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## CHAPTER 4: PROJECT EEO/AA REQUIREMENTS

### 4.1: GENERAL INFORMATION

#### 4.1.1 Purpose

The prime contractor and subcontractors on construction projects are subject to various requirements regarding EEO/AA. Project EEO/AA requirements are specific to one project.

#### 4.1.2 Scope

*Refer to Manual Section 1.7, “Compliance Requirement Summary”* for an overview of Project EEO/AA Requirements. Additional sections in **Chapter 4** provide details regarding each Project EEO/AA element. This section covers the project EEO requirements.

### 4.2 JOB SITE BULLETIN BOARD

#### 4.2.1 Purpose

Prime contractors are responsible for the job site installation and maintenance of a fixture for the display of information on various rights, protections and appeals to all workers and the public. The phrase “job site bulletin board” includes the fixture and its contents.

#### 4.2.2 Location

The job site bulletin board will be in a prominent, safe, maintained accessible site within the limits of the project. This site will be readily and safely accessible to the employees of every contractor on the project; walk up access to the display area will be maintained. Over the course of the project, work conditions may necessitate relocation of the bulletin board.

The number of boards may be dependent on the length of the project and whether there is a central location for workers to report. Multiple boards must be maintained consistently.

Placement of the job site bulletin board outside of project limits requires prior approval of the District Contract Compliance Manager.

#### 4.2.3 Timeframe

The job site bulletin board will be in place during the life of a project while there are workers on the project.

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<b>Installed</b>	<b>Removed</b>
<b>On or before workers first appear at the project.</b>	<b>When workers are no longer on the project.</b>
<b>This is usually the project begin work date</b>	<b>This is usually the project conditional or final acceptance date</b>

#### **4.2.4 Fixture**

The prime contractor determines the size and style of the fixture. There is no minimum required display space or standard style. The size of the posting area, however, should be sufficient to allow for single layout (versus overlap) of documents. The fixture may be ready-built or custom made. **Example 4-2-10** contains Project Site Bulletin Board Sample Layouts and Dimensions.

A clear, break-resistant protective cover should be placed over the documents to minimize fading, water damage, and vandalism. Document covers, which are easily removable, facilitate document changes and the replacement of damaged covers will be used.

#### **4.2.5 Content**

Posters are required by different authorities. A summary of the job site bulletin board is shown in **Table 4.2.5**. Contractors are encouraged to display where feasible the non-English versions of the posters.

**Table 4.2.5  
 Content of Job Site Bulletin Boards**

Authority	Required Poster
FHWA 1273	Notice of Federal-aid project (FHWA-1022)
FHWA 1273	Employee Rights under the <b>Davis-Bacon Act</b>
FHWA 1273	Wage Determination Appeal Process
FHWA 1273	EEO Policy & Officer
FHWA 1273	Wage Rate Decisions
FHWA 1273	Additional Wage Determinations
U.S. Equal Employment Opportunity Commission	EEO is The Law
Required by Executive Order 11246, as amended by Executive Order 13665 (April 8, 2014)	"EEO is the Law" Supplement Poster
Florida Commission on Human Relations	Florida Law Prohibits Discrimination
U.S. Department of Labor	Employee Rights & Responsibilities under Family & Medical Leave Act
U.S. Department of Labor	OSHA: Safe and Healthful Workplace Rights
U.S. Department of Labor	Employee Polygraph Protection
The American Recovery and Reinvestment Act of 2009	Whistleblower Know Your Rights (Required for ARRA projects only)

The completion and maintenance of data on project specific posters is the prime's responsibility. Lamination or plastic page protectors are recommended for each document.

There are three (3) nonstandard bulletin board documents that are customized to the project: (a) EEO Policy and Officer's name and contact information, (b) the prevailing wage table(s) for the project, and (c) additional wage decisions obtained for the project. Each of these documents may be more than one-page long.

**Refer to Section 1.4, "Directory of Compliance Related Websites"** for the FDOT Equal Opportunity Office website where the posters are available for downloading. Several of these posters are also available from other organizations in different sizes, formats and languages.

Contractors are advised that the USDOL and other federal, state, or local government agencies may require employers to post additional documents at their offices and/or work sites.

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The job site bulletin board may also be used to display other documents of general relevance to the project and its employees such as environmental permits, worker's compensation rights, safety, etc.

