

# Equal Employment Opportunity Contractor Compliance Program October 2007

## ***Purpose***

The Washington State Department of Transportation (WSDOT), as a recipient of federal-aid highway funds, is required to maintain an Equal Employment Opportunity (EEO) Program, which shall include a system to ascertain whether contractors and subcontractors are complying with their EEO contract obligations. This program shall include procedures to assure: (1) that EEO is being provided, and (2) that prompt corrective action will be taken in the event of noncompliance.

## ***Policy***

It is the policy of the Washington State Department of Transportation to perform all official equal employment opportunity actions in an affirmative manner, and in full accord with applicable federal law, statutes, executive orders, regulations, and policies enunciated there under, to assure the equality of employment opportunity, without regard to race, religion, sex, color, national origin, age, or disability both in its own work force and in the work forces of contractors, subcontractors, and material suppliers engaged in the performance of federal-aid highway construction contracts.

The Washington State Department of Transportation keeps people and business moving by operating and improving the state transportation systems vital to our taxpayers and communities.

## **I. Organization and Structure**

### **A. Staffing**

1. *Reporting Responsibilities* - The primary responsibilities for the day-to-day administration of the Contractor compliance programs lies with the EEO/OJT (On the Job Training) Contract Compliance Officer (Exhibit 1). The EEO/OJT Contract Compliance Officer reports directly to the EEO/OJT Unit Supervisor who reports directly to the External Civil Rights Branch (ECRB) Manager who in turn reports to the Director, Office of Equal Opportunity (OEO). The Director reports to the Secretary of Transportation. An organization chart is provided (Exhibit 2).
2. *EEO Contract Compliance Officer* - The position is full-time and filled by a Human Resource Consultant 3 (HRC3) within the ECRB. The EEO Contract Compliance program responsibilities include:
  - a. Conduct comprehensive EEO compliance and follow-up reviews of WSDOT and Highway & Local Program (H&LP) prime/sub contractors. Prepare findings, make compliance determinations, and notify contractors of review findings/determinations.

Prepare for issuance of “30 day Show Cause Notices”, conduct conciliation conferences, approve Corrective Action Plans and monitor on-going compliance. Work with Assistant Attorney General (AAG) in preparing agency response to legal challenges. Conduct onsite verifications and interviews with Apprentices/Trainees. Prepare extensive narrative and statistical EEO/OJT reports.

- b. Meet with and provide guidance, direction, coordination, interpretation and assistance to regional EEO Officers, H&LP, field personnel, unions, contractors, state and local agencies, and the general public regarding WSDOT’s EEO/OJT Contract Compliance program, policies, regulations and laws. Be available by phone/e-mail when needed for assistance.
- c. Develop, formulate, and prepare, WSDOT EEO/OJT Contract Compliance program policies, rules and regulations. Prepare updates for construction manual, standard specifications, Local Agency Guidelines (LAG) manual, forms and Special Provisions related to highway construction.
- d. Along with the OJT Support Services Coordinator work with all Tribes on Tribal Employment Rights Ordinance (TERO) issues. These pertain to employment of tribal members when on the reservations and Indian Preference when on or near. EEO staff work to keep communication going between the tribes and the contractors when a problem arises. EEO staff also works with the WSDOT Tribal Liaison to get the Centennial Accord implemented.
- e. Develop and conduct training workshops with the OJT Support Services Coordinator regarding EEO/OJT contract requirements and TERO obligations. Participate in related workshops, seminars, trade fairs, presentations to executive management, and other governmental agencies. Provide program technical assistance and information to contractors, unions, apprenticeship programs, community based organizations, Associated General Contractors, WSDOT Regional and field personnel including H&LP staff, and other governmental agencies regarding the EEO/OJT requirements.
- f. Liaison with contractors, contractor associations, unions, minority and female community groups as well as legislative committees and other state, federal and local agencies regarding all aspects of EEO/OJT Contract Compliance programs.
- g. Assist the OJT Support Services Coordinator in the direction of Tribal Employment Rights Ordinance (TERO) issues and attending meetings with, and assist when necessary, WSDOT Tribal Liaison. Work with both contractors and tribes on TERO issues.
- h. Set up meetings with Regional EEO Officers, External Civil Rights Branch (ECRB) staff, Highway & Local Programs (H&LP) staff, and all interested parties on a yearly schedule to update in all areas of ECRB.
- i. Administer the day-to-day operations of the On the Job Training (OJT) Program, including assigning training goals to federal aid contracts inclusive of vessel and marine. Approve contractor training programs from regions, forward Apprenticeship Training, Employer Labor Services (ATELS) or non-Joint Apprentice Training Council (JATC) programs to FHWA for approval after reviewing.
- j. Coordinating community outreach and staff training.
- k. Mediating/resolving EEO disputes and complaints when requested by contractor or their employee(s).

3. *Subordinate Staffing* – The EEO/OJT Contract Compliance Supervisor supervises a full-time Compliance Officer and the OJT Support Services Coordinator. The Compliance Officer is classified as a Human Resource Consultant 3 and assists in all aspects of EEO Compliance, including conducting compliance reviews.
4. *Headquarters Support* – In addition to the EEO/OJT Contract Compliance Supervisor and Officer, program assistance is received from the Construction Engineer Administration (WSDOT awarded contracts); H&LP local agency awarded contracts; and the Attorney General’s Office through coordination and counsel.

## **B. Regional Personnel**

1. *Regional EEO Officers* – Each of WSDOT’s six regions (Northwest, North Central, Olympic, Southwest, South Central, and Eastern) have an EEO Compliance Officer responsible for monitoring EEO/OJT program compliance at the regional level. All Regional EEO officers are located within the Operations Division within their respective regions and have civil rights as one of their responsibilities, except for the Northwest Region EEO Officer (HRC3) position, which is dedicated full-time to civil rights compliance. All other Regional EEO Officers are filled from within the engineering series and are assigned EEO/OJT duties as an ancillary responsibility (between 10-20 percent allocation of time). The Regional EEO Officers and Regional and Highway & Local Programs Engineers work in conjunction with the EEO/OJT Contract Compliance Officer in the administration of the two programs. The Regional duties include on an “as needed” basis:
  - a. Equal Employment Opportunity (EEO) Compliance
    - i. Assist in EEO Contract Compliance Reviews to offer comments and verify information as needed
    - ii. Present the EEO requirements at Pre-Construction Conferences
    - iii. Receive informal external discrimination/sexual harassment complaints and follow the complaint procedures for mediating/resolving EEO disputes and complaints. Notifying OEO of all complaints and sending documentation of what happened and how it was handled
    - iv. Disseminate EEO policies, procedures, rules, and guidance utilizing the construction manual, specification manual, and the special provisions in the contract
    - v. Assisting OEO with staff training – determine who the locals can go to at the regional level and what training is needed
    - vi. Tribal Employment Rights Office (TERO) expectations. (Exhibit 3)
    - vii. Monitor EEO compliance (i.e. Monthly Utilization Reports) in coordination with project personnel (Exhibit 4)
    - viii. Prepare reports and provide program technical assistance, e.g.: PR-1391s and 1392s (Exhibit 5)
    - ix. Ensure the proper display of notices and posters
    - x. Ensure compliance with non-segregated facilities requirements

b. On the Job Training/Training Special Provisions (OJT/TSP) Compliance

- i. Assist in OJT/TSP Interviews
- ii. Approve Department of Labor (DOL) training programs and individual trainees (except ATELS/JATC programs)
- iii. Assist OJT Supportive Service Consultant
- iv. Interface with local governmental and community agencies when necessary
- v. Prepare reports and provide program technical assistance, i.e.: training report
- vi. Monitor OJT compliance in coordination with project personnel
- vii. Receive external discrimination/sexual harassment complaints and follow the complaint procedures for mediating/resolving OJT disputes and complaints.
- viii. Notify OJT of all complaints and send documentation of what happened and how it was handled.

