



NORTH CAROLINA

Department of Transportation



Office of Civil Rights Equal Opportunity Contractor Compliance

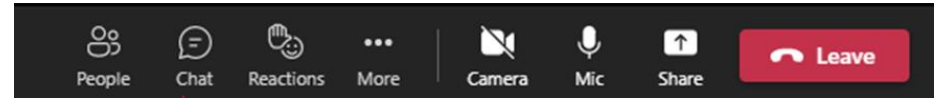
NCDOT EO Contractor Compliance Unit

JUNE 2023

Virtual Training Rules

- Digital Sign In

- Go to the meeting chat



- Write your name, title, and name of the company that you represent.

- Meeting Rules

- Mute your microphone
- Please ask questions in the chat



Training Objective

- To ensure that contractors and subcontractors performing work on Federal-aid highway contracts comply with the Equal Opportunity (EEO) and Affirmative Action (AA) requirement set forth in their construction contracts.
- To ensure our OCR peers have a better understanding of EO Contractor Compliance.

Learning Outcomes

- Authorities and FHWA-1273 Required Contract Provisions
- Roles and Responsibilities of EOCCP (relationship to all other OCR)
- Understanding Equal Opportunities
- Compliance Review Process

Federal Authorities

- Title VI and Title VII of the Civil Rights Act of 1964
- Federal-Aid Highway Act of 1968
- FHWA Regulations
 - ✓ 23 CFR 200 (Title VI)
 - ✓ 23 CFR 230 (EOCC Program)
 - ✓ 23 CFR 635 (Contract Procedures)

What is the FHWA-1273?

- a detailed explanation of the Required Contract Provisions for Federal-Aid Construction Contracts. This (typically) applies to all Federal-aid highway construction projects.
- a 12-page document, but we only monitor the requirements found on the first four pages (Sections I, II and III).

Where is the FHWA-1273 derived from?

- FHWA-1273 is derived from Title VI legislation

Title VI states:

“No person in the United States shall on the ground of race, color of national origin be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

- Title VI prohibits employment discrimination in a Federally assisted program where the primary objective of the Federal assistance is to provide employment (49 C.F.R Part 21.5(c))

Equal Opportunity Goals

- To ensure fair treatment in all terms and conditions of employment and subcontractor opportunities
- To ensure adequate representation and utilization of minorities and women by classification in the contractor's workforce

Who are our Stakeholders?

- Contractors (Prime and Subcontractors)
- FHWA
- NC DOT Construction Unit
- Division Offices

FHWA-1273 Required Contract Provisions

- I. General Requirements (refers to all contracts – no matter the dollar amount)
- II. Nondiscrimination (refers to contracts that are \$10,000 or more)
- III. Nonsegregated facilities (refers to contracts that are \$10,000 or more)

I. General Requirements

- FHWA-1273 must be physically incorporated in each Federal-aid highway construction contract.
- FHWA-1273 must be incorporated by reference in purchase orders, rental and supply service agreements.
- Prime Contractors are responsible 100% for compliance of all subcontractors and service providers – this includes all lower tier subcontractors.

Note: This section applies to all Federal-aid contracts.

II. Nondiscrimination (Compliance Monitoring)

1. Equal Employment Opportunity
2. EEO Officer
3. Dissemination of Policy
4. Recruitment
5. Personnel Actions
6. Training and Promotion
7. Unions (N/A in NC)
8. Reasonable Accommodation
9. Selection of Subcontractors
10. DBE Assurances Required
11. Records and Reports

Note: This section applies to Federal-aid contracts over \$10,000

1. Equal Employment Opportunity

Contractors are required to:

- Cooperate with NCDOT and FHWA (1.a)
- Have a signed EEO Policy Statement (1.b)
- Make Good Faith Efforts (GFE) (1.a)

Example of Contractor's EEO/AA Policy Statement

CONTRACTOR'S EEO/AA POLICY STATEMENT

Note: The EEO/AA Policy statement must be posted at company offices and all job sites.

It is the policy of (*Company Name*) to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

(*Company Name*) will take affirmative action to ensure that the EEO/AA Policy is implemented with particular regard to: advertising, application procedures, compensation, demotion, employment, fringe benefits, job assignment, job classification, layoff, leave, promotion, recruitment, rehire, social activities, termination, transfer, upgrade, working conditions and selection for training to include apprenticeship, pre-apprenticeship and on-the-job training.

