



# 2015 EXTERNAL CIVIL RIGHTS TRAINING ADVANCED SESSION



# WELCOME

- ▶ General Housekeeping:
  - Emergency Exits, Bathrooms
  - Two breaks
- ▶ ECR Manual page numbers
  - Arial Black for changes
- ▶ Offering class for inexperienced and another for experienced project engineers

## EXTERNAL CIVIL RIGHTS MANUAL

FEBRUARY 2015

Prepared by

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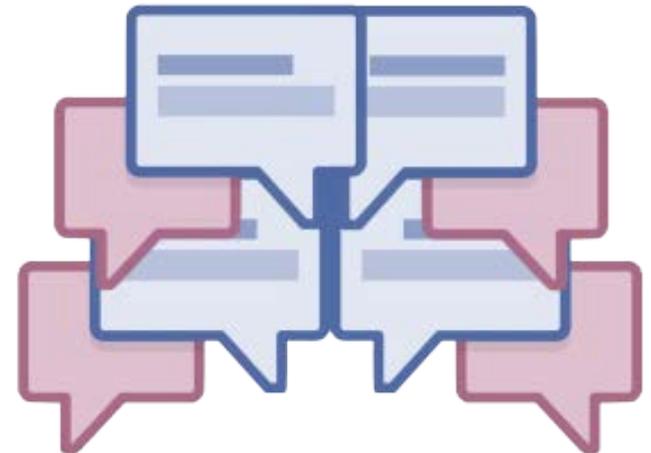


# DEFINITIONS

- ▶ Project Engineer (PE): engineer or manager
- ▶ ADE: Assistant District Engineers
- ▶ CR Hierarchy: – ADE – Civil Rights (program adm. or director) – ADE
- ▶ Documentation: photo, project diary, email

# CHAT BOX

- ▶ Slide number with written question/comment
- ▶ End of each section
- ▶ Final PowerPoint program
- ▶ RIGHT NOW: who and where



# PRESENTERS

- ▶ Title VI & Nondiscrimination/ADA : Paula Messmer
- ▶ Disadvantaged Business Enterprise: Denise Spanjer
- ▶ Contractor Compliance: Gail Brown
- ▶ On-The-Job Training: Denise Spanjer
- ▶ Labor Compliance: Gail Brown

## Civil Rights



Diane Laub  
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# TITLE VI AND NONDISCRIMINATION/ADA

Presenter: Paula Messmer  
NDDOT Civil Rights Division



# TITLE VI



DBE  
OJT

Title VII  
Contractor Compliance  
Labor Compliance

# Title VI and Nondiscrimination/ADA Program

- ▶ Restoration Act of 1987
- ▶ Ensures compliance with Title VI
- ▶ Data Collection Process
  - Public Meetings/Hearings
  - NDDOT Title VI Public Participation Survey and Instructions
- ▶ Exhibit I–A, page 6

# CTS LanguageLink

- Telephonic interpreter service
- Consultant interview Spanish speaking employees
- Interpreter services available





# Title VI/ADA

## Legal Authorities

ECRM  
Sec. 1 p. 2

- Civil Rights Act of 1964 – related statutes
- Race, color, sex, age, disability
- National Origin
- Environmental Justice (EJ)
- Limited English proficiency (LEP)
- Civil Rights Restoration Act of 1987
  - Request For Reasonable Accommodations
  - Exhibit I–B, page 9



# Title VI Assurances

- ▶ NDDOT required to sign Title VI Assurances
- ▶ Appendix A and E of the Title VI Assurances
- ▶ Required in all contracts
  - State and federally funded, all tiers
- ▶ Prime contractors /consultants requirements
- ▶ Exhibit I-C, page 11



# Title VI

## Compliance Oversight

ECRM  
Sec. 1 p. 4

- NDDOT enforcement responsibilities
- Noncompliance and reporting
- Examples of discrimination



# Title VI Complaints

- Filing Complaints with NDDOT
- Filing Complaints with U.S. DOT
- Title VI Complaint Process (SFN 51795 Rev. 12-2014)
- Exhibit I-D, page 19



# Scenario

- ▶ An individual calls you and wants to file a complaint against their employer, a contractor, for racial discrimination. What do you do?
- ▶ a. Schedule a meeting with the caller to discuss the alleged discrimination.
- ▶ b. Direct the caller to NDDOT website for a Complaint form and instructions.
- ▶ c. Provide caller the EEOC contact information.
- ▶ d. All of the above.