2. *Local Programs Engineer (LPE) and staff of local agencies* - Each of WSDOT's six regions (Northwest, North Central, Olympic, Southwest, South Central, and Eastern) have a LPE. All LPEs are part of H&LP staff and are assigned EEO/OJT duties as an ancillary responsibility. Ensuring adherence to the EEO and OJT Contract Compliance requirements are duties within the overall scope of responsibilities of the Local Agency. The local agency works in conjunction with the LPE, H&LP and the EEO/OJT Contract Compliance Officer in the administration of the two programs. The local agency duties include on an "as needed" basis:

a. Equal Employment Opportunity (EEO) Compliance

- i. Assist in EEO Contract Compliance Reviews to offer comments and verify information as needed
- ii. Present the EEO requirements at Pre-Construction Conferences
- iii. Receive informal external discrimination/sexual harassment complaints and follow the complaint procedures for mediating/resolving EEO disputes and complaints. Notify the Office of Equal Opportunity of all complaints and sending documentation of what happened and how it was handled
- iv. Disseminate EEO policies, procedures, rules, and guidance utilizing the LAG manual, construction manual, specification manual, and the special provisions in the contract
- v. Monitor EEO compliance in coordination with project personnel
- vi. Prepare reports and provide program technical assistance, e.g.: FHWA PR-1392s
- vii. Ensure the proper display of notices and posters
- viii. Ensure compliance with non-segregated facilities requirements

- b. On the Job Training/Training Special Provisions (OJT/TSP) Compliance
  - i. Assist in OJT/TSP Interviews (form 226-010)
  - ii. Approve training programs and individual trainees (except non ATELS/JATC programs)
  - iii. Prepare reports and provide program technical assistance, eg: training report
  - iv. Monitor OJT compliance in coordination with project personnel
  - v. Receive external discrimination/sexual harassment complaints and follow the complaint procedures for mediating/resolving OJT disputes and complaints.
  - vi. Notify OJT of all complaints and send documentation of what happened and how it was handled.

**C. WSDOT Project Personnel**

- 1. *Regional Project Engineers* – Ensuring adherence to the EEO and OJT Contract Compliance requirements are duties within the overall scope of responsibilities of the Project Engineer. Specific duties include:
  - a. Coordinate compliance monitoring efforts with their respective Regional EEO Officers
  - b. Maintenance of a separate current file, by project, of EEO and OJT records and activities
  - c. Ensure the timely and proper entry of EEO and OJT required data into the Construction Contract Information System (CCIS) computer mainframe program
  - d. Facilitate the submittal of EEO and OJT reports and required completed forms (eg.: PR-1391s & 1392s and training reports) by determining what contractors and subcontractors need to complete the report, contacting contractors accordingly, and reviewing the data on the report for completion and accuracy before submitting to the Regional Office.
  - e. Ensuring that the contractors, subcontractors, and WSDOT project personnel and their staff receives the necessary training to adequately administer the EEO and OJT program requirements.
  - e. Assist EEO staff by interviewing trainees and apprentices when requested.

**II. Compliance Procedures**

A. Authorities and Procedures

The authority for the EEO and OJT Contract Compliance programs and procedures, including the administration of discrimination investigations and sanctions, are found in the following:

- 1. Compliance Reviews, On-the-Job Training, and Discrimination Investigations
  - a. Authorities
    - i. Title 23 USC 140(a), Nondiscrimination
    - ii. Title 23 USC 315

- iii. State EEO Assurances, required by Federal Aid Highway Act of 1968
  - iv. 23 CFR 230 - Contract provisions
  - v. 23 CFR 1.36 – Compliance with federal law and regulations
  - vi. Title VI of the Civil Rights Act of 1964 – 49 CFR Part 21 and 23 CFR Part 200.
  - vii. Form FHWA 1273, incorporated in it's entirety in all federal-aid contracts (Exhibit 6)
- b. Procedures
    - i. Federal Aid Program Guide (FAPG), Transmittal 1 - dated 12/9/91 available from WSDOT OEO
    - ii. FAPG, Transmittal 15 - dated 6/6/96 available from WSDOT OEO
    - iii. FHWA 4710.8 – dated 2/1/99 available from WSDOT OEO
2. Sanctions – (Exhibit 7)
- a. RCW 34.05.410-494, Part IV – Adjudicative Proceedings
  - b. RCW 47.01.260, Authority of Washington State Department of Transportation
  - c. RCW 47.04.050, Acceptance of Federal Acts
  - d. RCW 47.04.070, Conformity with Federal Requirements
  - e. RCW 47.28.070, Forms of Bid – Data Required -Requirements - Refusal to furnish form-Appeal
  - f. WAC 468-16-180, Suspension of Qualification
  - g. WAC 468-16-200, Hearing Procedures

## **B. Implementation**

- 1. Incorporation of FHWA and WSDOT Authorities
  - a. Form FHWA -1273, “Required Contract Provisions, Federal-aid Construction Contracts,” contains contract provisions and proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies (see Exhibit 6). The FHWA-1273 shall be physically incorporated into each Federal-aid highway construction contract and subcontract.

The WSDOT has the responsibility to ensure compliance with 23 U.S.C. 140 and Title VI of the Civil Rights Act of 1964 and related regulations, including 49 CFR 21 and 26, and 23 CFR Parts 200, 230, and 633. Pursuant thereto contractors must provide, States must obtain, and FHWA must ensure non-discrimination in employment and the selection and retention of sub-contractors, material suppliers and vendors on all projects funded by federal aid and through the EEO provisions, provide for equal employment opportunity (inclusive of minorities and females) in all of their employment. Where non-compliance is determined, the WSDOT is obligated to impose sanctions through contract administration procedures. Contract sanctions are expected to be imposed by WSDOT in instances where a contractor has been determined to be in non-compliance with the EEO contract provisions and acceptable corrective action has not been obtained through normal administrative processes.

The following list of documents incorporating FHWA EEO and OJT contract compliance requirements must be included in the advertised bidding proposal and made a part of the

contract for each covered FHWA funded highway construction contract and each sub-contract that exceeds \$10,000 (Exhibit 8). The requirements are also applicable to contracts administered by WSDOT, and its local agency sub recipients. Refer to 23 CFR 230.

- i. Section II, “Nondiscrimination, Required Contract Provisions Federal-Aid Construction Contracts,” Form FHWA 1273 (see Exhibit 6)
  - ii. 1-07.11(2) A, (EEO) Title VI only. Contract General Special Provisions Division 1, “Equal Employment Opportunity Responsibilities (see Exhibit 8)
  - iii. 07113.FR1, Contract General Special Provisions Division 1, “Trainees”\*
  - iv. 0721.FR1, Contract General Special Provisions Division 1, “Indian Preference and Tribal Ordinances.”\* (see Exhibit 3)  
\*As applicable
- b. Responsibility – The EEO/OJT Contract Compliance Officer is responsible for updating and amending the EEO and OJT Compliance Sections of the Construction Manual, Contract Special Provisions, Standard Specifications, and LAG Manual to ensure that all project and program EEO/OJT requirements are consistent with federal regulations.
  - c. Revisions – All revisions to the manuals, provisions, and specifications are initiated in conjunction with the Construction Office’s Specification Engineer. Revisions to the Local Agency Guidelines are prepared in coordination with H&LP. Revisions are made on an “as needed” basis and are to be reflected in subsequent addendums and reprints. Copies of such changes will be provided to FHWA’s Division office for their consideration. FHWA concurrence is required for any significant revisions affecting federal programs.

## 2. Training – Civil Rights Staff

- a. EEO, OJT and Regional Compliance Officer – EEO/OJT Compliance staff, including Regional EEO Officers, receive training in both civil rights contract compliance matters, as well as professional development training. Additional training is received during the annual FHWA Civil Rights Regional workshops, specifically scheduled EEO/OJT training provided by the Resource Center or Division Civil Rights staff, and EEO/OJT/DBE yearly Compliance Officers Meetings. The FHWA’s Division Office provides interpretation and technical assistance regarding FHWA Civil Rights Program implementation, on an “as needed” basis.
- b. “Civil Rights” training is conducted as workshops for WSDOT Field Personnel, Contractors, local agency personnel, community based organizations, and TERO Officers. The course is available annually and/or upon special request. The goal of the workshop is to provide practical knowledge of the EEO and OJT requirements to all involved in the process.

