trainee goals are set in 1,000 hour increments or 1 slot (person). If a trainee goal is 2,000 hours, no more than two trainees can be approved on the project to achieve the hours. Each trainee is expected to complete 1,000 hours on the project. Once a trainee reaches 500 hours on the project the RE office may begin reimbursement. The 500 hours only pertains to reimbursement purposes. It does not mean that if a trainee reaches 500 hours on the project the goal has been satisfied. If a trainee leaves the project to no fault of the contractor and needs to be replaced by a new trainee the hours worked by the previous trainee can be counted as well as the hours the replacement trainee works.

### **Transferring of Hours**

Trainees and their hours may be transferred from project to project. Monthly trainee reports and payrolls would need to be submitted. The contractor may not bank trainee hours for future use.

### **Failure to Meet Goal**

What happens when contractors fail to meet trainee goals?

- Liquidated Damages. For example, if a trainee goal on a project is 1,000 hours, and the contractor only completed 300 hours on the project then liquidated damages would be assessed for 700 hours x \$7.00 = \$4,900.
- No reimbursement for hours worked under 500 hours
- Contractor Performance Rating would be affected.
- If the contractor does not meet a training goal, they will be asked to submit a good faith effort (GFE) outlining the steps they took to meet the goal and the barriers that prevented them from achieving the goal.

The On-the Job (OJT) Training Special Provision is incorporated in all MoDOT contracts. In addition, the most recent version can be located on our website at:

[http://www.modot.mo.gov/business/contractor\\_resources/External\\_Civil\\_Rights/jobtraining.htm](http://www.modot.mo.gov/business/contractor_resources/External_Civil_Rights/jobtraining.htm)

The most recent version of the trainee forms can be located on our website at:

[http://www.modot.mo.gov/business/contractor\\_resources/External\\_Civil\\_Rights/jobtraining.htm](http://www.modot.mo.gov/business/contractor_resources/External_Civil_Rights/jobtraining.htm)

## **Section VII – Recruitment Sources**

The contractor shall establish and maintain a current list of minority and women recruitment sources. A listing of potential recruitments sources can be obtained from MoDOT by contacting us at 573-751-1216 or [missy.stuedle@modot.mo.gov](mailto:missy.stuedle@modot.mo.gov)