#### **4.2.6 Poster of EEO Policy and Officer**

A sample poster of the EEO Policy and Officers has been developed for the contractor's use (**Form 275-020-28**). It includes a brief statement of the EEO Policy adopted by the contractors, advises that the policy may be obtained by contacting the companies, and identifies to workers the EEO Officer for the prime and each subcontractor having a subcontract of \$10,000 or more. The EEO Officer information is to be kept up-to date during the term of the project.

#### **4.2.7 Wage Rate Decision Poster(s)**

General Wage Determinations (also known as "wage tables" and/or "wage rate decisions") are documents issued by the USDOL stating the minimum hourly rate (and fringe benefit rate if applicable) for individual job classifications for a specified type of work within specified county(ies) of the project.

The contract document section titled "**Wage Rates For Federal-Aid Projects**" cites the specific wage rate decision number(s) and states that the version of the wage rate decision in effect is the one whose "modification date" is ten or more days prior to the opening of bids (also known as the contract letting date). Some contracts may state more than one wage rate decision number; each wage rate decision is posted. Wage decisions should be posted exactly as downloaded.

Refer to **Manual Section 1.4 Directory of Compliance Related Websites** for the U.S. Department of Labor website where the wage rate decisions are available for downloading.

#### **4.2.8 Additional Federal Wage Decisions Poster**

**Additional Federal Wage Rate Decisions poster (Form 700-010-67)** records the minimum hourly rate (and fringe benefit rate if applicable) for each additional job classification requested on the project. It includes the decisions obtained by all contractors on the project and it is to be maintained during the term of the project. This poster eliminates the need to post individual U.S. Department of Labor wage rate decision letters.

The prime contractor is responsible for completing this form for the project and posting it on the jobsite bulletin board. **Refer to Section 1.4, "Directory of Compliance Related Websites"** for the Forms & Procedures link to access the form and its instructions.

#### **4.2.9 Wage Determination Appeals Poster**

Information on how to file an appeal to a wage decision is included at the end of each wage rate decision. This information has been recreated as a separate poster. When the

poster is displayed; the appeal information may be deleted from the individually posted wage rate decisions.

#### **4.2.10 Inspecting Bulletin Board Content and Condition**

Periodic inspections of the job site bulletin board are performed during the term of the project. Content and condition factors are reflected in the FDOT form titled ***“Inspection Report for Job Site Bulletin Board (Form 275-021-10).”***

**Example 4-2-10**  
**Job Site Bulletin Boards: Sample Layouts & Dimensions**

**Example1: Project with Multiple Wage Decisions**

The following layout requires a minimum display space 48” wide and 48” high. Documents are displayed in four rows with each of the five standard posters placed on the top row. One-half inch is allowed around each side of the document. This sample shows two wage decisions (Highway and Heavy) each with two pages. There is space for at least five optional documents. The wide bold lines denote the actual bulletin board posting space.

←BOARD WIDTH: 48”→						
↑ BOARD HEIGHT: 48 INCHES ↓	STANDARD POSTERS→	EEO IS THE LAW & SUPPLEMENT	FL LAW PROHIBITS DISCRIMINATION	NOTICE	EMPLOYEE RIGHTS UNDER DAVIS-BACON	WAGE DETERMINATION APPEALS
	PROJECT SPECIFIC→ POSTERS	POSTER OF EEO POLICY & OFFICERS PG 1	POSTER OF EEO POLICY & OFFICERS PG 2	HIGHWAY DECISION PG 1	HIGHWAY DECISION PG 2	ADDITIONAL DECISIONS (FDOT FORM) PG 1
	PROJECT SPECIFIC→ POSTERS	HEAVY DECISION PG 1	HEAVY DECISION PG 2	WATER SEWER DECISION PG 1	WATER SEWER DECISION PG 2	WHISTLE BLOWERS (ARRA PROJECTS ONLY)
	U.S.DOL POSTERS→	EMPLOYEE RIGHTS/RESP FAMILY & MEDICAL LEAVE	OSHA SAFE & HEALTHFUL WORKPLACE	EMPLOYEE POLYGRAPH PROTECTION		

**Example 2: Project with One Wage Decision**

The following layout requires a display space 48” wide and 36” high (or 48” on ARRA funded projects). Documents are displayed in three rows with each of the five standard posters placed on the top row. One-half inch is allowed around each side of the document. The sample shows one wage decision on two pages. There is space for at least five optional documents. The wide bold lines denote the actual bulletin board posting space.