(*Company Name*) will continue to make it understood to the employment sources/agencies with which it deals, and in employment opportunity announcements/ads, the above mentioned EEO/AA Policy and that all of the company's employment decisions are based on individual merit only.

All current employees of (*Company Name*) are requested to encourage qualified disabled persons, minorities, females, special disabled veterans, and Vietnam Era veterans to apply for employment, on-the-job training or for union apprenticeship. It is the policy of (*Company Name*) to satisfy reasonable special accommodations for qualified disabled individuals.

It is the policy of (*Company Name*) that all company activities, facilities and job sites are non-segregated. Separate or single-user toilet and changing facilities are provided for privacy between genders. Disabled parking spaces may be assigned to accommodate accessibility needs.

It is the policy of (*Company Name*) to ensure and maintain a working environment free of coercion, harassment and intimidation at all job sites, and in all facilities at which employees are assigned to work. Any violation of the policy should be immediately reported to your supervisor or the Company EEO Officer identified below:

(*EEO Officer Name*):
(*Address/Office location*):
(*Telephone #*):

Company President Printed Name & Signature

Date

For the required EEO Statement, please refer to page 2(b) in the FHWA 1273

2. EEO Officer

- The contractor will designate a qualified EEO Officer
- The EEO Officer must have the responsibility and authority to implement the EEO program. Some examples of potential EEO Officers are:
 - ✓ President or Company Owner
 - ✓ HR Director
 - ✓ Project Manager
 - ✓ Safety Officers
 - ✓ Administrative Assistants (only if he/she has sufficient authority to make decision on behalf of the company)

Example of EEO Officer Announcement

EEO OFFICER ANNOUNCEMENT

To: All Employees and Subcontractors
From: *(Insert Company President's Name)* *(Initialed by Company President)*
Date:
Re: EEO (Equal Employment Opportunity) Officer

I would like to announce that *(Insert Contractor's Name)* has named *(Insert EEO Officer's Name)* as the EEO (Equal Employment Opportunity) Officer. The EEO Officer's role includes the following:

- The EEO Officer is our Company EEO expert. He/she has the knowledge, authority and responsibility for EO and EEO compliance.
- Works with employees, subcontractors, potential employees and state and federal agencies to ensure that all employees, potential employees and subcontractors are treated without regard to their race, color, religion, sex, national origin, age or disability.
- Leads meetings with all personnel to review our EEO policy and its implementation.
- Serves as contact person for all discrimination complaints.
- Initiates changes to personnel policies as deemed necessary to comply with EEO laws and regulations and federal-aid contract requirements.
- Oversees recruitment of new employees to ensure EEO compliance.
- Periodically audits wages, working conditions, personnel actions, benefits and other employment related activities to determine EEO compliance and initiates corrective action if necessary.
- Oversees the documentation of all EEO related policies and procedures.

This memorandum is being disseminated in the following ways:

1. A copy of this memo was placed on the bulletin boards at all construction sites, in the shop area and in the main office on *(Insert Date)*.
2. A copy of this memo was included with all employee paychecks on *(Insert Date)*.
3. A copy was mailed to all active subcontractors on *(Insert Date)*.
4. Inclusion in the *(Insert Date)* edition of the Employee Handbook.
5. A copy of this memo was mailed to all recruitment sources on *(Insert Date)*.

3. Dissemination of Policy

All members of the contractor's staff who are engaged in personnel actions such as hiring, recruiting, and supervising employees must be able to effectively communicate the company's EEO policies.

Policies include but not limited to:

- EEO/AA (Equal Employment Opportunity/Affirmative Action)
- ADA policies (Americans with Disabilities Act)
- Discrimination Complaint Procedures

Dissemination of Policy – Who?

Policy information should be made available to:

- ✓ Supervisors and Personnel Office Employees
 - ✓ A. Supervisory and personnel office employees
 - ✓ B. New supervisory or personnel office employees
 - ✓ C. All personnel who are engaged in direct recruitment for project
- ✓ New Hires
- ✓ Subcontractors
- ✓ ALL Employees

Dissemination of Policy-How?

