

# ***NDDOT Contractor Compliance Review Program Standard Operating Procedures***

**Review scheduling.** Because construction work forces are not constant, particular attention should be paid to the proper scheduling of contractor compliance reviews. Priority in scheduling contractor compliance reviews shall be given to reviewing those Prime Contractor's work forces:

- (1) Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations).
- (2) Working in areas which have significant minority and female labor forces within a reasonable recruitment area.
- (3) Working on projects that include special training provisions; and
- (4) Where compliance with equal opportunity requirements is questionable.

In addition, the following considerations shall apply:

- (5) Reviews specifically requested by higher authority shall receive priority scheduling.
- (7) Reviews shall be conducted prior to or during peak employment periods.
- (8) No contractor compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by higher authority.

**Selection of Projects.** The following are the steps utilized to select projects for review by the Contractor Compliance Review Coordinator:

- The basic criteria for selection are as follows: project size (\$1M or more), type, location, whether OJT and DBE requirements are part of the contract, and when the Prime Contractor was last reviewed. The review of awarded contracts usually begins in October of each year.
- The documents that are used for the initial selection of projects is the low bid tabulation report, which is sent via email by Construction Services, Project Status Report (PSR) which is found in CARS, and the Executive Dashboard located on the North Dakota Department of Transportation external website.
- The low bid tabulation report and the Executive Dashboard are used to verify projects awarded and contract value.

- The PSR contains the following information: bid opening date, PCNs and if it is a tied project, district responsible, type of work, start date and completion date, original contract amount, Prime Contractor Awarded, and Project Engineer assigned. The PSR also contains city, county, and local government projects.
- The Contractor Compliance Review Manager (CCRM) then reviews the PSR and compiles a list of Projects by District that meet the initial criteria (federally funded and more than \$1M) for the Contractor Compliance Review (CCR) Program.
- The PSR should be reviewed on a monthly basis after the low bid tabulation report is distributed via email. In approximately February or March the CCRM will review the compiled data and remove projects such as projects that were awarded to contractors that have been reviewed for several years in a row and have had no compliance issues in the past several years and projects that were awarded to the same contractor in the same district. (Projects should only be removed from the initial list of projects after past signed CCR reports have been thoroughly reviewed and found to be in compliance with no issues the past two years). In some cases, there are no other options than to review the same contractors in consecutive years as those contractors might be the only contractors who bid on projects. Prime Contractors that agree to a voluntary corrective action plan or have a rescinded show cause notification from the previous construction season will be reviewed during the current construction season as a part of the contractor compliance review program if a project was awarded.
- After the initial list of potential projects has been tabulated, the CCRM will then contact the OJT/DBE Program Manager and ask for input on the initial selection of projects that have DBE requirements or which Prime Contractors have OJT requirements. In most cases all projects selected will have OJT and DBE requirements. Lack of DBE goals on a project is not a reason to not select a Prime Contractor for review. There are several other contractual areas that a Prime Contractor must meet and should be review periodically.
- Once OJT/DBE requirements are confirmed with the initial spreadsheet of projects, the potential projects for review are separated by district. The CCRM will then do a comparative analysis of each district's projects in relation to which Prime contractor was awarded the projects, contract value, OJT/DBE requirements, start date of the project, and type of work conducted on the project. By doing this comparative analysis of projects in each district the CCRM will be able to comprise a final list of projects so that each district will have a contractor compliance review in their respective district and each project reviewed will have a different Prime Contractor.
- The goal is to conduct a contractor compliance review in each district and to conduct at least 10 total reviews each year. By reviewing projects in all districts, we will be able to review a variation of projects with different minority participation goals as each county has a different minority goal percentage. The female participation goal is set at 6.9% statewide.
- Once the final list of projects for the contractor compliance review program is formulated, the CCRM will meet with the Civil Rights Director (CRDD) and go over projects selected for review.

