

Equal Employment Opportunity (EEO) Contractor Compliance Program Plan

2022



Table of Contents

Section 1:	Overview of Public and Agency Involvement.....	1
1.1	Purpose	1
1.2	Organization and Structure.....	1
Section 2:	Compliance Procedures	3
2.1	Applicable Directives	3
2.2	FHWA Form PR-1391 and PR-1392 Reports.....	3
2.3	Contractor EEO Compliance Review Process	3
2.4	General Administrative Requirements	11
2.5	Compliance Training and Technical Assistance.....	11
Section 3:	Accomplishments.....	12
3.1	Compliance Reviews Conducted in FY21	12
3.2	Major Problems Encountered.....	12
3.3	Major Breakthroughs	12
Section 4:	Complaint Procedures	12
4.1	Complaints in Federal Fiscal Year 2020.....	13
4.2	Complaints in Federal Fiscal Year 2021	13
4.3	Contact Information.....	13
Section 5:	External On-the-Job Training Program	13
Section 6:	On-the-Job Training Supportive Services	14
Section 7:	Minority Business Enterprise Program	14
Section 8:	Liaison	14
Section 9:	Innovative Programs	14

Appendices

Appendix A:	NDOT Civil Rights Office Organizational Chart.....	15
Appendix B:	EEO Contractor Compliance Documentation Checklist.....	16

Section 1: Overview of Public and Agency Involvement

1.1 Purpose

The information provided in this document is intended to describe the Nebraska Department of Transportation's efforts to ensure that its contractors are providing equal opportunity to their employees without regard to an employee's race, religion, sex, color, national origin, age, or disability. The information in this program plan can be used as a guide toward implementing the contractors' EEO and affirmative action plans. However, contractors should consult the [Required Contract Provisions for Federal-Aid Construction Contracts](#) (FHWA-1273) for specific EEO and affirmative action obligations required to comply with Executive Order 11246 and related statutes and regulations.

This program manual will be updated annually in accordance with 23 CFR 230.313.

1.2 Organization and Structure

The Nebraska Department of Transportation (NDOT) has sixteen Divisions located at the agency headquarters, eight field Districts, and the Office of Legal Counsel (Attorney General). While the overall responsibility for the NDOT Contractor EEO Compliance program lies with the Director of the agency, daily operations are coordinated through the Civil Rights Engineer, who reports programmatically to the Director and administratively to the Program Management Division Administrator. The daily responsibilities of the Contractor EEO Compliance Program are assigned to the Civil Rights Highway Programs Administrator who supervises the Highway Civil Rights Specialist for EEO. All Civil Rights staff have attended multiple Civil Rights related webinar events and trainings hosted by the FHWA, the US DOT, NHI, and other agencies/organizations.

The NDOT Contractor EEO Compliance Program is centralized, with duties assigned to staff of the NDOT Civil Rights Office. The Civil Rights Office organizational chart can be found in **Appendix A**. The following positions are responsible for delivering the NDOT Contractor EEO Compliance Program:

Civil Rights Engineer

The Civil Rights Engineer is a full-time position. Responsibilities include oversight and implementation of the following internal and external areas of civil rights compliance:

- Disadvantaged Business Enterprise Program
- Americans with Disabilities Act (ADA)
- Equal Employment Opportunity (EEO) Contractor Compliance
- Internal EEO Compliance
- Title VI Compliance
- Environmental Justice
- Limited English Proficiency

Civil Rights Highway Programs Administrator (EEO Coordinator)

The Civil Rights Highway Programs Administrator (CRHPA) is a full-time position that reports to the Civil Rights Engineer, serves as the NDOT EEO Coordinator and is 40% allocated toward fulfilling all aspects of the day-to-day administration of the NDOT Contractor EEO Compliance Program. The CRHPA supervises the Civil Rights Specialist for EEO.