## 3. Communications to Contractors

- a. Preconstruction Conferences - The purpose of the EEO/ OJT component of the conference is to discuss the plans and specifications pertinent to program compliance. The primary responsibility for reviewing EEO/ OJT requirements during preconstruction conferences shall be shared between the Regional EEO Officer and the Project Engineer and/or their delegate. The Regional EEO Officer, in conjunction with the Project Office personnel, discuss EEO if they have a pre-meeting; if no preconstruction meeting is held all questions are addressed at pre-work meetings and ongoing throughout the contract. Only about 15% of the smaller jobs do not have these meetings.

b. Forms - Included in the contractor's initial packet are the following EEO/ OJT Forms (Exhibit 9)

<b>Form</b>	<b>Number</b>
Training Program (If applicable)	272-049
Apprentice/Trainee Approval Requests (If applicable)	272-050
Federal-Aid Highway Construction Contractor's Annual EEO Report (see Exhibit 5)	PR-1391 & PR-1392
Monthly Employment Utilization Report (see Exhibit 4)	820-010

c. Posters - The following poster(s) will be provided to the contractor.

<b>Poster</b>	<b>Number</b>
Equal Employment Opportunity is the Law	OFCCCP-1420

d. EEO/OJT Discussion Topics – The information to be provided during the Preconstruction Conference shall include:

- i. Training program and trainee approvals (if Applicable)
- ii. Submittal of required reports e.g., PR 1391 and DOT 820-010
- iii. Compliance with non segregated facilities requirements
- iv. Proper display of EEO posters
- v. Contractor designation of EEO Officer
- vi. Initiation and documentation of good faith efforts
- vii. Duty to investigate complaints of discrimination and/or sexual harassment
- viii. WSDOT On-the-Job Training Supportive Services (if applicable)
- ix. Retention of records (6 years)
- x. Inclusion of EEO requirements to all subcontractors or lower tier subcontractors
- xi. Cooperation in WSDOT and Federal reviews
- xii. Sanctions for noncompliance

e Contractor outreach efforts:

Congratulation letters are sent to each contractor as well as all Tribal Employment Rights Ordinance (TERO) offices when a contract is awarded. These letters cover the following information:

- the name and number of the contract
- notice of the possibility of being reviewed for EEO compliance
- TERO responsibilities if on or near an Indian Reservation and the OEO contact if there is a problem
- OJT Supportive Services contact with OEO, ECRB for assistance in referral and placement of minorities and females



### III. EEO/OJT Compliance Monitoring

#### A. Purpose

The purpose of EEO/OJT monitoring is to ensure that prime contractors and subcontractor(s) maintain nondiscriminatory hiring and employment practices and are taking affirmative action as appropriate to ensure that applicants are employed, placed, trained, upgraded, promoted, and otherwise treated equally without regard to race, color, religion, sex, national origin, age, or disability. The compliance review process provides for comprehensive evaluation of all aspects of a prime/subcontractor's employment practices and conditions of employment. This includes an ongoing examination, determining a reasonable representation of minorities/females in each construction work classification, throughout the life of the project.

#### Comprehensive Contract Compliance Review Procedures

1. *Selection of Contract/Contractor for review* - The proposed number of reviews conducted each year will be sent to FHWA with a copy to H&LP, along with a schedule of reviews, at the beginning of each new Fiscal Year and updated as changes in the schedule occur. WSDOT's Comprehensive Contract Compliance Reviews are, for the most part, area-wide reviews, conducted on federally funded projects. However, on special occasions a contract review may be conducted if warranted. The selection of contractors for review (either prime or sub) is based on the following criteria:
  - a. Greatest potential for employment opportunity
  - b. Work in areas with significant minority/female representation
  - c. Contracts that are located within the same geographical area (county)
  - d. Contracts with On-the-Job Training requirements – OJT/TSP
  - e. Where a contractor's compliance is questionable
  - f. In addition to the factors noted, contractors with 15-plus employees and contracts valued over \$100,000 shall be given priority for review.
  - g. Contractors not reviewed previously
2. *Criteria for review selection* - To identify contractors that meet the criteria listed above, an examination of the following data is conducted if available from WSDOT:
  - a. Construction Contracts Information System (CCIS) training data
  - b. Monthly computer training report
  - c. Contract Compliance/Prequalification computer report
  - d. Monthly Employment Utilization Reports (DOT Form 820-010) (see Exhibit 4)
  - e. Annual EEO Work Force Report (PR 1391) (see Exhibit 9)
  - f. Subcontractor files
  - g. Contract documents
  - h. Prior to or during peak employment periods
3. *Notice of review* – A standard formal notice is sent by certified mail (Exhibit 10) to the contractor (with a copy to the local agency if local agency awarded contract) at least two weeks prior to the review date. The letter specifies the following:
  - a. Date, time, and location of review
  - b. An outline of the mechanics and basis of the review and documents required
  - c. Name of reviewer(s)
  - d. Contract(s) to be examined
  - e. Authority for conducting the review

- f. Who should be in attendance from the company
- g. Information required from the contractor
- h. Individuals to whom copies are sent; e.g., Regional Administrator, FHWA, the Construction Office/H&LP, to prime if a subcontractor, and to H&LP for all local agency contractors
- i. Interview on jobsite – requisite

In accordance with FHWA guidance, the utilization of relevant labor force data or other availability data in assessing the contractor’s compliance with the contract provisions is applied in a constitutional manner. WSDOT has compiled both Monthly Utilization Report (MUR) data and unemployment statistical data to determine availability. The data was compiled per county for use as pertinent availability data. The current census data will be utilized as soon as it is available.

- 4. *Expedited Review Process* – To expedite the review process, information is required *prior* to the scheduled meeting date. The information is to be returned within ten days of the contractor’s receipt of the notice. The contractor’s information is sent directly to the attention of the EEO/OJT Contract Compliance Officer, P.O. Box 47314, Olympia WA 98504-7314.

The following information is requested:

- a. WSDOT Monthly Utilization Report, DOT Form 820-010, (see Exhibit 4) for the captioned contract(s) covering the period from the start of construction to the time of review;
- b. Certified payroll records for contract(s) (*separated by project*) covering the period from the start of construction to the time of review, annotated for work classification, race and gender;
- c. A current signed and dated copy of the Equal Employment Opportunity Policy of the company with name and number of confidential contact person (EEO Officer);
- d. List of all persons employed by the firm in the covered plan area since the beginning of the covered federal aid contract(s), as well as a list of all persons employed by the firm for the contract being reviewed indicating hiring date(s), new hire(s), transfer(s), trade(s), ethnicity, sex, and if applicable, termination date(s);
- e. If applicable, list of apprentice trainees assigned to the contract(s) (*separated by project*) indicating ethnicity, sex, trade(s), number of hours assigned, number of hours worked, current employment and training status, and union affiliations, including union local numbers and address.
- f. Documented evidence of good faith efforts to comply with minority and female EEO Requirements in each trade. This documentation should identify specific needs for specific work classifications at specific dates and locations. This documentation must be two-way, targeted, ongoing, and job specific. The results of these efforts are important in determining the company’s good faith effort achievements. The EEO Requirements are indicated in the contract Special Provisions.
- g. Evidence of efforts to promote minorities and females within the contractor’s organization.

- 5. *Information required during review* – The following is required to be presented or made available at the time of the review:

- a. Name and responsibilities of the person designated as the company’s EEO and DBE Officer(s) and percentage of time spent on these duties. The firm’s EEO and DBE Officer(s) are requested to be at the review.
- b. Any additional information pertinent to determining the contractor’s compliance status.

- c. Copies of all job applications received by contractor during course of contract, specifically for the contract, notated with what happened with them.

6. *Office review procedures*

- a. Introduction – The introduction is used to briefly explain objectives of the review. The introduction includes the following topics:
  - i. Reviewer’s roles
  - ii. Time requirement for review
  - iii. Topic areas to be discussed (EEO, OJT, and DBE)
  - iv. Purpose of review
  - v. Scope of review
  - vi. Identification of other participants
  - vii. Authority for review
  - viii. On-site verification and interviews (non-segregated facilities, EEO Posters, minority/female interviews)
  - ix. Exit conference as possible
- b. Pre-review preparation – Prior to the meeting, any information already obtained through contractor and WSDOT (or local agency) documents and reports are entered onto the compliance review form e.g., contract value, DBE and training assignment, percent completed, MUR and certified payroll spreadsheets from requested advance information, new hire breakdown by work classification, and total employee breakdown by work classification.