- After final review of projects and approval of the CRDD, the CCRM will then contact the Assistant District Engineers (ADE's) and Team Leads each spring to collect additional information to ensure projects selected for review meet criteria for selection and time frame for reviews. In some cases, the scope of projects change once awarded and are no longer a candidate for the contractor compliance review program. All CCR's should be completed by October 1<sup>st</sup> each year.
- After the final review of projects between the CCRM and ADE is conducted the CCRM will call each Prime Contractor's Equal Employment Officer (EEO) to set up a date for the review. Generally, there should be 3-5 weeks of payrolls submitted in LCPtracker and the project should be at peak employment before the exit conference is scheduled. During peak employment the CCRM will be able to obtain good data for the CCR report by using the various reports which are located in LCPtracker under the reports tab. These reports will pull minority and gender data from submitted certified payroll reports (cpr's), total hours reported by all contractors, and skilled craft hours for minorities and female employees.
- The initial email to the EEO will contain the notification letter, SFN 9427 Contract Compliance Review Checklist, and additional directions. After the notification email is sent to the contractor, a teams meeting is set up in Microsoft Outlook to conduct the exit interview. (Make sure to ask the Prime Contractor's representative if he or she would like to be mailed a copy of the notification letter instead of email). The notification letter should only be sent after the CCRM has reviewed the signed proposal between NDDOT and the Prime Contractor. Signed proposals are located on the external NDDOT homepage under quick links.

**Contractor notification.** The CCRM will provide written or electronic notification to the contractor at least 3 weeks prior to the scheduled exit interview. All exit interviews will be conducted via electronic means unless after the initial review there are serious concerns which at that time the exit interview will be scheduled face to face. This notification will include the scheduled date of the review, instructions for completing required documents, and SFN 9427 Contractor Compliance Review Checklist. A secure link will be sent via email to the contractor to upload supporting documents for the SFN 9427 no less than 3 weeks prior to the scheduled exit interview.

The SFN 9427 Contractor Compliance Review Checklist will consist of the following items:

- Basic Project information and Points of Contact of the contractor being reviewed
- Subcontractors, Regular Dealers, Venders, Suppliers working on the project. B2Gnow will be used to verify the contractors working on the project or providing services
- Union Affiliations
- Other Recruitment Sources
- Project Personnel
- Training
- Project Personnel Actions
- Recruitment
- EEO Policy
- Dissemination of EEO Policy
- EEO and DBE Officers
- Discrimination complaint Procedures
- Subcontract agreements

➤ Previous review results

**Preliminary analysis.** Before the onsite exit interview, the CCRM should analyze the employment patterns, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to:

- (1) The contractor's current work force. The reports used by the CCRM that LCPTracker will generate are: goal report for minority and female participation on a project, FHWA 1391 report and project employee list report for construction employment data, for CC-257 monthly employment utilization report by contractor, and the enhanced query project summary report which is used for the review of certified payrolls.
- (2) The contractor's relationship with referral sources, e.g., unions, employment agencies, community action agencies, minority and female organizations, etc;
- (3) The minority and female representation of sources.
- (4) The availability of minorities and females with requisite skills in a reasonable recruitment area.
- (5) Any pending EEOC or Department of Justice cases or local or State Fair Employment Agency cases which are relevant to the contractor and/or the referral sources; and
- (6) The related projects (and/or contractor) files of FHWA regional or division and State Coordinator's offices to obtain current information relating to the status of the contractor's project(s), value, scheduled duration, written corrective action plans, FHWA 1391 or Manpower Utilization Reports, training requirements, previous compliance reviews, and other pertinent correspondence and/or reports.

**Onsite verification and interviews.** If an onsite visit is required, the following items will be discussed:

- (i) Objectives of the visit;
- (ii) The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and
- (iii) Arrangements for the site tour(s) and employee interviews.