←BOARD WIDTH: 48”→						
↑ BOARD HEIGHT: 36 INCHES ↓	STANDARD POSTERS→	EEO IS THE LAW & SUPPLEMENT	FL LAW PROHIBITS DISCRIMINATION	NOTICE	EMPLOYEE RIGHTS UNDER DAVIS-BACON	WAGE DETERMINATION APPEALS
	PROJECT SPECIFIC→ POSTERS	POSTER OF EEO POLICY & OFFICERS PG 1	POSTER OF EEO POLICY & OFFICERS PG 2	HIGHWAY DECISION PG 1	HIGHWAY DECISION PG 2	ADDITIONAL DECISIONS (FDOT FORM) PG 1
	U.S.DOL POSTERS→	EMPLOYEE RIGHTS/RESP FAMILY & MEDICAL LEAVE	OSHA SAFE & HEALTHFUL WORKPLACE	EMPLOYEE POLYGRAPH PROTECTION		WHISTLE BLOWERS (ARRA PROJECTS ONLY)

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## 4.3 EEO INFORMATION FOR PROJECT PERSONNEL

### 4.3.1 Purpose

Contractors will routinely inform their project employees of their EEO civil rights, contractor's policies, procedures, and various wage/payroll protections. This information is presented in meetings, and through other appropriate means such as employee handbooks, notices, and posters.

### 4.3.2 Means of Communication

Contractors may present information to project personnel regarding the EEO policy and procedures in one or more of a variety of means:

- Issuance of employee handbooks that include the EEO policy and procedure
- Placement of notices or posters describing the EEO policy and procedure
- Conducting meetings describing the EEO policy and procedures
- Other communication methods.

In selecting communication methods, contractors are encouraged to consider the rapidity with which their workforce turns over, the primary and secondary language of project personnel, average reading levels of personnel, and any need for addressing project specific information, such as wage rates and job site bulletin boards, etc.

### 4.3.3 Who is Included in Project Personnel

Project personnel include all of the contractors' full time and part time craft and laborer employees working on the project. Temporary workers and workers from a staffing firm who are working as craft or laborer employees for the contractor are considered project personnel and communications are to be extended to them.

Persons classified as journeymen/women, OJT trainees and apprentices and working foremen/women in any of the following job categories are included in the meeting:

equipment operators	mechanics	truck drivers
ironworkers	carpenters	cement masons
electricians	pipe fitters/plumbers	painters
semi-skilled laborers	unskilled laborers	

### 4.3.4 Project Personnel EEO Meetings

Informational meetings conducted at the project site have served as the traditional means of communicating EEO policy and procedure information to project personnel. The meeting leader will be the person who is knowledgeable in the topics to be addressed and who has attended their company's most recent Supervisory and Office Personnel EEO Meeting.

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The following major topics are addressed at a Project EEO Meeting:

- EEO Policy and Affirmative Action Plan
- Identification of EEO Officer
- Workforce Diversity and Recruitment
- Wages and Payrolls
- Location & Content of Bulletin Boards
- Interviews by State and Federal Representatives
- Training Opportunities
- Complaints
- Utilization of Disadvantaged Businesses

Meeting leaders are encouraged to develop an outline of subjects that will typically be covered in each of the topics; this can form the foundation for the contractor's development of full meeting scripts and fosters full coverage of each topic.

### **4.3.5 Recordkeeping**

Contractors are to maintain records evidencing compliance with EEO communication requirements for all employees. **Form 275-021-06, Record of Project EEO Meeting**, may be used to document project personnel communications by means of meetings or alternative record keeping methods for other types of communications may be developed. Records should document changes in the contractors' workforce.

**Refer to Section 1.4, "Directory of Compliance Related Websites"** for the Forms & Procedures link to access the form and its instructions.

## **4.4 ANNUAL JULY EEO REPORT**

### **4.4.1 Purpose**

Annually, the Federal Highway Administration (FHWA) submits a report on the status of the Equal Employment Opportunity program to the U.S. Senate. July is the reporting period due to generally good weather nationwide. FDOT creates one cumulative report from the individual contractor reports. This represents the total employment on all Federal-Aid highway projects in Florida as of July 31 and the report is therefore known as the **"July Report."**

### **4.4.2 Scope**

All FDOT construction projects active in July that receive Federal-Aid participation (FAP) are included in Florida's July Report. All construction contractors having a contract of \$10,000 or more and who were active one or more days between July 1 and July 31 prepare a report.



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### 4.4.3 Content

All full-time and part-time employees employed on the specific FAP project during the selected July pay period must be accounted for by sex and race for each of the fifteen job categories. Note that Officials (Managers), Supervisors, Foremen/women and Clerical who are assigned primarily to the project are included in this report.