# QUESTIONS AND ANSWERS





# DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Presenter: Denise Spanjer  
NDDOT Civil Rights Division



# DBE Certification

DBEs are small for-profit businesses certified by the NDDOT UCP Board

- CFR states eligibility requirements
- DBE Directory is up to date
- Revamping Directory's functionality
- 27 DBEs work regularly in the state
- Sundre Sand & Gravel graduated in 2014

# DBE Overall Goal – 6.22%

## RACE/GENDER CONSCIOUS

RGC – Numeric percentage greater than zero

NDDOT RGC goal – 2.75%

Good Faith Efforts

Careful monitoring for any changes after time of award.

## RACE/GENDER NEUTRAL

RGN – Zero percent

NDDOT RGN goal – 3.47%

No good faith efforts  
layer of monitoring

Notify CRD when changes occur

# SP in effect through life of project

RGN & RGC SPs will change in 2015

- ▶ DBE Rule Modifications
- ▶ Simplifying language
- ▶ Match the voice and mood of the 2014 Standard Specifications

Each project is governed by the SP in effect at the time of bid for the life of the project.



# Working with CRD

## Communication Channels

Prime > Project

Engineer > ADE > CRD

CRD > ADE > Project

Engineer > Prime

# pre-construction Conference Communication

## Prime must:

- ▶ Notify and invite all subs and any DBE firms listed on Form C
- ▶ Address issues to assure DBE program compliance
- ▶ Provide the DBE with the pre-construction form and pre-construction minutes



# Project Engineer Awareness

Replacements

Self-performance

Requests to Sublet dates



# Own Workforce & Equipment

Instead of going through Good Faith Efforts and the Replacement Process, this prime got really cute. They put an erosion control firm's employees on the payroll AND leased all the firm's equipment.

When the project engineer questioned why the erosion control firm's employees were there, one said, "They told us to tell you we are the prime's employees..."

What should be done?



# Own Workforce & Equipment

- a) Give them credit for originality and call it good.
- b) This is technically correct according to spec.
- c) Contact the ADE, stop the work, note in project diary
- d) Insist the prime go through the Replacement Approval Request and GFE.
- e) A & B
- f) C & D

# Participation Review

- ▶ Locate DBE Participation Review in CARS
  - PCN > Search Documents > Document Type: Reference > Click Search
  - The search will produce one file
    - DBE Participation Review

# DBE Participation Review

Page 1

**DBE PARTICIPATION REVIEW – RACE CONSCIOUS**  
 North Dakota Department of Transportation, Civil Rights Division

SFN 13743a (Rev. 2-2013) Update – 11/26/2014 **6.59%**

**GOAL: 3.00%**  
**ACH: 4.76%**

**BID OPENING**  
 November 14, 2014

<b>APPARENT LOW BIDDER</b> KNIFE RIVER MATERIALS		<b>LOW BID</b> \$1,630,814.45
<b>JOB NUMBER</b> 34	<b>PCN(S)</b> 18336	<b>PROJECT NUMBER(S)</b> SNH-6-005(028)300
<b>WORK TO BE COMPLETED</b> 2" MILL & 2" RECYCLED HBP FAA 43 OVERLAY AND ADA PEDESTRIAN RAMS ALON SHARED USE		<b>LOCATION</b> PEMBINA; ND 5 FROM EAST JCT ND 32 EAST TO CAVALIER