7. *Other Attendance*

The Regional EEO Officer is requested to accompany the reviewer on WSDOT awarded projects to provide project background information, general assistance and support during the review. The Local Agency and an H&LP representative is requested to accompany the reviewer on local agency awarded projects to provide project background information and general assistance and support during the review.

- 8. *WSDOT review form* - The contract compliance review is documented using WSDOT’s Comprehensive Contract Compliance Review form. (Exhibit 11)
- 9. *Completion of WSDOT Review form* – WSDOT’s review form is self-explanatory. The completed review form must be signed by the reviewer and Manager of External Civil Rights, with a signature block available for FHWA Division concurrence. A step-by-step review of the form follows:

*Determination of compliance status* – This section is not completed until a full examination of all the pertinent data has been conducted.

Contractor Information:

*Date of review*

*Name and address of contractor* – The contractor’s physical address as well as the post office box is noted. If the contractor is headquartered out of state but also has an office in Washington, both addresses are noted. The contractor’s telephone and fax numbers are noted.

*Policy Officer* – The individual in the company ultimately responsible, such as the owner or president - not the EEO Officer unless he/she is also the owner or president.

*EEO/DBE Officer* - List all individuals having EEO and or DBE responsibilities for the company and/or contract by name and official title.

*Written EEO Policy* - If the contractor has an EEO policy, he/she may also have an Affirmative Action Plan (AAP). The EEO policy and, if available, the Affirmative Action Plan (AAP) are attached as exhibits to the compliance review.

WSDOT's contract obligates the contractor to comply with the Affirmative Action Policy Statement incorporated in the contract provisions.

*Contractor identification:*

II. *Project Data:*

*WSDOT/federal aid contract number(s)*

*Region* - The region responsible for the administration of the WSDOT contracts review is indicated on the review form.

*Contract Value* – The contract value is the same as the contract award amount. The actual current value of the contract may be lesser or greater than the award amount and will be reported on the review form as the contract value.

*Project name*

*Project Officer* – The contractor's employee(s) directly responsible for both the actual work on the project and oversight of work force needs e.g., project manager or superintendent.

*County*

*Start date* – The actual start date of work on the project.

*Estimated completion* – Estimated date of physical completion of the project.

*Percent complete* – Project's percentage completion based on dollars expended.

III. *Disadvantaged Business Enterprise Participation:*

*DBE goal and Condition of Award* - The DBE goal and dollar attainment as recorded in the contract and Condition of Award Letter.

*DBE contractor* – Information is extracted from the Condition of Award letter and from the contractor. The DBE's site representative is the individual responsible for managing, supervising, and controlling the DBE's work on the project. The DBE's "type of work" includes both Condition of Award and non-Condition of Award work subcontracted. Any changes expected to affect the DBE's assignment are noted.

*Commercially useful function (CUF) Analysis* – The sharing of equipment and employees and/or supervisory personnel and use of agents are to be noted. If potential CUF or certification problems are identified, the ECRB DBE section will be notified. A notation of actions or follow up to be made (if any) by the DBE Contract Compliance Officer.

IV. *Union affiliation and the recruiting and training data* – A listing of the work classifications utilized or intended for utilization by the contractor indicating union local number and location in addition to hiring and training process(es) dictated by union bargaining agreements (if applicable). Copies of approved training program and all approved apprentice/trainee forms with number of hours assigned, work classification, and percent of training completed at time of review.

V. *Employment Data:*

*New hire information* – A head count of new hires taken from the contractor’s annotated employee list. A new hire is anyone hired and put on the project subsequent to the award of the contract (in the case of sub-contractors the signing of the subcontract). A person is considered new hire opportunity if they have been off the contractor’s payroll prior to the beginning of the project. If there was a break in service, and the employee worked for someone else, those positions become new-hire opportunities.

*Total employee breakdown* – The total number (headcount) of individuals who have worked on the project by work classification, ethnicity, and sex.

*Employees by work classification* – A list by name, and work classification of all minority and females who are claimed/listed by the contractor on the employee list.

*General Information* – The analysis is presented both in narrative and statistical form and reviews all the work force data, including new hire and rehire/recall employment opportunities as to attainment of the minority and female utilization for *EEO Requirements*: The Monthly Utilization Reports (MURs) for each month are recorded on the Monthly Employee Report Worksheet to determine actual minority and female hourly attainment by work classification. MURs are further checked by completion of a Payroll Verification Form of the payrolls from the beginning of the contract to the review date. The contractor’s foreman can only be counted toward attainment of an EEO Requirement if he or she is working in a designated work classification function in addition to supervising the performance of work, e.g. Carpenter Foreman or Operating Engineer Foreman. Minority females will be counted toward the attainment of both the minority and female EEO Requirements. Minority and female EEO Requirement levels must be generally consistent throughout the life of the contract. Minority and female assignment of work, retention, and treatment must be consistent with that provided to others within the company’s work force.

Training:

a. *Training assignment* – The training hours assigned and percent of training hours accomplished are reported in this section. Change orders increasing or decreasing the training assignments are noted here. If there is an under-run at the time of the review, the reviewer will incorporate the training deficiency in the final compliance determination. WSDOT does not pay for under runs [training hours less than assigned to the contract] and verifies the trainee(s) are receiving training in the skill assigned.

b. *Trainees approved* – The trainees approved and/or claimed by the contractor for the project(s) are written here. The list of trainees includes all trainees claimed by the contractor, whether employed by the contractor or subcontractors.

VI. *Summary, Findings, Conclusions, and Recommendations* – The following questions must be checked and/or verified with the contractor and Regional EEO Officer.

- i. Have required written notices been sent to unions?
- ii. Are recruiting publications used to show that the contractor is “an Equal

- Opportunity Employer?”
- iii. Are such publications circulated in minority-oriented communities?
  - iv. Has certification of use of non-segregated facilities been made?
  - v. Are such facilities in effect provided on a non-segregated basis?
  - vi. Have other reports required by federal, state, municipal, or other statutes, regulations, directives, etc. been submitted?
  - vii. Have compliance or other reviews made by other agencies resulted in a determination of compliance?
  - viii. Are prescribed equal employment opportunity clauses included in all applicable purchase orders, subcontracts, and collective bargaining union agreements?
  - ix. Are applications for employment accepted, and are selections in effect made, without regard to race, color, religion, sex or national origin?

“*Good faith efforts*” – The obligation is upon the contractor to submit any information pertinent to accessing its compliance status, particularly pertaining to those work classifications where deficiencies exist as to promotions, recruitment, outreach, and attending yearly EEO Workshops.

*Overall observations and commentary* – A recap of the information already presented measured against the criteria for determining compliance.

*Deficiencies/violations* – If noncompliance violations exist, the reviewer must succinctly state the specific deficiencies that will be cited in the “30-Day Show Cause Notice.” (Exhibit 12)

The standard language is as follows:

- i. Contractor failed to make a good faith effort to provide equal employment opportunity to (*minority or female*) in the (*deficient work classification(s)*).
- ii. Contractor failed to consistently assign, hire, employ, and/or recruit (*minority or female*) in the (*deficient work classification(s)*).
- iii. Contractor did not and/or could not demonstrate sufficient good faith efforts as to its attempts to consistently assign, hire, employ, and/or recruit (*minority or female*) in the (*deficient work classification(s)*).

*Recommendations/determinations* – The formal determination of compliance reasoning is stated here.

*Participant list* – All individuals in attendance and their titles and organization are listed.

*Request for Additional Information* – Contractor will be given up to 10 calendar days to submit additional information pertinent to understanding his/her compliance status. The request for additional information will be made utilizing the “Request for Additional Information” Form 272-062 (Exhibit 13). If information is not received, the reviewer can proceed with the information already received.

- 10. *Comprehensive Compliance Review Determination Analysis* - To determine compliance, the following factors and questions must be analyzed.
  - a. It is WSDOT’s expectation that the contractor’s workforce be reflective of available minorities and women in each work classification.

- b. If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?