Employment data is reported on the Contractor's Annual FHWA 1391 Report.

### 4.4.4 Pay Period Reported

Employment data is collected for a very specific time frame. The contractor's report is based on their final July pay period which is the last active pay week which falls fully within July. (The report is not based on the contractor's peak week of employment during the month of July.)

The pay period on which a contractor's report is based must fall fully in July; the pay period must have start and end dates between July 1 and July 31.

Selecting which pay period to base the report on depends on the contractor's activity during July.

<b>If the Contractor is</b>	<b>Base the July Report on</b>
Both active and inactive during July	The last pay period (*) that falls fully within July for which they were active on the project.
Active throughout July	The last pay period (*) that falls fully within July.
Inactive between July 1-31	No report is required.
*The pay period must have start and end dates between July 1 and July 31.	

### 4.4.5 Report Submission

On or before August 20, contractors submit the Contractor's Annual FHWA 1391 Report data by submitting a copy of the completed form to the Resident Compliance Specialist (RCS) of that project.

### 4.4.6 Florida's July Report Cycle

Contractor reports are compiled into project reports (including Local Agency project reports); project reports are compiled into District reports; District reports are compiled into the State report.

Timely submission of data on the proper form is essential to both meeting FHWA's deadline and FDOT statistical analysis to determine parity. **Table 4.4.6.1** summarizes Florida's July Report Cycle and report due dates. In the event a due date falls on a Saturday or Sunday, that report is due on the preceding Friday.

**Table 4.4.6.1: Florida’s July Report Cycle**

<u>Who is Reporting?</u>	<u>What is the FDOT form Number reported on?</u>	<u>Name of Form:</u>	<u>What data is reported?</u>	<u>What is the Due Date* (Or preceding Friday if date is a Saturday or Sunday?)</u>	<u>Who is the report sent to?</u>
Contractors (contract of \$10,000 or more)  (Includes contractors on Local Agency Projects)	N/A	FHWA 1391	Contractor’s workforce on a project per the last active week falling fully in July	Aug 20	Compliance Specialist
Resident and Local Agency Compliance Specialists	275-020-01 or FHWA 1391	“Federal-Aid Projects: Summary Employment Data for July” or FHWA 1391	Project total workforce (sum of all contractor reports for a project)	Sept. 1	District Contract Compliance Office
District Contract Compliance Office	N/A	Electronic submission of Federal-Aid FHWA 1392 Data	District Project Total Workforce one Report, Sum of LAP & regular work program	Sept. 8	State Contract Compliance Administrator, FDOT Equal Opportunity Office
FDOT Equal Opportunity Office	N/A	FHWA Form 1392, Federal-Aid Highway Construction, Summary of Employment Data thru FHWA Civil Rights Connect System	LAP & regular work program Statewide Total for of all Districts	Sept. 15	FL FHWA Civil Rights Specialist

**Refer to Section 1.4, “Directory of Compliance Related Websites”** for the Forms & Procedures link to access the form and its instructions.

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## **4.5 TRAINING ASSESSMENTS**

### **4.5.1 Purpose**

To assess the level of experience and comprehension of a Contractor's Compliance Staff with the requirements of FHWA 1273 for Federal-Aid contracts. The training assessment is to identify areas where the Compliance Staff or Contractor may need additional training and may be used as a factor in determining the schedule for official Contract Compliance Reviews as described in Section 4.6.

### **4.5.2 Training Assessment Meeting**

The RCS or District EEO Compliance personnel will meet with the designated compliance staff of the Prime Contractor on every federally funded contract at the preconstruction meeting or Contractor's location to conduct a training assessment. An assessment may be conducted via teleconference only in the event of out of state Compliance Staff or by written request to the Central Office EEO Compliance Administrator. In addition, a training assessment will be conducted for all new prime contractors and relevant compliance staff.

The DCCM can waive the assessment on the prime contractor if the Contractor has received a 90% rating on previous assessments or were found to be in substantial compliance, as determined by a DCCM, during a compliance review. The training assessments and compliance reviews used in this determination must have been conducted within the last three (3) years. The DCCM should consider when making the determination to waive an assessment, the contractor's staff from District to District to insure training in the requirements of FHWA-1273 is consistent throughout the contractor's workforce. This will insure training is provided where needed.