**DBEs LISTED ON FORM A**

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED
West River Striping	28,676.03	1.76%	100%	762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124

**ADDITIONAL DBE PARTICIPATION COMMITTED TO AFTER BID SUBMITTAL**

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED
Reiner Contracting	78,780.78	4.83%	100%	411-0105, 702-0100

**DBE BID ITEMS KNIFE RIVER MATERIALS WILL DO WITH THEIR OWN FORCES:** 302-0100, 411-0105, 430-0143 haul only and 430-5828

**DBEs NOT USED BECAUSE KNIFE RIVER MATERIALS WILL DO THE WORK:** Miigwech Trucking (formerly known as Keith Brown Trucking), and JD Donovan

**DBEs NOT USED DUE TO BID DIFFERENTIAL:** West River Striping – rumble strips, Morris Sealcoat & Trucking – fog only, Hudson, Inc. and Reiner Contracting.

**DBES NOT USED DUE TO OTHER (Specify):** DBE West River Striping was used over DBEs Muscha Pavement Marking and Dallmann Services Co. for pavement marking

**ACTIVITIES & CONTACT:**  
**DBEs Quoting:**  
 Dallmann Services Co: 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124  
 Decorative Concrete Designs: 750-2115  
 Hudson Incorporated: 411-0105  
 JD Donovan: asphalt cement haul only LATE  
 Miigwech Trucking, Inc.: 302-0100, 411-0105, 430-0143 haul only  
 Morris Sealcoat & Trucking: 702-0100, 760-0005, 760-0007  
 Muscha Pavement Marking: 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124  
 Reiner Contracting: 411-0105  
 West River Striping: 702-0100, 760-0005, 760-0007, 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124

## Summary of Prime's DBE Participation at time of award

- Contract amount
- DBE subcontractors used
- Intention to self-perform
- Non-DBE subcontractors used
- Management decisions



# Required Forms

SFN60596 – Project Engineer CUF confirmation

SFN60597 – CUF Certification

SFN60638 – Monthly Record of DBE Payments

SFN14268 – DBE Participation Certification

SFN60595 – Replacement Approval Request

SFN 60791 – DBE Weekly Trucking Report





# SFN60596

## Project Engineer On-site Work Confirmation

1. Is the DBE subcontractor performing the work listed on their subcontract?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are all of the DBE firm's employees carried on the DBE firm's payroll?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3. Does the DBE firm's equipment have the DBE firm's name or logo on it?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
4. Is the DBE firm's equipment leased from the prime contractor or any other contractor on the project?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
5. Have other contractors on the project performed the work subcontracted to the DBE firm?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
6. Is the DBE superintendent or foreman working as an employee of any other contractor or subcontractor on the project?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
7. Are any of the DBE firm's employees also working for the prime contractor?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

# SFN60638

## MONTHLY RECORD OF DBE PROJECT PAYMENTS

North Dakota Department of Transportation, Civil Rights Division  
SFN 60638 (Rev. 11-2014)

For DBE Project Payment (Enter month and year)

Prime contractors and subcontractors are required to submit a monthly record of project payments to Disadvantaged Business Enterprise (DBE) firms on highway construction project. If no payments have been made, please indicate "none" on the form.

Submit by the 15th working day of every month.  
The payments listed should reflect those made to the listed DBE in the previous month.

Submit to: CIVIL RIGHTS DIVISION by EMAIL: [CIVILRIGHTS@ND.GOV](mailto:CIVILRIGHTS@ND.GOV)  
or FAX: 701-328-0343

Project Number			This payment is a : <input type="checkbox"/> Partial Payment <input type="checkbox"/> Final Payment
PCN	Bid Opening Date	Job Number	
Prime Contractor/Consultant			
Subcontractor/Subconsultant			

Payments made in the previous month are detailed below (Include additional sheets as needed.)