*Standard Federal Equal Employment Opportunity Construction Contract Specification (FHWA 1273) specifies the minimum necessary good faith effort steps that must be taken by a contractor to achieve compliance. Each step should be documented. The contractor's good faith efforts should include, as a minimum, documentation substantiating the following:*

- i. Environment free from harassment,
- ii. Development of meaningful and substantive recruitment efforts with WSDOT OJT Support Services Coordinator and minority/female community sources,
- iii. Maintenance of a minority/female applicant file,
- iv. Referral(s) of impending unions to state/federal agencies,
- v. Development of OJT opportunities,
- vi. Dissemination of company's EEO Policy,
- vii. Ensuring non-segregated facilities,
- viii. Review of company's EEO process, e.g., hiring, layoffs, etc.,
- ix. Documented, ongoing, targeted, project specific, recruitment efforts with WSDOT OJT Supportive Services Coordinator, and minority/female community based organizations,
- x. Referrals of applicants for possible employment from minority/female employees,
- xi. Review of new hire and promotional opportunities.

- c. What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

The contractor's affirmative actions to achieve compliance must be substantive and well documented. Particular emphasis will be given to the efforts taken prior to workforce buildup and upon new hire and rehire/recall. In assessing the employment opportunities WSDOT has adopted FHWA's Core Crew policy position that every employment opportunity, except for those positions filled by "core crew" employees (i.e., supervisory personnel and individuals with specialized skills) will have to be tested as to whether equal opportunity was given.

- d. Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?

It is WSDOT's expectation that the contractors substantially meet the EEO Requirement in each work classification or show substantive good faith effort documentation as to its systematic and meaningful attempts to recruit, retain, and employ minority and female individuals. Failure to show satisfactory compliance will result in the finding of noncompliance.

- e. Is there impartiality in treatment of minorities and females?

Minority and female employees should have equal access to all the opportunities available. (i.e. pay, upgrades, hours of work, etc.)

- f. Are affirmative action measures of an isolated nature or are they continuing?

The contractor's affirmative action efforts must be ongoing efforts. Isolated efforts will be examined as to whether they were reasonable.

- g. Have the contractor's efforts produced results?

Contractor's efforts are expected to be result oriented; pro forma compliance will not be accepted.

h. Assessing Unions and Exclusive referral sources

If the contractor relies in whole or in part upon unions as a source of employees, the contractor shall use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minorities and women within the unions, and to effect referrals by such unions of minority and female employees. It shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.

i. Exit conference

If possible, the contractor will be given an idea of the possible outcome of the review. This will depend upon the information received and evaluated to this point. It may only be possible to give a preliminary finding. The contractor will be informed of the process of determining compliance and how he/she will be notified of the compliance determination with actions, if any, that will be taken at that time.

**11. Compliance Determination**

- a. In compliance Finding – Upon completion of the comprehensive contract compliance review, if it is found that the contractor has effectively implemented the equal opportunity requirements or has presented evidence that every good faith effort was made toward achieving that end, the contractor will then be found in compliance.
- b. 23 CFR 230.409(g) – *Compliance determinations*. The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the Compliance Specialist conducting the review of the contractor's compliance or noncompliance with contractual provisions, contract special provisions, FHWA form 1273, (see Exhibit 7) and the EEO Assurances.
- c. Noncompliance – A contractor shall be considered to be in noncompliance when:
  - i. The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment, or
  - ii. The contractor fails to provide evidence of every good faith effort to provide equal opportunity as described on page 26 of this document under good faith efforts, or
  - iii. The contractor fails to provide the requisite compliance review documentation in a timely manner.
- d. Notice of non-compliance determination/Show Cause Notice – A non-compliance determination or Show Cause Notice letter (see Exhibit 13) is sent to the contractor within 30 calendar days of the completion of the compliance review. The Manager, External Civil Rights, must review the Show Cause Notice. The Director, Office of Equal Opportunity, must sign the notice. The Show Cause Notice and Request for a Corrective Action Plan will include:
  - i. Basis of determination
  - ii. Contractual provisions violated by the firm
  - iii. Standard language cited in Show Cause Notice
  - iv. Federal authority for the citation
  - v. Options available to the contractor



- vi. Procedures and deadlines for affecting these options
  - vii. Consequences for failure to satisfactorily respond
12. Distribution of Review and Determination/Show Cause Letters – The reviews will be distributed as follows on WSDOT awarded contracts:

<b>Recipient</b>	<b>Number of Copies</b>
FHWA	1
WSDOT Regional EEO Officer	1
WSDOT Records Control	1
Original to file	1
WSDOT Construction	

The reviews will be distributed as follows on local agency awarded contract:

<b>Recipient</b>	<b>Number of Copies</b>
FHWA	1
WSDOT H&LP	1
WSDOT Records Control	1
Original to file	1
WSDOT Local Projects Engineer	1
Local Agency	1

13. *Conciliation Conference Noncompliance Finding* – A conciliation conference is scheduled whenever a contractor is found in noncompliance subsequent to a Comprehensive Contract Compliance Review. The purpose of the conference is to discuss with the contractor the noncompliance finding and answer any questions and/or concerns he/she may have.

Showing Cause – Two avenues are available by which a contractor can show cause:

- i. Evidence Refuting Noncompliance Determination - A contractor may elect to refute the noncompliance finding by submitting clear and convincing evidence that the determination of noncompliance was reached in error. The “good faith efforts” evidenced by the contractor must have occurred prior to the date of the compliance review notice and must directly refute the basis of the noncompliance finding. Corrective actions taken subsequent to a noncompliance finding cannot be considered in the reassessment of the initial noncompliance finding, but can be weighed as to ascertaining the contractor’s current and future compliance status.
- ii. Submit a Corrective Action Plan (CAP) (Exhibit 14)

Location and timing of conference -The conciliation conference can be held either at the WSDOT Headquarters or, at the contractor’s request, by teleconference if it is feasible, within the “30 Day Show Cause” period. The contractor’s representative(s) and WSDOT’s Contract Compliance Officer normally attend it. If legal counsel accompanies the contractor, an Assistant Attorney General is expected to also be present. Advance notice of who will be attending should be obtained prior to the meeting. Corrective Action Plan (CAP) - A sample of a CAP shall be made available to the contractor. (see Exhibit 14).

- c. When the contractor submits a CAP it will be discussed in detail. Finalized concurrence and approval of the CAP will be in the rescind letter notifying the contractor that the non-

compliance finding has been rescinded. The letter will include a signed copy of the contractor's CAP and explain his/her reporting requirements while under close scrutiny.

- d. Corrective Action Plan Elements - Since many contractors are not familiar with the elements or structure of an acceptable Corrective Action Plan (CAP), it is the responsibility of the Contract Compliance Officer to shape the contractor's general commitments into a binding obligation. Before a formal CAP can be prepared, however, it must be clear to the reviewer that the contractor (i.e., its top management.) sincerely wishes to address the deficiencies cited and that the proposed efforts are more than mere paper compliance. Each Corrective Action Plan must specifically be adapted to the individual contractor and aimed cited deficiency (ies). A Corrective Action Plan will include the following:
  - i. Specific efforts that will be taken in recruitment, utilization, retention, and policy dissemination to the cited deficiency.
  - ii. The commitments must also be applicable to current and future WSDOT projects.
  - iii. Corrective action steps must be instituted within 30 days or upon the next real new hire opportunity.
  - iv. In instances where a contractor has been found to have discriminated, corrective action must be instituted immediately.
  - v. Commitment to submit, by the 15<sup>th</sup> of each month until a follow-up review is conducted, documentation of the company's compliance with his/her CAP.
  - vi. Violation of the agreement could result in sanction action.
- e. Processing of draft CAP – If accepted, the CAP is signed by the contractor, the EEO/OJT Officer and the Manager of External Civil Rights at a conciliation meeting either in person or over the phone. Once the CAP is accepted by WSDOT the contractor is no longer considered in non-compliance, the show-cause is rescinded and the contractor is placed in the close scrutiny program. (Exhibit 15)

Close Scrutiny - Once a Corrective Action Plan is approved and signed by all parties, the contractor is then placed in the Close Scrutiny program. In the program the contractor is required to submit a report each month updating his or her activities as to his/her compliance with the plan. The EEO Specialist reviews the documentation and if any problems are identified, the contractor is notified and correction sought. A contractor failing to submit his/her monthly report on a timely basis is subject to administrative sanctions, such as the withholding of progress payments.