Their duties include but are not limited to:

- Plan, organize, and perform technical, administrative, liaison, and oversight activities attendant to federally-mandated EEO compliance.
- Develop and maintain agency EEO Plan; Publicize Plan both internally and externally.
- Oversight of EEO Contractor Compliance Reviews
- Review and final approval of EEO Contractor Compliance Review Reports
- Submittal of Federal-aid Highway Construction Summary of Employment Data (Form PR-1392) to FHWA
- Investigate or oversee the investigation of EEO complaints filed with NDOT against contractors working on federal aid highway projects.
- Prepare and administer training related to the NDOT EEO Contractor Compliance Program

The current EEO Coordinator has occupied the CRHPA position since April 2022. They have 14 years of experience at NDOT in several Divisions including Construction, Project Development, and Traffic Engineering. They have received civil rights training in the areas of Title VI, EEO, Environmental Justice, and ADA.

Civil Rights Specialist for EEO

The Highway Civil Rights Specialist – EEO is a full-time position that reports to and works in coordination with the Civil Rights Highway Programs Administrator. Their duties include:

- Conduct EEO inspections of highway construction projects and/or contractors' home offices.
- Review and analyze data and interview personnel to determine if contractors are in compliance with the EEO/EO contract requirements including recruiting, hiring, training, and promoting women and minorities, and subcontracting with women and minority owned firms.
- Document findings of contractor inspections and interviews, organize documents obtained during the inspections as exhibits and prepare written EEO Contractor Compliance Review Reports.
- Intake of Federal-aid Highway Construction Summary of Employment Data (Form PR-1391) from contractors and preparation of Federal-aid Highway Construction Summary of Employment Data (Form PR-1392).
- Prepare and administer training related to the NDOT EEO Contractor Compliance Program

Disadvantaged Business Enterprise Liaison Officer

The Disadvantaged Business Enterprise Liaison Officer (DBELO) is a full-time position that reports to the Civil Rights Engineer and is responsible for developing, implementing, and monitoring the agency's Disadvantaged Business Enterprise (DBE) Program to ensure compliance with 49 CFR 26. The DBELO is also responsible for implementing the OJT Program according to the NDOT Training Special Provisions. The DBELO reports to the Civil Rights Engineer and supervises the Civil Rights Specialist for DBE and OJT.

Civil Rights Specialist for DBE and OJT

The Civil Rights Specialist for DBE and OJT is a full-time position that reports to the Disadvantaged Business Enterprise Liaison Officer. Their duties include:

- Intake OJT Trainee Enrollment Requests and Monthly Reports. Determine if individuals are eligible to participate.
- Monitor OJT Program to ensure contractors are meeting their OJT obligations.
- Prepare annual FHWA OJT Update and Accomplishments Report.
- Intake of Federal-aid Highway Construction Summary of Employment Data (Form PR-1391) from contractors.

Section 2: Compliance Procedures

2.1 Applicable Directives

The NDOT administers a centralized Contractor Compliance Program to meet FHWA regulations under 23 CFR 230. The specific Required Contract Provisions (FHWA-1273) are applicable to all contractors and subcontractors who hold Federal or Federal-aid contracts of \$10,000 or more.

2.2 FHWA Form PR-1391 and PR-1392 Reports

23 CFR 230.121 (a) (1) requires that all prime contractors and subcontractors complete and submit FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, for all work performed on Federal-aid projects during a designated portion of the month of July. This report provides the employment workforce data on these contracts and includes the number of minorities, women, and non-minorities in specific highway construction job categories. The employment data entered must reflect the workforce on Federal-aid projects during all or any part of the payroll period preceding the end of July. The PR-1391 forms are to be completed and submitted to the NDOT Civil Rights Office no later than August 15th.

The NDOT Civil Rights Office will compile all PR-1391 data into the PR-1392 Form and submit to FHWA by September 25th of each year.

2.3 Contractor EEO Compliance Review Process

2.3.1 Introduction and Authority

As stated in 23 CFR 230.405, the State (NDOT) as the contracting agency, “has a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.” The NDOT Contractor Compliance Review process is the means for determining whether contractors, subcontractors, suppliers, and consultants performing on Federal-aid highway projects are in compliance with the EEO program requirements.

The NDOT Civil Rights Office has the responsibility for setting policy, issuing guidance, providing training, technical assistance, and monitoring the contractor’s EEO compliance through on-site visits. In addition, the NDOT Civil Rights Office provides compliance reporting to FHWA.