Intended			Dollar Amounts Paid			Remaining on Contracted Amount
Bid Items Number	Bid Item Description	Amount indicated on Original Form A and/or Request to Sublet	Amount Paid on this Payment	Previous Amount Paid	Total Amount Paid to Date	
					0.00	

Submitted by the 15th of every month following the DBE's commencement of work on the project.

# SFN14268

## DBE PARTICIPATION CERTIFICATION

North Dakota Department of Transportation, Construction  
 SFN 14268 (Rev. 01-2014)

Complete this form for each disadvantaged business enterprise (DBE) for which a Form C (Notification of Intent to Use DBE) was submitted in accordance with the Disadvantaged Business Enterprise Program Special Provision. The DBE, intended amount, and bid item numbers must reflect what was entered on Form C. If additional DBE participation is realized during the course of the project, this form must be completed and submitted for **ONLY** those additional DBE firms that were certified by NDDOT. In those instances, "not intended" should be entered in the "\$ Amount Intended" column.

This statement certifies that the DBE firm listed below performed on the project in accordance with the Disadvantaged Business Enterprise Program Special Provision. The following is a true and accurate statement of the monetary amount of the intended participation and the actual amount paid to the DBE.

Prime Contractor		DBE Firm	
Project Number		Job Number	Bid Opening Date

Prime submits SFN14268 to project engineer within 4 weeks of the DBE contract work being completed.



# DBE Rule Modifications

**49 CFR § 26.53 (f)(1)ii. 2. (B)** That, unless your consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

**49 CFR § 26.53 (g)** These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to meet the contract goal.

# SFN60595

If there are any changes in project as it was awarded:

- ▶ SFN60595 Replacement Approval Request must be submitted.
  - Except where the intended amount has been paid to the DBE.

**UNFULFILLED OBLIGATION - REPLACEMENT - APPROVAL PROCESS**  
North Dakota Department of Transportation, Civil Rights Division  
SFN 60595 (02-2014)

**STEP 1**  
**INSTRUCTIONS:** Submitting this form is the first step in the "Unfulfilled Obligations" (SP RC p. 13) or the "Termination of Use" (SP RC p. 11) process. **Complete and submit immediately to Project Engineer when any change, replacement, substitution, or additional work is identified.** Approval must be received prior to hiring replacement or additional work. **No work may commence until Civil Rights Division's written approval is delivered.**

Prime Contractor or Subcontractor		NDDOT Bid Opening Date	
Project Engineer		District	
Project Location	PCN	Project Number	

Date Project Engineer was Notified	Explain if Notice was not Given
------------------------------------	---------------------------------

**Status of Intended Project Goal:**  
Identify the DBEs currently on the project and the status of the intended DBE participation achievement.

DBE Firm	Original Intended Amount	Amount Paid to Date	New Intended Amount	Participation Loss or Gain

Will your firm achieve the goal amount you committed to at the time of bid?  Yes  No  
If not, explain in the space provided.

Explain how your firm followed the 'unfulfilled obligation' process.

Prime Contractor Signature	Date
Project Engineer Signature	Date

*Project engineers monitor contract work to ensure the DBEs listed on the DBE Participation Review perform the items of work specified at the time of bid and that no improper substitutions occur.*



# Potato, Potahhto

Replacement of Prime's doing their own work was not viewed as "unfulfilled obligations" or "termination of services" and therefore the prime wasn't advised to submit the "unfulfilled obligations" or go through the process.

Therefore, replacement work was approved by the District without the prime getting CRD's approval to proceed.

The goal had not been achieved, what should have been done?