Policy information can be made available to employees via:

- ✓ Employee Orientation
- ✓ Periodic meetings every six months with supervisory and office personnel
- ✓ Employee Handbook/Company Manual
- ✓ E-mail, Contractor's website, Newsletters
- ✓ Bulletin Board Postings

Dissemination of Policy

SUPERVISOR AND OFFICE PERSONNEL EEO MEETING

COMPANY NAME:	PROJECT #:	DATE OF MEETING:
NAME AND TITLE OF PERSON CONDUCTING MEETING:	CHECK ONE: <input type="checkbox"/> PRIME <input type="checkbox"/> SUBCONTRACTOR	MEETING LOCATION:

CERTIFICATION OF MEETING:
The signature below is certification that a meeting was held with project personnel informing them of the topics checked below. A signed attendance record was made and copies of meeting content and handouts are attached.

SIGNATURE: _____, Meeting Leader

TOPICS ADDRESSED: (Full Agenda Attached)

- EEO Policy and Implementation
 - Affirmative Action Plan and Implementation
 - FHWA 1273 Obligations
 - Identification of EEO Officer
 - Work force Diversity and Recruitment
 - _____
- Bulletin Boards
 - Wages and Payrolls
 - Utilization of Disadvantaged Businesses
 - Training and/or Promotion Opportunities
 - Complaints
 - _____

ATTENDEE NAMES (Please Print)	ATTENDEE SIGNATURES	JOB TITLE

Use additional pages if necessary

Required Postings

Federal

U.S Department of Labor website

Popular Topics --- Posters

State

N.C. Department of Labor website

Publications --- Posters or Other State/Federal Posters

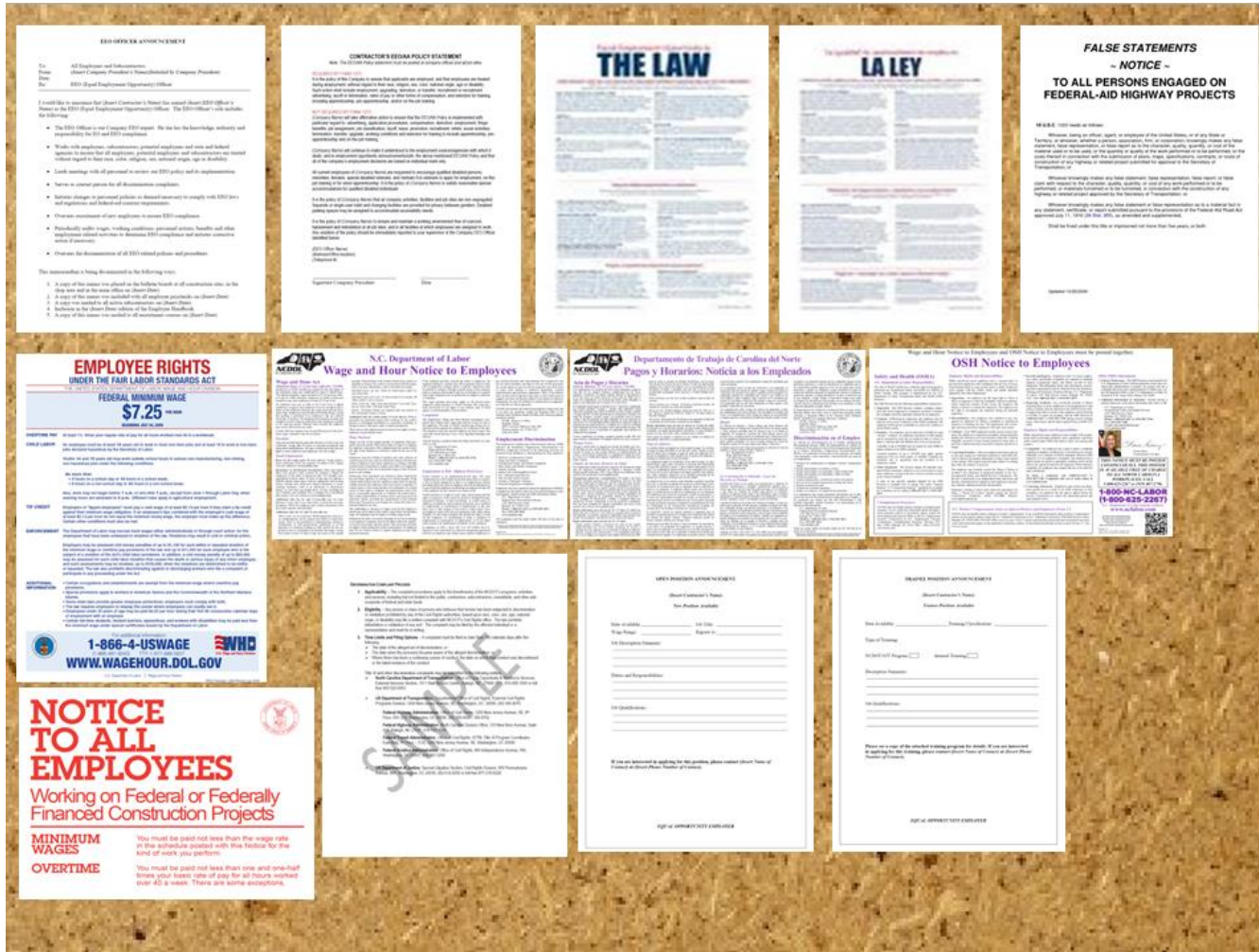
[All State and Federal Workplace Posters | NC DOL](#)