### **4.5.3 Federal-Aid EEO Checklist**

Part A of the Federal-aid EEO Checklist found in Chapter 4 of the CCM Reference Guide will be completed during the training assessment meeting. Part B is to be completed during an on-site review of the job site. During the on-site review, the bulletin board should be reviewed and five (5) employees should be interviewed if available. After all the questions have been marked, the RCS will add up the number of boxes marked yes and divide by the total number of questions. The resulting percentage will be entered at the bottom of the Checklist.

### **4.5.4 Training Schedule**

The DCCM can provide the additional training to the Contractor based on the assessment results. The training schedule will identify the areas that need training along with the time and place of the training being provided. The training can be provided individually or in a group setting.

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### **4.5.5 Follow up Assessment Meeting**

If necessary, the DCCM will conduct a follow up assessment meeting after the training has been provided and can revise/update the Federal-aid EEO Checklist.

### **4.5.6 Database for Checklist**

When the Federal-Aid EEO checklist has been completed, the DCCM will enter the results of the checklist (the rating percentage) in the Contract Compliance database along with other required information, such as the company being assessed, the date, person conducting the assessment, etc., within five (5) working days of completing the assessment.

## **4.6 PROJECT CONTRACT COMPLIANCE REVIEWS**

### **4.6.1 Purpose**

The Federal Highway Administration (FHWA) requires FDOT as a contracting agency to assure compliance of contractors with the requirements of Federal-Aid construction contracts including the EEO, DBE and OJT requirements.

The following procedural steps have been taken from **23 C.F.R. Part 230.409** and modified for this procedure. The definitions in **23 C.F.R. Part 230.407** are incorporated by reference.

### **4.6.2 Review Scheduling**

Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor's workforces:

1. Which hold the greatest potential for employment and promotion of minorities and females (particularly in higher skilled crafts or occupations);
2. Working in areas that have significant minority and female labor forces within a reasonable recruitment area;
3. Working on projects that include training special provisions;
4. Where the contractor's compliance with Equal Opportunity is questionable based on a review of employment data, previous compliance reviews, on-site visits, and certified payrolls;
5. Where there is evidence that the contractor may have engaged in, or tolerated alleged discriminatory practices.

In addition, the following considerations shall apply:

1. Reviews requested by FHWA shall receive priority scheduling;
2. Contractors with an overall training assessment rating below 80% shall receive priority scheduling;

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3. Where practicable, a review should be conducted prior to or during peak employment periods;
  4. Do not review a home office workforce of less than 15 employees unless requested and approved by FHWA headquarters Office of Civil Rights;
  5. Do not review a contractor that has completed or fulfilled his work on the project and has been paid in full for his participation except for the retainage allowed to be held by the prime.

For compliance reviews based on an area workforce, the DCCO shall define the applicable geographical area by considering the following:

1. Union geographical boundaries;
2. The geographical area from which the contractor recruits their employees, i.e., reasonable recruitment area;
3. SMSA or census tracts; and
4. The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

#### **4.6.3 Contractor Notification**

The DCCO should provide written notification to the contractor of the pending compliance review at least two (2) weeks prior to the scheduled on-site review. This notification shall include the purpose, scope, date, and time of the review. The notice should include the contractor's responsibility for providing pertinent documentation and information as requested, an outline of the mechanics and basis of the review, requisite interviews, and documents required.

The contractor shall be requested to supply to the DCCO prior to the onsite verification and interviews the following information:

1. Current EEO Report developed from the most recent payroll;
2. Copies of purchase orders and subcontracts containing the EEO clause;
3. Copies of all current bargaining agreements;
4. A list of recruitment sources available and utilized;
5. A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC), FCHR, any local agency, or internally regarding the contractor or from present or past employees;
6. A list of promotions made during the past six (6) months, to include race, national origin, sex of employee, previous job held, job promoted into, and corresponding wage rates;
7. A certified payroll to show job categories, race, sex and date of hire;
8. A list of minority-owned or female-owned companies contacted as possible subcontractors, vendors, material suppliers, etc.;
9. EEO Policy Statement and DBE Affirmative Action Plan; and

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10. Any other necessary documents or statements requested by the DCCO for review prior to the actual onsite visit.

For a project review, the DCCO shall hold the prime contractor responsible for ensuring that all active subcontractors are present at the on-site meeting and have supplied the required documentation.