The CCRM, CRDD, and the ADE for the respective district will make a physical tour of the project site(s) to determine that:

- (i) EEO posters are displayed in conspicuous places in a legible fashion;
- (ii) Facilities are provided on a nonsegregated basis (e.g. work areas, washroom, timeclocks, locker rooms, storage areas, parking lots, and drinking fountains);
- (iii) Supervisory personnel have been oriented to the contractor's EEO commitments;
- (iv) The employee referral source system is being implemented;
- (v) Reported employment data is accurate;
- (vi) Meetings have been held with employees to discuss EEO policy, particularly new employees; and
- (vii) Employees are aware of their right to file complaints of discrimination.

(1) The CCRM should interview at least one minority, one nonminority, and one woman in each trade, classification, or occupation. The contractor's superintendent should also be interviewed.

(2) The CCRM shall also determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

(3) The CCRM shall determine, and the report shall indicate the following:

(i) Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?

(ii) What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

(iii) Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?

(iv) Is there impartiality in treatment of minorities and women?

(v) Are affirmative action measures of an isolated nature or are they continuing?

(vi) Have the contractor's efforts produced results?

During the exit conference with the contractor, the following topics shall be discussed:

(i) Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

(ii) The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews); and

(iii) Any other matters that would best be resolved before concluding the onsite portion of the review.

(1) Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the CCRM shall prepare the review report and make a determination of either:

(i) Compliance, and so notify the contractor; or

(ii) Noncompliance, and issue a 30-day show cause notice.

The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of noncompliance, particularly if deficiencies not addressed by the plan are uncovered during the final analysis and report writing. A voluntary corrective action plan should be accepted with the understanding that it only addresses those problems uncovered prior to the exit conference.

**Compliance determinations.** The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the CCRM and the CRDD conducting the review of the contractor's compliance or noncompliance with contractual provisions pursuant to E.O. 11246, as amended, and FHWA EEO Special Provisions implementing the Federal-Aid Highway Act of 1968, where applicable.

**(1)** The compliance status of the contractor will usually be reflected by positive efforts in the following areas:

- (i)** The contractor's equal employment opportunity EEO policy;
- (ii)** Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;
- (iii)** The authority and responsibilities of the EEO officer;
- (iv)** The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;
- (v)** The extent of participation and minority and female utilization in FHWA training programs;
- (vi)** The contractor's review of personnel actions to ensure equal opportunities;
- (vii)** The contractor's participation in apprenticeship or other training;
- (viii)** The contractor's relationship (if any) with unions and minority and female union membership;
- (ix)** Effective measures to assure nonsegregated facilities, as required by contract provisions;
- (x)** The contractor's procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and
- (xi)** The adequacy of the contractor's records and reports.

**(2)** A contractor shall be considered to be in compliance when the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to achieve this goal shall be result-oriented, initiated and maintained in good faith, and emphasized as any other vital management function.

**(3)** 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.

### **Show cause procedures -**

**(1) General.** Once the onsite verification and exit conference have been completed and a compliance determination made, the contractor shall be notified in writing of the compliance determination. This written notification shall be sent to the contractor within 15 days following the completion of the onsite verification and exit conference. If a contractor is found in noncompliance, action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice. The notice shall advise the contractor to show cause within 30 days why sanctions should not be imposed.

**(2) When a show cause notice is required.** A show cause notice shall be issued when a determination of noncompliance is made based upon:

- (i) The findings of a compliance review;
- (ii) The results of an investigation which verifies the existence of discrimination; or
- (iii) Areawide plan reports that show an underutilization of minorities (based on criteria of U.S. Department of Labor's Optional Form 66 "Manpower Utilization Report") throughout the contractor's work force covered by part II of the plan bid conditions.

**(3) Responsibility for issuance.**

- (i) Show cause notices will normally be issued to federally assisted contractors when the State has made a determination of noncompliance, or when FHWA has made such a determination and has requested the State to issue the notice.
- (ii) When circumstances warrant, the Federal Highway Administrator or a designee may exercise primary compliance responsibility by issuing the notice directly to the contractor.