- g. Failure to Show Cause - If contractor fails to Show Cause or if an acceptable Corrective Action Plan cannot be negotiated to the satisfaction of WSDOT, the contractor will then be notified as to WSDOT's intent to impose sanction action.
14. Follow-Up Contract Compliance Review (Follow-Up Review) (Exhibit 16)
- a. Purpose – To determine whether a contractor has satisfactorily complied with his/her approved Corrective Action Plan.
  - b. Method of review – The reviewer will test the contractor's adherence to each CAP commitment as well as quantitative accomplishments. The written review shall be in

narrative form (see Exhibit 17). The review may be conducted within 6 to 12 months after the initial Comprehensive Contract Compliance Review, if possible; however, it may be conducted anytime after the Corrective Action Plan has been approved. The follow-up Review will be based on the same contract if possible or contract with the most new hire opportunities, dollar amount, and availability of minorities and females. The Follow-Up Review focuses on the specific deficiencies cited in the “30-Day Show Cause Notice”. If, during the review process, problems in other areas are identified, the contractor will be notified of those concerns, but such deficiencies cannot be considered in the Follow-up Review determination. WSDOT will, however, watch the contractor’s hiring practices on future jobs and may schedule a regular compliance review in the near future, which would look at all areas not covered by the previous CAP.

- c. Review findings – A contractor found in noncompliance subsequent to a Follow-up Review is subject to the immediate imposition of sanctions.

#### **IV. SANCTIONS – (for authorities refer to page 6 of this document)**

##### **A. Policy**

It is the policy of the Washington State Department of Transportation to work proactively with its contractors to achieve compliance. Pursuant to 23 USC §140, 49 CFR 21- 23, and 23 CFR 200, 230 and 633, WSDOT is obligated to use all means available to it under State and Federal law, as outlined in its approved EEO Program, to obtain contractor Compliance with FHWA EEO requirements that are separate and distinct from the requirements established by EO 11246.

##### **B. Violations of EEO Provisions**

When a contractor violates EEO provisions of the contract, the Contracting Agency may incur damages. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations as well as loss of federal funding. Damages attributable to a contractor’s violations of the EEO provisions may be deducted from progress payments due the contractor or from the retainage withheld by the Contracting Agency as allowed by RCW 60.28.020 and RCW 47.28.030. Before any money is withheld, the contractor will be provided with a notice of the basis of the violations and provided an opportunity to respond.

The Contracting Agency’s decision to recover damages for an EEO violation does not limit its ability to suspend or revoke the contractor’s pre-qualification status or seek other remedies as allowed by federal or state law. In appropriate circumstances, the Contracting Agency may also refer the contractor to other state or federal authorities for additional sanctions.

##### **C. Available Sanctions**

1. *Withholding of progress payments* – The contract sanction of withholding of progress payments can be utilized in limited situations where its implementation is directed to a specific and readily correctable problem(s). The withholding of progress payments should not be used if there is a possibility that the problem to be addressed will involve an extended period of time or is not readily correctable within the contract time.
2. *Suspensions or termination of work* – Suspensions of work or termination of an existing contract(s) are only available if the need for sanction is immediate, no other recourse is available, and such action is taken consistent with the requirements found in Section 1-08 of the Contract *Standard Specifications*.

3. *Bidding suspension action* – This sanction is the preferred method by which sanctions are imposed for EEO noncompliance. WAC 468-16-180(2) states as follows:

“The secretary may upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor impose suspension upon a contractor.

Further, WAC 468-16-180(3) (e) & (f) states as follows:

(3) “The secretary may suspend qualification for:

(e) A finding of non-compliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with equal employment opportunity for women, minority, and disadvantaged business enterprise requirements.

(f) Repeated findings of noncompliance with equal employment opportunity or women’s, minority and disadvantaged business enterprise requirements.”

4. *Sanction requirements* – All sanction actions can be imposed simultaneously and each requires proper notice and consultation with the Office of the Attorney General and the Construction Office. Suspension actions require further coordination with the Pre-Contract Office and the Office of the Secretary. Suspension action is the preferred method when dealing with Equal Employment Opportunity (EEO) noncompliance issues.

#### D. Sanction procedures

1. *Noncompliance/Show Cause Notice required* – For suspension actions to be initiated, the department shall have:
  - a. Formally determined the contractor to be in noncompliance for specific EEO program violation(s)
  - b. Issued the noncompliant contractor, by certified letter, a “30-Day Show Cause Notice” which specifically cites the area(s) in which the contractor is in violation
  - c. Provided the contractor 30 days as of the issuance of the notice of noncompliance, with an opportunity to show cause and/or present an acceptable Corrective Action Plan
2. *Election of Suspension Action* – Sanctions will be sought if any one or more of the following occurs:
  - a. Contractor fails to show cause;
  - b. An acceptable Corrective Action Plan cannot be reached;
  - c. Contractor fails to satisfactorily comply with its his/her approved Corrective Action Plan;
  - d. The violation is of such seriousness that a delay would result in harm to individual(s) and/or to the state.
3. *Suspension Concurrence* – If suspension action is recommended, the following steps shall be followed (can be performed concurrently):

- a. Review by Attorney General and Headquarters Construction Office review;
  - b. Concurrence by WSDOT Assistant Secretary for Field Operations and Pre-Contract Office concurrence;
  - c. Notification of the action to Federal Highway Administration, although suspension concurrence is not required.
4. *Effect of Suspension* – A contractor’s suspension shall apply to their his/her prequalification status (WAC 468-16-180(3)), as well as to its his/her prime contracting and subcontracting eligibility on all WSDOT state and federally funded contracts, and federally assisted contracts administered through the Highways and Local Programs Service Center.
5. *Duration of Suspension* – suspension shall be for a maximum of three months for one finding of non-compliance and failure to correct under WAC 468-16-180(3) (e), and six months for repeated findings of non-compliance under WAC 468-16-180(3) (f) as outlined in WAC 468-16-180(4)(b) - Prequalification Suspension.
6. *Suspension Action/Hearing* – Upon receipt of all concurrences and reaching the determination to proceed with the initiation of suspension action, the hearings procedure set forth in WAC 468-16-200 shall apply. Although the hearing procedures set forth in WAC 468-16-200 address only the suspension or revocation of a contractor’s prequalification, the hearing shall be deemed the appropriate forum to address all issues pertaining to the suspension action.
7. *Formal notice and avenue for appeal.*
- a. The contractor shall be notified by certified letter of WSDOT’s intent to initiate suspension action.
  - b. Within 20 calendar days of the date of notification that WSDOT intends to initiate suspension action, the contractor may request an appeal, in writing, to the Secretary of Transportation.
  - c. If the contractor submits a timely request for an administrative hearing, suspension actions against the noncompliant contractor shall be held in abeyance until such time as a final order is issued.
  - d. If an administrative hearing is requested and the final order supports the state’s position, the suspension shall be conclusive unless appeal there from to the Superior Court of Thurston County is taken within five days. The appeal shall be heard summarily within ten days after it is taken and on five days notice thereof to the department.

E. Special Sanction Circumstances

- 1. *Non pre-qualified contractors* – WAC 468-16 does not apply to non pre-qualified contractors such as those that work solely on local agency projects. Therefore in such cases if a non pre-qualified contractor requests an appeal in writing before the expiration of the 30-day show cause period, WSDOT shall through appropriate channels recommend a formal hearing pursuant to 23 CFR 230.409(h)(7)(iii).

## **IV. FILING OF COMPLAINTS**

### **External Complaint Procedures for Federally Assisted Programs and Activities**

These procedures cover all complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI), including its Disadvantaged Business Enterprises (DBE), Equal Employment Opportunity (EEO) and On-the-Job Training (OJT) Program components, Section 504 of the Rehabilitation Act of 1973 (Section 504), Civil Rights Restoration Act of 1987 (CRRA), and the Americans with Disabilities Act of 1990 (ADA), regarding any program or activity administered by the Washington State Department of Transportation (WSDOT) as they relate to local agencies, contractors and other sub recipients of United States Department of Transportation (USDOT) funds. These procedures apply to complaints filed against a program and/or activity funded by either the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) or the Federal Aviation Administration (FAA). Intimidation or retaliation of any kind is prohibited per Title 49, Code of Federal Regulations, Part 21.11(e).

The procedures do not deny the right of the complainant to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination.

These procedures are part of an administrative process, which do not provide for remedies that include punitive damages or compensatory remuneration for the complainant.