#### **4.6.4 Preliminary Analysis and Initial Meeting**

Before the onsite verification and interviews, the DCCO shall 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 workforce;
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 based on U.S. Census data or U.S. Department of Labor Statistics;
5. Any pending EEOC, FCHR, Department of Justice cases or local cases which are relevant to the contractor; and
6. The related project (and/or contractor) file to obtain current information relating to the status of the contractor's project(s), value, scheduled duration, written corrective action plans, EEO Reports, training requirements, previous compliance reviews, certification of payment to subcontractors, information submitted in the Equal Opportunity Reporting System, and other pertinent correspondence and/or reports.

The review must include at least one (1) construction site visit. During this meeting with the contractor, the following topics shall be discussed during the visit:

1. The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and
2. Arrangements for the site tour and employee interviews. The initial meeting may be held at any appropriate location convenient to the review area and agreed upon by the contractor.

#### **4.6.5 Onsite Verification and Interviews**

After the initial meeting and preliminary analysis, the DCCO shall make a physical tour of the employment site(s) to determine that:

1. EEO posters are displayed in conspicuous places in a legible fashion;

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2. Supervisory and personnel office employees have been oriented to the contractor's EEO commitments;
  3. The employee referral source system is being implemented;
  4. Reported employment data is accurate;
  5. Meetings or other methods of communication have been used to disseminate the EEO policy particularly new employees; and
  6. Employees are aware of their right to file complaints of discrimination.

The DCCO shall:

1. Interview at least one (1) minority, one (1) non-minority, and one (1) female in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.
2. Determine the union membership status of union employees on the site (e.g. whether they have permits, membership cards, or books, and in what category they are classified [e.g., A, B, or C] based on a sampling of the organization's members.)
3. Determine the method utilized to place employee's OJT and whether equal opportunity requirements have been followed.
4. Verify that all DBE subcontractor payments entered into the Equal Opportunity Reporting System are accurate and up-to-date.
5. Assurance of Prompt Payment- The 30-day time period for payment is required at every tier (49 CFR 26.29 (a)). A contract provision must exist in every contract that requires contractors and subcontractors to pay for satisfactory performance of their contract (completion and acceptance) no later than 30 days from their receipt of payment. The RCS should obtain copies of the contractor's last two "Certification Disbursement of Previous Periodic Payment to Subcontractors" (Form 700-010-38). These forms can be pulled from the Electronic Document Management System (EDMS). Verify proof that payment was made to subcontractor within 30 days of receiving payment from FDOT. Proof can be in the form of canceled check or receipt of payment. This includes all subcontractor or material suppliers. Subcontractors should also pay lower tier subs within 30 days of receiving their payment from the prime and so forth. The previous two month's Certifications (Form 700-010-38), should be verified. (Make sure that at least one DBE and one non-DBE is a part of this Certification review, if applicable. Submit any and all deficiencies found in this section to FDOT's State Construction Compliance Manager for action.

6. Request any other documentation deemed necessary to ensure contractor compliance.

The DCCO shall make the following determinations in the review report:

1. Is there reasonable representation and utilization of minorities and females in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and females?
2. What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?
3. Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and females?
4. Is there impartiality in treatment of minorities and females?
5. Are affirmative action measures of an isolated nature or are they continuing?
6. Have the contractor's efforts produced results?
7. The DCCO should interview or survey subcontractors to determine compliance with prompt payment requirements.

The DCCO should determine if the contractor is complying with its DBE Affirmative Action Plan by the following:

1. What is the contractor's DBE utilization?
2. Does the contractor have bid files and efforts of documentation to solicit quotes from DBEs?
3. What are the duties of the DBE Officer?

#### **4.6.6 Exit Conference**

Before concluding the review process, the DCCO should schedule an exit conference with the contractor. The following topics shall be discussed: 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;

1. The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews);
2. Any other matters that could be resolved before concluding the onsite portion of the review.

Voluntary corrective action plans may be negotiated at the exit conference.

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



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corrective action plan should be accepted with the understanding that it only addresses those problems uncovered prior to the exit conference.

#### **4.6.7 Compliance Determinations**

Based on information obtained through the compliance review, the DCCO conducting the review shall determine the contractor's compliance or noncompliance with contractual provisions and include written documentation to support the review findings.

The compliance determination will include consideration of the contractor's efforts in the following areas:

1. The contractor's EEO policy;
2. Dissemination of the policy and education of supervisory and personnel office employees concerning their responsibilities in implementing the EEO policy;
3. The authority and responsibilities of the EEO officer;
4. The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;
5. The extent of utilizing minorities and females in training programs;
6. The contractor's review of personnel actions to ensure equal employment opportunities;
7. The contractor's participation in training;
8. The contractor's relationship (if any) with unions and minority and female union membership;
9. The contractor's procedures for monitoring subcontractors' utilization of minorities and females in the subcontractors' workforces;
10. The adequacy of the contractor's records and reports.