Posters include Spanish Versions

Additional Required Postings

- EEO Officer designation
- EEO Policy
- Discrimination Complaint Procedures
 - Employees and Subcontractors
- Job Postings (this is not a requirement. However, this is part of the recruitment process)
- ADA Policy

Example of Bulletin Board with Required Posters



4. Recruitment

- Advertise as an “Equal Opportunity Employer”
- Conduct systematic and direct recruitment that likely to yields qualified minorities and women
- Encourage existing employees to refer minorities and women

Recruitment Methods and Sources

Methods

- Advertisements (hard copy and online)
- Word of Mouth (must still be documented)
- Networking (must still be documented)

Sources (Example)

- State Employment Agencies
- Highway Construction Trade Academies (NCDOT/OJT Program)
- Trade Associations
- Employee Referrals
- Community Colleges/Technical Schools
- Internal Applicant Logs

5. Personnel Actions

Wages, working conditions and employee benefits shall be established and administered. This includes personnel actions of every type, including:

- Hiring
- Promotions
- Transfers
- Demotions
- Layoffs
- Terminations

All actions shall be taken without regards to race, color, religion, sex, national origin, age or disability.

What Do Personnel Actions Include?

- Periodic Site Inspections (FHWA-1273 Part 2 Section 5a)
- Evaluation of Wages (FHWA-1273 Part 2 Section 5b) *
- Personnel Action Reviews (FHWA-1273 Part 2 Section 5c) *
- Complaints of Discrimination (FHWA-1273 Part 2 Section 5d)

**All annotated by race, gender and job classification*

Example of Site Inspection Form

EEO Construction Site Inspection

Date of Visit: _____ Signature of Inspector: _____
 Project #: _____ Title of Inspector: _____

1. ___ Yes ___ No Are all posters listed below displayed in all applicable languages in an externally visible place on the job site?

<input type="checkbox"/> EEO is the Law	<input type="checkbox"/> Employee Rights Under FMLA
<input type="checkbox"/> Wage Rate Info Fed-Aid Hwy Project	<input type="checkbox"/> USERRA
<input type="checkbox"/> Actual Wage Rates	<input type="checkbox"/> Polygraph Protection Act
<input type="checkbox"/> Employees Rights – Davis Bacon Act	<input type="checkbox"/> NC Labor Laws
<input type="checkbox"/> Employee Rights - FLSA	<input type="checkbox"/> Workers' Compensation
<input type="checkbox"/> NOTICE Federal Aid Project	<input type="checkbox"/> Unemployment Insurance Poster
<input type="checkbox"/> Job Safety & Health – OSHA	

2. ___ Yes ___ No Our firm's EEO policy is displayed in an externally visible place on the job site.

3. ___ Yes ___ No Our firm's discrimination complaint procedure including the EEO Officer's name is displayed in an externally visible place on the job site.

4. ___ Yes ___ No I found no segregated areas on this job site.

5. ___ Yes ___ No I found no racially or sexually discriminating signs, words, or drawings on this jobsite, including recreational areas, break areas or restrooms.

6. ___ Yes ___ No The restrooms and changing areas have no "peepholes" and can be locked from the inside.

7. ___ Yes ___ No I saw no visible evidence that employee working conditions, tool assignments or facilities demonstrate discriminatory treatment of jobsite personnel.

8. ___ Yes ___ No I have asked employees if they have any discrimination complaints, and they all have answered "no".

9. ___ Yes ___ No I have discussed with Project Manager and EEO concerns that were raised as a result of this inspection.