Every effort will be made to obtain early resolution of complaints at the lowest level possible and with the guidance of the USDOT modality with jurisdiction over the matters. The option of informal mediation meeting(s) between the affected parties and the investigator may be utilized for resolution, at any stage of the process. The investigator will make every effort to pursue a resolution of the complaint. Initial interviews with the complainant and the respondent will request information regarding specifically requested relief and settlement opportunities.

WSDOT will not investigate complaints in which it appears as a respondent. The matters will be referred to the USDOT modality under which the complained-of program or activity falls.

#### **Procedures**

1. Any individual, group of individuals or entity that believe they have been subjected to discrimination prohibited by the legal provisions of Title VI, Section 504, ADA or the CRRA may file a written complaint with WSDOT's Office of Equal Opportunity (OEO).
2. A formal complaint must be filed within 180 calendar days of the alleged occurrence or when the alleged discrimination became known to the complainant.
3. The complaint must meet the following requirements:
  - a. Complaint shall be in writing and signed by the complainant(s).
  - b. Present the date of the alleged act of discrimination (date when the complainant(s) became aware of the alleged discrimination; or the date on which that conduct was discontinued or the latest instance of the conduct).

- c. Present a detailed description of the issues including names and job titles of those individuals perceived as parties in the complained-of incident.
  - d. Allegations received by fax or e-mail will be acknowledged and processed, once the identity (ies) of the complainant(s) and the intent to proceed with the complaint have been established. For this, the complainant is required to mail a signed, original copy of the fax or e-mail transmittal for OEO to be able to process it.
  - e. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. A complaint form will be forwarded to the complainant for him/her to complete, sign and return to OEO for processing.
2. Upon receipt of the complaint, OEO will determine its jurisdiction, acceptability or need for additional information before initiating its investigation. In cases where the complaint is against one of WSDOT's sub recipients of federal highway funds, the Department will assume the jurisdiction and will investigate and adjudicate the case. Complaints against WSDOT will be referred to the corresponding USDOT modality for proper disposition. In special cases warranting intervention to ensure equity, the USDOT modality may assume jurisdiction and either complete or obtain services to review or investigate matters.
  3. Acceptance of a complaint will be determined by:
    - a. Whether the complaint is timely filed;
    - b. Whether the allegations involve a covered basis such as race, color, national origin, gender, disability or retaliation;
    - c. Whether the allegations involve a program or activity of a Federal-aid recipient, sub recipient, or contractor; or, in the case of ADA allegations, an entity open to the public;
  4. A complaint may be dismissed for the following reasons:
    - a. The complainant requests the withdrawal of the complaint;
    - b. The complainant fails to respond to repeated requests for additional information needed to process the complaint;
    - c. The complainant cannot be located after reasonable attempts.
  5. OEO has sole authority for accepting complaints for investigation. Once OEO decides to proceed with the investigation, the complainant and the respondent will be notified in writing of such determination within five calendar days. (Exhibit 18) The complaint will receive a case number and then logged in OEO's records identifying its basis, alleged harm, the race, color, national origin and gender of the complainant(s).
  6. In cases where WSDOT assumes the investigation of the complaint, OEO will provide the respondent with the opportunity to respond to the allegations in writing. The respondent will have 10 calendar days from the date of OEO's

written notification of acceptance of the complaint to furnish his/her response to the allegations.

7. Within 40 calendar days of the acceptance of the complaint, the WSDOT's investigator will prepare an investigative report for the review of the External Civil Rights Branch (ECRB) Manager and the Attorney General's Office (AGO). The report shall include a narrative description of the incident, identification of persons interviewed, findings and recommendations for disposition. The ECRB Manager and the AGO will have 10 calendar days to review and provide comments to the investigator.

Once the investigator addresses any AGO's comments to the preliminary investigative report, the report and its findings will be forwarded to the ECRB Manager.

9. Any comments or recommendations from the AGO will be reviewed by the ECRB Manager. There will be a period of 10 calendar days for the ECRB Manager to discuss the report and any recommendations with the OEO Director, and have the investigator address any modifications to the existing investigative report. The report will be modified as needed and made final for its release to the corresponding USDOT modality (FHWA, FTA or FAA).
10. WSDOT's final investigative report with the preliminary findings and a copy of the complaint will be forwarded to FHWA (both, Washington Division Office and Headquarters Civil Rights (HCR)), FTA or FAA, within 60 calendar days of the acceptance of the complaint.
11. WSDOT OEO will notify the parties of its preliminary findings which are subject to the corresponding USDOT modality's concurrence.
12. The corresponding USDOT modality will issue its final agency decision (FAD) to WSDOT based on the state's investigative report.
13. Once the corresponding USDOT modality issues its final decision, WSDOT will notify all parties involved about such determination. USDOT's final determination is not subject to an administrative appeal.
14. A complainant dissatisfied with USDOT's FAD may file action with the appropriate US District Court.

## **V. ON-THE JOB TRAINING SPECIAL PROVISIONS (OJT/TSP)**

### **Purpose:**

It is the policy of the FHWA to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry. Moreover, it is the policy of the Federal Highway Administration to encourage the provision of supportive services, which will increase the effectiveness of approved on-the-job training programs conducted in connection with federal-aid highway construction projects. WSDOT, and its sub-recipients, in carrying out the responsibilities of a federally assisted contract, shall determine which federal-aid construction contract shall include "Training Special Provisions". Under the Training Special Provisions (TSP), the contractor shall make every effort to enroll minority and women trainees to the extent such persons are available within a reasonable recruitment area.



This training provision is not intended, and shall not be used to discriminate against any applicant for training, whether that person is a minority, woman, or otherwise.

## **Washington State Department of Transportation's Responsibility to FHWA**

### **A. Program Administration**

Goal setting on federally funded projects and the number of training hours are established by the Office of Equal Opportunity and H&LP based on the following guidelines:

1. Availability of minorities and women for training.
2. The potential for effective training.
3. Duration of the contract.
4. Dollar value of the contract.
5. Total normal work force that the average bidder could be expected to use.
6. Geographical location.
7. Type of work.
8. The need for additional journey level workers in the area.
9. The need to correct underutilization of minorities and females in specific trades.
10. A satisfactory ratio of trainees to journey level workers expected to be on the contractor's workforce during normal operations (considered to fall between 1:10 and 1:4).

The intent of the program is to recruit entry-level individuals and provide them with meaningful training, expected to lead them to journey-level. The unions, Associated General Contractors (AGC), and the contractors have voiced concern over the lack of young people seeking employment in the highway construction trades. This coupled with an aging workforce could cause a major shortage of trained highway construction workers in the near future. The industry is already experiencing a shortage of minority and female construction workers in most trades with the only exception being possibly Laborers in some areas. If contractors do not voluntarily train as many people as possible, with beneficial training, they will have no one to work on contracts, which will affect their bidding ability as well as their business.

WSDOT no longer assigns a certain number of apprentice/trainees; however, no apprentice/trainee can be assigned less than 200 hours on a contract. WSDOT will not assign training on contracts that will not support the 200 hours. Providing less than 200 hours is not considered to be beneficial training nor does it help to achieve journey-level status. The intent of the Training Special Provisions is to develop trainees into full journey-level. FHWA and WSDOT will only approve training programs meeting the requirements of the Training Special Provisions (TSP). Flagging/traffic control programs are not considered as meeting the intent of the TSP. Training under the TSP should only be directed toward those trades where underutilization/under representation exists. If an apprentice has less than 200 hours to achieve journey level, the contractor may assign those hours and replace the apprentice to fulfill the remaining hours.

### **B. Approval Process General**

The training program must be submitted prior to work commencing (before the first progress payment). The program must identify the trade or trades proposed which will accomplish the training items in the contract, the number of trainees and hours assigned to the trade, and the estimated beginning work date for the trainee/apprentice. Acceptable training programs include:

- **SATC Programs** – Apprenticeship programs include those programs that are registered with the Washington State Apprenticeship and Training Council. These programs consist of an individual written agreement between an employer and apprentice, or between an employer and a group of employees.

- **ATELS Program** – Apprenticeship programs approved by the U.S. Department of Labor, Apprenticeship Training, Employer, and Labor Services (ATEL).
- **Non-SATC/ATELS (open shop)** programs are approved by WSDOT and FHWA for the specific project.