**(4) Content of show cause notice.**

- (i) Notify the contractor of the determination of noncompliance;
- (ii) Provide the basis for the determination of noncompliance;
- (iii) Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;
- (iv) Schedule (date, time, and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;
- (v) Advise the contractor that the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies; and
- (vi) Advise the contractor of the availability and willingness of the CCRM to conciliate within the time limits of the show cause notice.

**(5) Preparing and processing the show cause notice.**

- (i) The NDDOT CCRM who conducted the investigation or review shall develop complete background data for the issuance of the show cause notice and submit the recommendation to the head of the Regional Federal Highway Administrator, as appropriate.
- (ii) The recommendation, background data, and final draft notice shall be reviewed by NDDOT Director and sent to the Legal Division for review. The show cause notice will be signed by the NDDOT Director or his designated appointee.
- (iv) The notice shall be personally served to the contractor or delivered by certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.
- (v) The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause period.
- (vi) The 30-day show cause notice shall be issued directly to the noncompliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.

**(6) Conciliation efforts during show cause period.**

(i) The CCRM and the CRDD are required to attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts shall be directed toward correcting contractor program deficiencies and initiating corrective action which will maintain and assure equal opportunity. Records shall be maintained as required by state and federal agency retention guidelines.

(ii) In instances where a contractor is determined to be in compliance after a show cause notice has been issued, the show cause notice will be rescinded and the contractor formally notified. The FHWA Administrator shall be notified immediately.

**(7) Corrective action plans.**

(i) When a contractor is required to show cause and the deficiencies cannot be corrected within the 30-day show cause period, a written corrective action plan may be accepted. The written corrective action plan shall specify clear unequivocal action by the contractor with time limits for completion. Token actions to correct cited deficiencies will not be accepted.

(ii) When a contractor submits an acceptable written corrective action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports.

(iii) When an acceptable corrective action plan is not agreed upon and the contractor does not otherwise show cause as required, the formal hearing process shall be recommended through appropriate channels immediately upon expiration of the 30-day show cause period.

(iv) When a contractor, after having submitted an acceptable corrective action plan and being determined in compliance is subsequently determined to be in noncompliance based upon the contractor's failure to implement the corrective action plan, the formal hearing process must be recommended immediately. There are no provisions for reinstating a show cause notice.

(v) When, however, a contractor operating under an acceptable corrective action plan carries out the provisions of the corrective action plan but the actions do not result in the necessary changes, the corrective action plan shall be immediately amended through negotiations. If, at this point, the contractor refuses to appropriately amend the corrective action plan, the formal hearing process shall be recommended immediately.

(vi) A contractor operating under an approved voluntary corrective action plan (*i.e.*, plan entered into prior to the issuance of a show cause) must be issued a 30-day show cause notice in the situations referred to earlier in this instruction *i.e.*, failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

**Follow-up reviews.**

(1) A follow-up review is an extension of the initial review process to verify the Prime Contractors performance of corrective action and to validate progress report information. Therefore, follow-up reviews shall only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

(2) Follow-up reviews shall be reported as a narrative summary referencing the initial review report.



***Hearing process.***

(1) When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing Prime Contractors into compliance within the prescribed 30 days, the reviewer (or other appropriate level) shall immediately recommend, through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing. The Prime Contractor should be notified of this action.

(2) Recommendations to the Federal Highway Administrator for hearing approval shall be accompanied by full reports of findings and case files containing any related correspondence. The following items shall be included with the recommendation:

(i) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;

(ii) Copies of any contractor or subcontractor certifications;

(iii) Copy of show cause notice;

(iv) Copies of any corrective action plans; and

(v) Copies of all pertinent Manpower Utilization Reports, if applicable.

(3) All parties shall be promptly notified of the results of the findings.

***Filing of Contractor Compliance Review documents.***

1. All documents for each CCR will be filed in filenet using the ILINX capture application. When filing any documents in filenet ensure that you are using the appropriate index codes. The index matrix for filenet can be found on the MyDot intranet home page under the online services tab.