If you answered "No" to any question above, reference the question number and state action taken here:

Example of Wage Evaluation Form

WAGE EVALUATION

Employee Name	Job Classification*	Race	Gender	Wage Rate	Start Date	Comments

*Job classes must match FHWA 1391 – Officials/Managers, Supervisors, Foreman/Women, Clerical, Equipment Operators, Mechanics, Truck Drivers, Ironworkers, Carpenters, Cement Masons, Electricians, Pipefitters/Plumbers, Painters, Laborers-Semi-skilled or Laborers-Unskilled

Findings and Corrective Action if applicable:

Example of Personnel Actions Log

PERSONNEL ACTIONS LOG

Project #:

Log Period: (Insert From and To Dates)

Terminations							
Employee Name	Race	Sex	Term Date	Position Held	Wage Rate	Reason for Termination	
Recalls/Rehires							
Employee Name	Race	Sex	Recall Date	Position	Wage Rate	Previous Position	Wage Rate

Complaints of Discrimination

The contractor is required to:

- Make employees and subcontractors aware of their right to file a Title VI complaint of discrimination
- Develop procedures for prompt processing and disposition of Title VI discrimination complaints (23 C.F.R Part 200.9 (b3)). This includes:
 - Investigating all complaints of discrimination in an appropriate time
 - Attempting to resolve complaints
 - Taking appropriate corrective action
 - Informing employees and subcontractors of avenues of appeal

Example of Discrimination Complaint Process

DISCRIMINATION COMPLAINT PROCESS

1. **Applicability** – The complaint procedures apply to the beneficiaries of the NCDOT's programs, activities, and services, including but not limited to the public, contractors, subcontractors, consultants, and other sub-recipients of federal and state funds.
2. **Eligibility** – Any person or class of persons who believes that he/she has been subjected to discrimination or retaliation prohibited by any of the Civil Rights authorities, based upon race, color, sex, age, national origin, or disability may file a written complaint with NCDOT's Civil Rights office. The law prohibits intimidation or retaliation of any sort. The complaint may be filed by the affected individual or a representative and must be in writing.
3. **Time Limits and Filing Options** – A complaint must be filed no later than 180 calendar days after the following:
 - The date of the alleged act of discrimination; or
 - The date when the person(s) became aware of the alleged discrimination; or
 - Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

Title VI and other discrimination complaints may be submitted to the following entities:

- **North Carolina Department of Transportation**, Office of Equal Opportunity & Workforce Services, External Services Section, 1511 Mail Service Center, Raleigh, NC 27699-1511; 919-508-1830 or toll free 800-522-0453
- **US Department of Transportation**, Departmental Office of Civil Rights, External Civil Rights Programs Division, 1200 New Jersey Avenue, SE, Washington, DC 20590; 202-366-4070
 - Federal Highway Administration**, Office of Civil Rights, 1200 New Jersey Avenue, SE, 8th Floor, E81-314, Washington, DC 20590, 202-366-0693 / 366-0752
 - Federal Highway Administration**, North Carolina Division Office, 310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919-747-7010
 - Federal Transit Administration**, Office of Civil Rights, ATTN: Title VI Program Coordinator, East Bldg. 5th Floor – TCR, 1200 New Jersey Avenue, SE, Washington, DC 20590
 - Federal Aviation Administration**, Office of Civil Rights, 800 Independence Avenue, SW, Washington, DC 20591, 202-267-3258
- **US Department of Justice**, Special Litigation Section, Civil Rights Division, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202-514-6255 or toll free 877-218-5228

6. Training and Promotion

- Identify or locate, qualify and increase the skills of minorities and women
(FHWA-1273 Part 6a)

- Make full use of training programs (FHWA-1273 Part 6b), such as:
 - On-the-Job Training Program Requirements (23 Code of Federal Regulation, Part 230 Subpart A)
 - Apprenticeships
 - Skill Development (ex: job shadowing)
 - Certification Programs

OJT Program and Supportive Service

- OJT Program Requirement
 - 23 Code of Federal Regulation, Part 230 Subpart A
 - Statewide annual Alternate OJT Training Goal
 - Number of trainees is based on central, and division lets over the last three FFY.
 - GFE/Non-Compliance Process for OJT

Supportive Service

- Highway Construction Trade Academy (HCTA)
- Pop-up HCTA
- Advanced Training
- Summer Accelerator Program
- Apprenticeship Program
- Construction Career Days
- Career Fairs

Example of Trainee Position Announcement

TRAINEE POSITION ANNOUNCEMENT

(Insert Contractor's Name)

Trainee Position Available

Date Available: _____ Training Classification: _____

Type of Training:

NCDOT/OJT Program: Internal Training:

Description Summary:

Job Qualifications:

Please see a copy of the attached training program for details. If you are interested in applying for this training, please contact *(Insert Name of Contact)* at *(Insert Phone Number of Contact)*.