#### Open Shop Training Program Non-SATC/ATELS

Federal concurrence must be obtained for any non-SATC or non-ATEL training program. These programs must contain a detailed listing of program components as listed on the WSDOT Training Program Form 272-049, Section III - A-E. (see Exhibit 9)

#### **Apprentice/Trainee Approval Forms**

Submittal of form DOT 272-050 – (see Exhibit 9) After the training program has been approved, the Apprentice/Trainee Approval Form should be submitted as near the beginning of the project as possible. The form shall include, but not be limited to, the following information:

1. Name of trainee/apprentice
2. Social Security Number
3. Race/Ethnic background
4. Gender
5. Classification to be trained
6. Any previous hours completed on other WSDOT contracts

SATC/ATELS apprentice/trainee – When a SATC/ATELS apprentice is first enrolled, a copy of the apprentice certificate showing apprenticeship registration must accompany Form 272-050.

#### **Good Faith Effort**

Substantial Compliance – Although the TSP program is specifically designed to increase minority and female participation in the federal aid highway construction projects where underutilization exists, it is not intended to be discriminatory. Contractors and subcontractors may utilize a non-minority male apprentice/trainee if otherwise in compliance with the contract’s EEO/TSP requirements, in each work classification, or have sufficiently documented their good faith efforts taken to fill the specific training position with either minorities or females.

WSDOT requires the contractor to furnish evidence of his/her systematic and direct recruitment efforts through the use of public and private sources likely to yield minorities and females. The following, while not all inclusive, represents a few examples of good faith efforts: Letters that are project specific (location of the project, how long it will last, type of pay) and targeted for the work classifications utilized must be sent to WSDOT Supportive Services Consultant, Community Based Organizations (CBOs) (two or three that are likely to refer minorities or females), and unions/apprenticeships (if union shop). The letters should be sent prior to job startup to alert CBOs to the possibility of the contractors needing assistance finding minorities and females. These letters should be ongoing and targeted when the contractor needs assistance in finding minorities and/or females in a specific work classification. The contractor’s letters should also address anything the contractor has done to hire minorities and/or females including employee referrals. The contractor in his or her letter must request a response and then note the result of the contractor’s request for assistance. Good faith efforts must be two-way communications with documented results. If the contractor is a union contractor, he/she must contact the union first then the WSDOT in-house Supportive Services consultant as well as two or three CBOs.

## **Ethnicity Verification**

When there is a questionable ethnicity/race claim concerning an individual submitted for participation in the OJT program, further documentation of that claim may be necessary to ensure eligibility. Acceptable documentation for ethnicity verification includes, in order of preference:

1. Birth certificate.
2. Naturalization papers.
3. Native American – Indian Tribal roll, tribal voter registration certificate, or other official document.
4. History of individual having held himself to be a member of the minority group or community (driver's license, school, medical, and service records).
5. Recognition of applicant in a particular minority community as a minority through sworn and notarized statements from bona fide members of the community who are clearly disinterested parties.
6. Proof of membership and interaction in recognized minority organizations.
7. If a person manifests the visual characteristics of an acceptable ethnic minority group, the contractor may consider the person to be a member of that group.

If requested by WSDOT, the contractor will be required to obtain this information from the employee claiming the minority status. If the individual requesting minority status cannot provide acceptable documentation and does not manifest the visual characteristics of the ethnic group claimed, the individual cannot claim minority status for the purpose of the OJT program.

## **Beneficial Training**

The contracting agency (WSDOT or the local agency) will ensure its contractors provide on-the-job training aimed at developing or contributing to full journey level status in the type of trade(s) involved. Training shall be consistent with the approved trainee/apprentice program. Training tasks will be consistent with the approved trade classification for the specific contract.

## **Training Reimbursement Process**

1. Submittal of certified invoice requesting payment for training.
2. Payments will not be made under the bid item "Training" if the failure to provide the required training is caused by the contractor and lack of good faith on the part of the contractor to meet the training requirements.
3. Training will not be reimbursed if the contractor fails to provide beneficial training.
4. Overrun hours of the training item must not exceed 25% of the contract quantity of hours assigned or 500 hours, whichever is least.
5. Change orders may be submitted to increase the Training Hours assigned to a contract. On WSDOT awarded contracts the Headquarters Construction Office will approve such request with concurrence of the OEO EEO Officer, on a case-by-case basis. On local agency awarded contracts H&LP approval is required.
6. Training assignments can be increased for a SATC or ATELS approved apprentice on a case-by-case basis, but not to exceed their attainment to journey level status, and only when beneficial and well-rounded training can be assured.

## **Wage Progression**

1. Apprentices participating in a SATC or ATELS approved apprenticeship will be paid applicable ratios or wage progressions approved by the Washington State Department of Labor and Industries.

Trainees participating in a non SATC or ATELS approved training program will be paid the prevailing wage for journey level workers in their work classification.

Beneficial Training – The contracting agency will monitor contractors to ensure trainees and apprentices are receiving beneficial training in the type of trade involved. Training shall be consistent with the apprentice SATC/ATELS approved training program or the open shop contractors WSDOT/FHWA approved training program.

It is normally expected that the trainee/apprentice will begin training on the project as soon as possible after start of work, utilizing the skills involved and remaining on the project as long as training opportunities exist in the work classifications or until the completion of the training program.

Onsite Interviews are performed to determine and assess:

1. Whether apprentice/trainee is receiving beneficial training
2. Work place environment
3. If trainee/apprentice is experiencing problems on the jobsite
4. If the apprentice/trainee is being treated fairly

On WSDOT awarded contracts, WSDOT monitors contracts with training through monthly training reports and monthly construction reports. These reports are generated in Headquarters and disseminated to the Regional EEO Officers. If there are problems, the EEO Officer contacts the contractor to address the deficiencies.

1. If there are deficiencies, the contractor must provide a corrective action plan addressing the deficiencies.
2. No payment will be made under the bid item “Training” if there has been a failure to provide the required Training

Non-Compliance Sanctions

1. Progress payments for training items may be withheld for failing to comply with all OJT Program requirements.
2. Failure to satisfactorily comply with the OJT requirements will be reflected in the contractor’s performance evaluation.
3. Sanctions for violations of EEO provisions

When a contractor violates EEO provisions of the contract, the Contracting Agency may incur damages. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations as well as loss of federal funding. Damages attributable to a contractor’s violations of the EEO provisions may be deducted from progress payments due to the contractor or from the retainage withheld by the Contracting Agency as allowed by RCW 60.28.020. Before any money is withheld, the contractor will be provided with a notice of the basis of the violations and provided an opportunity to respond.

The Contracting Agency’s decision to recover damages for an EEO violation does not limit its ability to suspend or revoke the contractor’s pre-qualification status or seek other remedies as allowed by federal or state law. In appropriate circumstances, the contracting Agency may also refer the contractor to state or federal authorities for additional sanctions.

On Local Agency awarded contracts, the local agency monitors contracts with training through monthly pay estimates. If there are problems, the local agency contacts the contractor to address the deficiencies.

## Training Non-Compliance Sanctions

1. Progress payments for training items may be withheld for failing to comply with all OJT Program requirements.
2. Sanctions for violations of EEO provisions

When a contractor violates EEO provisions of the contract, the Contracting Agency may incur damages. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations as well as loss of federal funding. Damages attributable to a contractor's violations of the EEO provisions may be deducted from progress payments due to the contractor or from the retainage withheld by the Contracting Agency as allowed by RCW 60.28.020. Before any money is withheld, the contractor will be provided with a notice of the basis of the violations and provided an opportunity to respond.

The Contracting Agency's decision to recover damages for an EEO violation does not limit its ability to seek other remedies as allowed by federal or state law. In appropriate circumstances, the Contracting Agency may also refer the contractor to state or federal authorities for additional sanctions.

On WSDOT awarded contracts, WSDOT may provide each trainee with a certificate showing the type and length of training satisfactorily completed.

## **Reports**

WSDOT will submit annual suggested training goals to the Federal Highway Administration 30 days from the end of the calendar year. If WSDOT is unable to attain its goals during the twelve month period, WSDOT will inform FHWA the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goals during the next calendar year.

WSDOT will submit the Federal Highway Annual Training Report to FHWA no later than July 31 of each year. This report contains the number of minorities and females receiving training during the report period as well as an analysis of the year's report along with the trainee database and TSP participants reaching journey status.