# Potato, Potahhto

- a) This was new work, therefore, did not impact the goal
- b) This was new work, therefore, the prime needed to solicit services of available DBEs
- c) This was additional trucking, give the current truckers more hours of work.
- d) Contact DBE truckers who quoted them, if not available hire a non-DBE
- e) Contact all DBE truckers in directory, follow process
- f) B & E



# EXCEPTION

- ▶ Work is required by permit
- ▶ Prime notifies DBE or non-DBE/BD and project engineer
- ▶ DBE or non-DBE/BD cannot do the work in the time required?
  - Text or phone message acceptable
- ▶ Explain in writing in one calendar day
- ▶ ADE has authority to replace

# Weekly Trucking Report

DBE Trucking firms may count  
“one-for-one” match trucks  
toward the DBE goal

Truly tricky to track at times

Weekly DBE trucking report in the works

SFN 60781

<http://www.dot.nd.gov/forms/sfn60781.pdf>



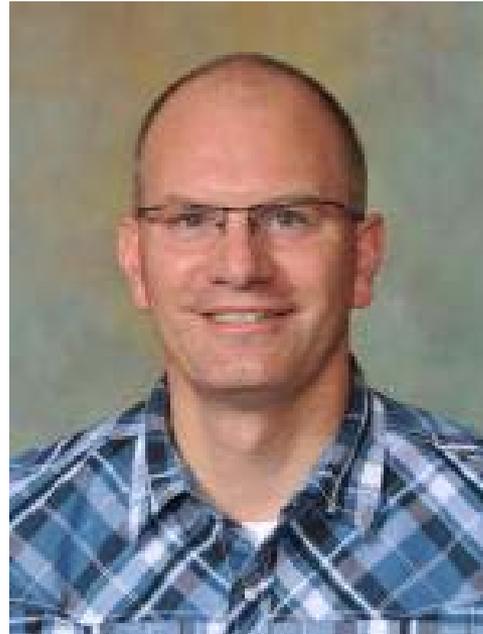
# Confusion

- ▶ Participation Review listed DBE for the bridge removal and three other bid items. The DBE sent a letter stating they could not remove a bridge.
- ▶ CRD incorrectly deleted all achievement for the DBE.
- ▶ Prime scraped the surface base course from adjacent private land rather than using DBE trucking listed in Participation Review
- ▶ The prime did not go through GFE on any of the work



# Confusion

Rob Rayhorn from Dickinson District will provide the rest of the story...





# QUESTIONS AND ANSWERS





# CONTRACTOR COMPLIANCE PROGRAM

Presenter: Gail Brown  
NDDOT Civil  
Rights Division



# How Compliance Reviews Are Conducted

- ▶ 1. Desk Audit – a thorough review of paperwork , including payroll, DBE, prompt payment, workforce diversity, etc.
- ▶ 2. Exit Conference – meeting with the contractor, the ADE and Project Engineer and CRD to discuss findings of desk audit and interviews.



# Noncompliance Finding

- ▶ First noncompliance finding for at least a decade this last summer.
- ▶ Minnesota Contractor on first federal-aid job, in Minot District.
- ▶ The contractor worked hard and took immediate action, and was found to be back in compliance 6 weeks later, although there recruitment will be supervised this upcoming season.



# Corrective Actions

- ☑ Issue Show Cause Notice;
- ☑ Conduct mandatory meeting to discuss Corrective Action Plan;
- ☑ Accept CAP or Initiate Contract Sanctions; and
- ☑ Conduct follow-up review.



# Scenario #1

- ▶ You are a Project Engineer on a federal-aid construction project.
- ▶ In discussions about trainees with the Project Superintendent, he confides to you that the company does not like to hire women in the trades. So, they want only a minority male trainee.
- ▶ What do you do with this information.



# Scenario #1 – Answer

- ▶ This is a serious matter.
- ▶ Document the conversation as soon as you can – write it down.
- ▶ Contact your ADE immediately. CRD will become involved from there.



# Scenario #2

- ▶ You are a manager on a federal-aid job, and your are onsite during peak employment.
- ▶ You have noticed that there are no women on the Project, either at the Prime level, or for any subcontractor at any tier.
- ▶ What do you do with this information?



# Scenario #2 – Answer

- ▶ a. Check the certified payrolls to make sure that you are correct .
- ▶ b. Begin an investigation on whether the workers for the prime have female workers on other jobs or sites. Call a buddy who is the Project Engineer in another district for another project of the Prime.
- ▶ c. Interview Project Superintendent as to why there are no female workers on site.