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.

A contractor shall be considered not to be in compliance when:

1. The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment; or
2. The contractor fails to provide evidence of every good faith effort to provide equal opportunity.

#### **4.6.8 Show Cause Procedures**

Once the onsite verification and exit conference have been completed and a compliance determination has been made, the contractor shall be notified in writing of

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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 to be in noncompliance, 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 thirty (30) days why sanctions should not be imposed. The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause process.

A show cause notice must be issued when a determination of noncompliance is made based upon:

1. The findings of a compliance review; or
2. The results of an investigation that verifies the existence of discrimination.

Show cause notices will normally be issued to federally assisted contractors when a Department has made a determination of noncompliance, or when FHWA has made such a determination and has requested the State to issue the notice when circumstances warrant. FHWA may exercise primary compliance responsibility by issuing the notice directly to the contractor.

The show cause notice must:

1. Notify the contractor of the determination of noncompliance and provide the basis for the determination of noncompliance;
2. Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;
3. Schedule (date, time, and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;
4. 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;
5. Advise the contractor of the availability and willingness of the DCCO to conciliate within the time limits of the show cause notice.

In preparing and processing the show cause notice, the DCCO shall:

1. Develop complete background data for the issuance of the show cause notice.
2. Forward the background data and the final draft notice for review by the General Counsel's Office and provide the EOO with a copy of the correspondence.

3. Deliver the notice to the contractor by personal service, certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.
4. Issue the 30-day show cause notice directly to the noncompliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.
5. Ensure the show cause is issued by the DCCM.

Conciliation efforts during show cause period:

1. The DCCM is 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 that will maintain and ensure equal opportunity. Records shall be maintained in case files indicating actions and reactions of the contractor, a brief synopsis of any meetings with the contractor, notes on oral communication and written correspondence, requests for assistance or interpretations, and other relevant matters.
2. 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 of compliance.

#### **4.6.9 Corrective Action Plans**

The following procedural steps have been taken from **23 C.F.R. Part 230.409** and modified for this procedure. The definitions in **23 C.F.R. Part 230.407** are incorporated by reference.

1. 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.
2. 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.
3. When an acceptable corrective action plan is not agreed upon and the contractor does not otherwise show cause as required, a recommendation to withhold funds should be made to the DCE.
4. 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, a recommendation to withhold funds should be made to the DCE. There are no provisions for reinstating a show cause notice.

5. When 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, the contractor refuses to amend the corrective action plan appropriately, a recommendation to withhold the monthly estimate for the project should be made to the DCE.
6. A contractor operating under an approved voluntary corrective action plan entered into prior to the issuance of a show cause must be issued a 30-day show cause notice when it fails to implement an approved corrective action plan or the agreed upon corrective actions fail to result in necessary changes.

#### **4.6.10 Follow-up Reviews**

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

Follow-up reviews shall be reported as a narrative summary referencing the initial review report. The report will assess the adequacy of the contractor's corrective actions in addressing any deficiency.

#### **4.6.11 Review Reports**

The DCCO shall maintain detailed notes from the beginning of the review on which a comprehensive compliance review report can be developed.

The completed compliance review report shall contain documentary evidence to support the determination of a contractor or subcontractor's compliance status. The report must be submitted within 15 days of completion of the review to the EOO.

Findings, conclusions, and recommendations shall be explicitly stated and supported by documentary evidence.

The compliance review report must be completed on **Form 275-021-09, Compliance Data Report**, and contain the following information:

1. Complete name and address of contractor.
2. Project(s) identification.
3. Basis for the review, i.e. area workforce or project workforce.
4. Identification of federal or federal-aid contract(s).
5. Date of review.
6. Employment data by job craft, classification, or occupation by race and gender. This data must be verified during the onsite.

7. Identification of local unions involved with contractor, when applicable.
8. Determination of compliance status: compliance or noncompliance. The determination of compliance should include documentation to support the findings for each standard on the **Compliance Data Report**.
9. Copy of show cause notice or compliance notification sent to contractor.
10. Name and title of the staff who conducted the review.

Each contractor (a joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor. Each review level is responsible for ensuring that required information is contained in the report.