EQUAL OPPORTUNITY EMPLOYER

8. Reasonable Accommodation

Contractors must:

- Be familiar with requirements of the Americans with Disabilities Act (ADA)
- Provide reasonable accommodations in employment activities
- Document actions
- Post policies

9. Selection of Subcontractors

Selection

Contractors shall not discriminate in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

Notification

Contractors shall notify potential subcontractors and suppliers of EEO obligations (FHWA-1273 Part 9a).

Monitoring

Contractors are required to monitor, enforce, and document subcontractors' EEO compliance (FHWA-1273 Part 9b).

Contractor Monitoring of Subcontractors

- Hold pre-work meeting with all EEO Officers to inform subcontractors of their obligations under FHWA-1273 (can be during pre-construction meeting or can be a separate meeting)
- Facilitate regular EEO check up calls or meetings with active subcontractors
- Periodically request subcontractor EEO Program information and evaluate the documentation submitted
- Document all monitoring activity
- Ensure all subcontractor EEO Officers fully participate in the compliance review process
- *It is the Contractor's responsibility to set timeframes for meetings, check ups, information requests and monitoring of subcontractors.*

10. DBE Assurances Required

- Contractors must carry out requirements of 49 C.F.R. Part 26, if applicable
- DBE assurance language is included in FHWA-1273
- Contractors and subcontractors must provide equal opportunity in the selection of DBE's

11. Records and Reports

- Records shall be retained for a period of three years following the date of the final payment to the contractor.
- Records shall be made available for inspection by the NCDOT or FHWA. This includes the following:
 - ✓ **Annual EEO Report (Form 1391)**
 - ✓ Utilization Report (workforce information)
 - ✓ Payroll records annotated by race and gender

Reminder: ALL employment records and reports can be requested if a compliance review is conducted

III. Nonsegregated Facilities

The contractor is required to ensure all facilities are not segregated. This includes common areas where employees congregate, such as:

- Waiting rooms
- Work areas
- Cafeterias
- Restrooms
- Time Clock

Please Note: Contractors are still required to provide separate or single-user restrooms and dressing/sleeping areas to assure privacy between the sexes.

Compliance Review Process

- Preliminary Analysis
 - ✓ Submit a complete response to the request for information
 - ✓ Required of prime and subcontractors
- Onsite Verification
- Compliance Determination
- Corrective Action Plan (CAP)
- Enforcement

Compliance Considerations

- Good Faith Efforts
- Recruiting Sources
- Representation and Utilization
- Employment Practices
- Training Programs
- Selection of Contractors

Compliance Determination by the NCDOT

In Compliance

- Subject to FHWA's approval
- Letter advising of compliance is sent to contractor and DOT Resident Engineer

Non-Compliance

- A Show Cause Notice (SCN) is sent to the contractor
- Corrective Action Plan (CAP) and Conciliation Agreement
- Follow Up Review

Non-Compliance Enforcement

- Withholding payments (including final payment)
- Canceling or suspending contracts
- Suspending or disbarring contractors
- Declaring a contractor to be a non-responsive bidder

Most Common Deficiencies

Contractors fail to:

- Submit a complete response to the request for information
- Participate in the reviews (EEO Officers/Subcontractors)
- Evaluate and document wages and personnel actions
- Develop a recruitment process that yields diversity
- **Monitor and ensure compliance of subcontractors**

Important Points for Contractors to Know

The Contractor Compliance Program is not a “Gotcha”

Important Points for Contractors to Know

Contractors **MUST** make a Good Faith
Effort beyond a paper process...

Important Points for Contractors to Know

Document, Document, Document...

Helpful Resources



- Federal Highway Administration (www.fhwa.dot.gov)
- NC Department of Transportation website (www.ncdot.gov)
- FHWA-1273 Form
- <http://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

Questions?

NC Department of Transportation
Office of Civil Rights
External Civil Rights Section
1511 Mail Service Center
Raleigh, NC 27699-1511

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