# Noncompliance Outcome

Contractor was able to hire two female operators and bring the percentage of female hours up from zero to 5%.

Contractor completely restructured its recruitment procedures and is working with its local unions to get a female apprentice.

# FHWA – 1273

## Nondiscrimination Contract Provisions

ECRM  
Sec.3 p. 1-3

1. EEO Policy Statement;
2. EEO Officer;
3. Dissemination of Policy;
4. Recruitment;
5. Personnel Actions;
6. Training and Promotion;
7. Unions;
8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment; and
9. Records and Reports.





# Discriminatory Practices 2014

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A superintendent making derogatory comments about an Indian reservation.

---

A foreman throwing a hard hat at a minority driver's truck hard enough to break the windshield.

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Referring to a group of minority workers as "you people" – as in "you people can't drive."



# Discrimination “Don’ts”

ECRM  
Sec. 3 p. 5

The ADE and Project Engineer (or their staffs) do not conduct investigations.

The ADE and Project Engineer do not make findings for people complaining of discrimination.

# Scenario #3

- ▶ You are the project engineer on a federal-aid construction project. You are about to start EEO interviews for the prime contractor pursuant to an upcoming CC review. The contractor has a large crew of laborers that speak little or no English. One of the crew offers to translate for the others. Do you take him up on this offer?



# Scenario #3 – Answer

- ▶ Always interview employees alone – never within earshot of other employees or management.
- ▶ If you wish to interview a person who is not comfortable in English, use the interpreter's service. Talk to your ADE for further info.



# Reviews of Smaller Projects

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Beginning 2015, we will do more limited reviews of smaller Projects (\$1–3M)

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Concentrate on EEO Compliance generally without a rigid workforce analysis

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Keeps contractors in compliance with other agencies.



# Bulletin Boards

ECRM  
Sec. 3 p. 10



Thank you for filling out the Bulletin Board Review Forms and for taking pictures this year! Project staff did an amazing job and I thank you.

Thank you also for inspecting them monthly and making sure things are up to date. I have little to add on this as staff was A+ on getting this done.



# QUESTIONS AND ANSWERS





# ON-THE-JOB TRAINING (OJT) PROGRAM



Presenter: Denise Spanjer  
NDDOT Civil Rights Division



# OJT Program

ECRM  
Sec. 4 p. 2

- ▶ Master List
- ▶ Primary role of Project Engineer
  - Observe, report, support
- ▶ Trainee training time on the equipment, in the truck, etc.
  - Doesn't have to be 100%
- ▶ OJT Supportive Services On-Site Visits
  - Meet, acknowledge trainee, provide wage rate and curriculum

# Wold Engineering – OJTSS

- ▶ OJT Supportive Services On-Site Monitor
  - Visits trainees, superintendent, trainer, project engineer on the project site
- ▶ OJT Supportive Services Project Assistant
  - Contacts contractors weekly to check on trainee status, progress
  - Checks payrolls and hours on projects
- ▶ District Payroll Responsibility
  - Trainee graduates to Journeyworker



# Assignments

- ▶ OJT Special Contract Provision
- ▶ Trainees are assigned to contractors
  - Not projects
  - May move trainees from project to project
- ▶ Contractors from other states may have different experiences with OJT Program
  - Trainee hours are assigned to projects as a bid item



# Completion is Important

- ▶ Trainee positions are assigned based on a contractor's cumulative contract dollars
- ▶ Contractors are strongly encouraged to complete a trainee's program/curriculum within one construction season
  - If they have not completed the position, the position may be carried over



# OJT Program

ECRM  
Sec. 4 p. 5

- ▶ Apprenticeships
  - Contractor may fulfill positions with apprentices
  - Contractor must choose program for apprentice
- ▶ Trainee candidates are screened for prior experience
- ▶ Minimum wage rates are noted in the OJT Program Manual
  - At no time, may the trainee be paid less than the lowest Laborer wage rate.