When a project review is conducted, the project workforce must be reported. During an area wide review (all federal-aid or federal projects in an area), area wide workforce must be reported.

#### **4.6.12 Reported Workforce**

Data is recorded in the format shown on the **Project EEO Report (Form 275-010-12)**.

All full-time and part-time construction craft and laborer employees working on the project during the specified payroll period must be accounted for by sex and race for each of the fifteen (15) job categories. Classifications are recorded in the same EEO categories as those used for the **Company EEO Report (Form 275-021-07)**.

Refer to **Section 3.4** and **Example 3.4.5** for the **EEO Job Category of Classifications**.

Employees working in more than one job classification during the pay period are to be included in the one EEO category associated with the majority of their project work hours.

If the contractor has employed an agency for supplying job site workers, the agency's workers are included in that contractor's Project EEO Report if they are OJT the week reported.

#### **4.6.13 Pay Period Reported**

The Project EEO Report is based on a single weekly pay period and that period is specified by FDOT or FHWA at the time of request.

Directions for completing the **Project EEO Report Form 275-010-12** can be found in **Section 1.4 Directory of Compliance Websites & Addresses, Forms and Procedures**.

### **4.7 PROJECT EEO FORMS & DOCUMENTS**

This is a list of forms and documents referenced in this chapter that are listed in numerical sequence and alphabetical order.

Refer to **Section 1.4 Directory of Compliance Websites & Addresses.**

<b>NUMERICAL SEQUENCE</b>		
<b>FDOT Form No.</b>	<b>Document Title</b>	<b>Manual Section</b>
275-010-12	Contractor's Project EEO Report	4.5
275-020-01	Federal-Aid Projects: Summary Employment Data for July	n-a
275-020-28	Poster of EEO Policy and Officers	4.2
275-021-06	Project Personnel EEO Meeting Record	4.3
275-021-10	Inspection Report for Job Site Bulletin Board	4.2
700-010-67	Additional Federal Wage Rate Decisions	4.2
FDOT Equal Opportunity Office Website	EEO Is the Law (Poster)	4.2
FDOT Equal Opportunity Office Website	Employee Rights & Responsibilities Under the Family & Medical Leave Act (Poster)	4.2
FDOT Equal Opportunity Office Website	E-Verify	4.2
FDOT Equal Opportunity Office Website	Florida Law Prohibits Discrimination (Poster)	4.2
FDOT Equal Opportunity Office Website	Important (Poster)	4.2
FDOT Equal Opportunity Office Website	Job Safety & Health It's the Law (OSHA) (Poster)	4.2
FDOT Equal Opportunity Office Website	Notice Employee Polygraph Protection (Poster)	4.2
FDOT Equal Opportunity Office Website	Notice –FHWA Highway Construction (Poster)	4.2
FDOT Equal Opportunity Office Website	Wage Determination Appeal Process (Poster)	4.2
FDOT Equal Opportunity Office Website	Whistleblowers Know Your Rights (Poster-ARRA projects only)	4.2

<b>ALPHABETICAL SEQUENCE</b>		
<b>Document Title</b>	<b>FDOT Form No.</b>	<b>Manual Section</b>
Additional Federal Wage Rate Decisions	700-010-67	4.2
Contractor's Project EEO Report	275-010-12	4.5
EEO Is the Law (Poster)	FDOT Equal Opportunity Office Website	4.2
Employee Rights & Responsibilities Under the Family & Medical Leave Act (Poster)	FDOT Equal Opportunity Office Website	4.2
Federal-Aid Projects: Summary Employment Data for July	275-020-01	4.4
Florida Law Prohibits Discrimination (Poster)	FDOT Equal Opportunity Office Website	4.2
Important (Poster)	FDOT Equal Opportunity Office Website	4.2
Inspection Report for Job Site Bulletin Board	275-021-10	4.2
Job Safety & Health It's the Law (OSHA) (Poster)	FDOT Equal Opportunity Office Website	4.2
Notice Employee Polygraph Protection (Poster)	FDOT Equal Opportunity Office Website	4.2
Notice –FHWA Highway Construction(Poster)	FDOT Equal Opportunity Office Website	4.2
Poster of EEO Policy and Officers	275-020-28	4.2
Project Personnel EEO Meeting Record	275-021-06	4.3
Wage Determination Appeal Process (Poster)	FDOT Equal Opportunity Office Website	4.2
Whistleblowers Know Your Rights (Poster-ARRA projects only)	FDOT Equal Opportunity Office Website	4.2