# Program Approval

- ▶ Contractors must request approval for program and trainee candidate separately
- ▶ All requests come through CRD
- ▶ Curriculum is outlined in the OJT Program Manual available at
- ▶ <http://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf>



# Scenario

Every time you've been on the project a Qualified Testing Technician Trainee has been working; but, he is working as a laborer, not working as a testing technician with his trainer.

What do you do?

- a) Record the incident in your diary and contact the ADE
- b) Check in with the trainer and ask how many hours the trainee has completed in the program
- c) Visit with the trainee to see how things are going with his training
- d) None of the above
- e) All of the above



# Reimbursement

- ▶ Training hours on state and federal funded projects are reimbursable at \$4 per hour
- ▶ There is no reimbursement for hours of work on county, TERO, city, private, out-of-state
  - Some training hours count toward completion
- ▶ Contractors must submit their trainee's hours monthly by the 15<sup>th</sup> or there is no reimbursement



# Credit for Training Hours

- ▶ Training hours may be earned on federal and state funded projects
  - Trainees may receive credit for hours spent in training on other projects.
    - County, TERO, city, private, out-of-state
    - Hours count toward completion up to 25% of the total hours (500 hour program = 125 max)



# Failure to Comply

ECRM  
Sec. 4 p. 10

- ▶ Failure to fill trainee position
  - The contractor must show good faith in their attempts to hire a trainee to fill a need in their company.
  - Contractors who refuse to fill the position face consequences.
- ▶ Failure to train
  - Using trainee position as laborer or flagger, etc.
  - “Train Yourself” – lacking supervision of trainer



# OJT Program

ECRM  
Sec. 4 p. 4

- ▶ Contractor may create a custom program
  - Project Manager has not received adequate supervision.
- ▶ Abbreviated programs
  - Apprenticeships
  - CDL holding Trucker
- ▶ Trainee may fulfill two position assignments
  - Not at same time



# QUESTIONS AND ANSWERS





# LABOR COMPLIANCE (Davis-Bacon) PROGRAM

Presenter: Gail Brown  
NDDOT Civil Rights Division



# Pickup Driver vs. Single Axle Truck Driver

ECRM  
Sec. 5 p. 46

Old Rule – In the past, whether a ½ ton, ¾ ton or 1 ton truck was a pickup (Group 1 Laborer) or a single axle truck (Truck Driver, Single Axle) was determined by what type of equipment was in the truck.

New Rule: Depends on Gross Vehicle Weight rating.



# New Rule – Trucks/Pickups

- ▶ < 26,000 pounds GVW rating is a Pickup Truck. The driver will be paid as a Group 1 Laborer.
- ▶ > 26,001 pounds GVW rating is a Single Axle Truck. The driver will be paid as a Truck Driver, Single Axle, or above.



# Determining Gross Vehicle Weight Rating

In determining GVWR, do not consider the vehicle's actual weight, but rather the total hauling capacity.

GVWR is assigned by the vehicle manufacturer and represents the maximum weight of the vehicle and what it can carry when fully loaded.

Label is commonly found on the truck door jamb or on the inside of the door.

If towing a trailer, find GVWR label and add to GVWR of the truck towing the trailer.



# Scenario # 1 – GVWR

- ▶ You see a 1 ton truck on the site – you check and the truck weighs 5,000 pounds empty and has a hauling capacity of 5,000 pounds. What is the GVW rating?
- ▶ The truck is hauling a trailer with a capacity of 15,000 pounds and a weight of 1,500 pounds. What is the combined GVW rating of both?



# Scenario #2

- ▶ You are a Project Engineer on a federally-assisted highway project. An employee identified by the contractor as an Equipment Operator comes to you and complains that he is not being paid properly on the job. He maintains that the prime contractor is altering his timesheets, both taking time off each week, and downgrading his Group # for certain hours each week. What do you do with this information?



# Scenario #2 – Answer

- ▶ A. You ask for copies of the employee's timesheets and begin monitoring the employee's activities.
- ▶ B. You approach the project superintendent and inquire as to whether he knows anything about the allegations.
- ▶ C. You tell the employee that he has the option of filing a Davis–Bacon Wage Complaint and refer him to the online form.
- ▶ D. You note the issue in the project diary and notify your ADE.



# Scenario # 3

- ▶ You notice an employee classified as a laborer and who typically does laborer work operating a skidsteer to move materials on a worksite. He is moving on and off the skidsteer and otherwise doing laborer work. How should he be classified and paid?
- ▶ The contractor says she was unaware that the skidsteer classification was added to the Wage Decision and she has always allowed laborers to use the skidsteers to make their work easier. She says she has always paid these workers who operate the skidsteer as laborers. What do you do?

# Workers with more than one classification

- ▶ If a worker moves from Laborer duties to operate a piece of equipment, the time in each classification must be noted.
- ▶ Worker must be paid for actual time spent in each classification.
- ▶ Rule of Reason – very briefly helping out another crew might be incidental (i.e. too small to note).

# Scenario #4

- ▶ You are doing labor interviews on a federal-aid highway job. You have interviewed 3 workers of a lower-tier subcontractor, who are all telling you they earn less than DBRA wages for their classification.
- ▶ One of the workers pulls out a paystub, which you ask to take a copy of. When you review certified payroll, there is no question that the Payroll and check stub do not match up. What do you do?



# Scenario #4 – Answer

- a. You call the subcontractor in order to gather a little more information before making a serious accusation.
  
- b. You call the prime contractor and ask the prime to gather more information before bringing the issue up to your ADE.
  
- c. You take the issue to the ADE even if you are not sure a violation has occurred.



# Labor Interviews

- ▶ Interview workers who might be vulnerable to demands for kickbacks – new employees, those who speak little English, etc.
- ▶ Interview workers alone – never together/
- ▶ Never use one worker or foreman to translate for another – we have a service.
- ▶ Try to do prime's labor interviews early, when there is time to fix issue.
- ▶ Do subcontractor interviews as you can.



# Scenario #5

- ▶ After talking to the Prime, you get a call from a VP of the subcontractor, who begins yelling at you. The subcontractor admits to filing false payroll and doing the same thing on non-NDDOT federal work. Your first instinct is to calm the very upset owner. What do you do?



# Scenario #5 – Answers

- a. Get more information on the filing of false payroll and document the conversation very well for the ADE.
  
- b. Apologize that you will need to hang up and do so.
  
- c. Ask the ADE or another project engineer to be a witness and put the call on speaker.



# Scenario #5 - Do You Report?

- a. Since the VP admitted to falsifying payroll only on non-NDDOT projects, you exceed your job duties if you investigate it. You keep what was said to yourself.
  
- b. You call the fraud hotline for the IG or AG office. You have a duty to disclose, but this way, you can remain anonymous.
  
- c. You disclose what happened to your ADE.



# Suppliers and Leasing Companies

- ▶ **Material suppliers** are not subject to Davis–Bacon except that drivers may become so if they spent **more than a de minimis** time on site.
- ▶ **Equipment Lease companies** are different – they might be subject to DBRA if time on site is **more than incidental**.



# Suppliers and Leasing Companies

- ▶ The following scenario comes from a concern of Rob Rayhorn:
- ▶ An equipment company has been asked to provide a large crane on a federally-assisted job site for 2–3 hours on one day. The company provides a worker to operate the crane as well as the crane itself. Does this company need to provide Davis–Bacon Certified Payrolls this work?



# QUESTIONS AND ANSWERS





# THANK YOU FOR PARTICIPATING IN THE 2015 EXTERNAL CIVIL RIGHTS TRAINING

Please send your questions/comments to:  
[civilrights@nd.gov](mailto:civilrights@nd.gov) or call 701-328-2637