The Contractor EEO Compliance Review process is comprised of the following steps:

1. Selection and Planning
2. Preliminary Analysis and Desk Audit
3. Project-site Inspection and Interviews
4. Compliance Status Reporting and Corrective Action

2.3.2 Selection and Planning

Because construction work forces are not constant, particular attention must be paid to the proper scheduling of equal opportunity compliance reviews. Reviews will be conducted prior to or during peak employment periods. No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by FHWA Washington Headquarters.

Priority in scheduling equal opportunity compliance reviews will be given to reviewing those contractor's work forces:

- Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations);
- Working in areas which have significant minority and female labor forces within a reasonable recruitment area;
- Working on projects that include special training provisions;
- Where compliance with equal opportunity requirements is questionable (based on complaints received or previous 1391 form data);
- Reviews specifically requested by the FHWA Washington Headquarters shall receive priority scheduling;
- If the firm was found to be in non-compliance the previous year;
- There is reason to believe the firm is currently or has been involved in questionable actions involving DBE's and/or the DBE Program.
- Size of the project: How many subcontractors or suppliers are there on the project that can also be reviewed? Projects will generally be over \$1 million. If any of the subcontractors on a selected project have been reviewed in the past 3 – 4 years, it may not be necessary to review them on the selected project.
- If the contractor is a new firm or has never had a contractor compliance review.

2.3.3 Contractor Notification of Review

Once a firm has been selected for a compliance review, the NDOT Civil Rights Office will provide written notification to the contractor of the pending compliance review at least 2 weeks prior to the onsite verification and interviews. This notification will include the scheduled date(s), an outline of the mechanics and basis of the review, requisite interviews, and documents required. The contractor will be requested to provide a meeting place for the on-site visit either at the local office of the contractor or at the jobsite.

The contractor will be requested to supply all the following information to the NDOT Civil Rights Office prior to the on-site verification and interviews:

- Current Form PR-1391 developed from the most recent payroll;
- Copies of all current bargaining agreements;
- Copies of purchase orders and subcontracts;
- A list of recruitment sources available and utilized;
- A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC) or other Federal, State, or local agency regarding the contractor or any source of employees;

- A list of promotions made during the past 6 months, to include race, national origin, and sex of employee, previous position(s) held, position promoted into, and corresponding wage rates;
- An annotated payroll to show job classification, race, national origin and sex;
- A list of minority or female-owned companies contacted as possible subcontractors, vendors, material suppliers, etc.; AND
- Any other necessary documents or statements requested by the NDOT Civil Rights Office for review prior to the actual on-site visit.

For a project review, the prime contractor shall be held responsible for ensuring that all active subcontractors are present at the meeting and supplied the documentation listed above. A current checklist of the documentation requested by NDOT is included in this document as **Appendix B**.

All documents requested from the contractor are to be received 7 days prior to the date of the on-site visit to allow sufficient time for the NDOT Civil Rights Office to review the documents before interviewing the contractor's EEO Officer and workforce.

2.3.4 Preliminary Analysis / Desk Audit

Before the on-site verification and interviews, the NDOT Civil Rights Office will analyze the employment data, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to:

- The contractor's current workforce;
- The contractor's relationship with referral sources, e.g., unions, employment agencies, community action agencies, minority and female organizations, etc.;
- The minority and female representation of sources;
- The availability of minorities and females with requisite skills in a reasonable recruitment area;
- Any pending EEOC or Department of Justice cases or local or State Fair Employment Agency cases which are relevant to the contractor and/or referral sources;
- The related project (and/or contractor) files of NDOT's and FHWA's offices to obtain current information relating to the status of the contractor's project(s), value, scheduled duration, written corrective action plans, PR-1391 or Manpower Utilization reports, training requirements, previous compliance reviews, and other pertinent correspondence and/or reports.

After reviewing the documentation, the NDOT Civil Rights Office will prepare a written report identifying all preliminary findings to be discussed with the contractor's EEO Officer during their interview.

2.3.5 Project-site Inspection and Interviews

The second phase of a Contractor EEO Compliance Review consists of the construction or home office site visit(s). During the initial meeting with the contractor, the following topics will be discussed:

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

EEO staff from the NDOT Civil Rights Office will make a physical tour of the employment site(s) to determine that:

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

NDOT EEO staff will interview at least one minority, one non-minority, and one woman in each trade, classification, or occupation, subject to the availability of these demographics in each classification and/or on the project site. The contractor's superintendent or home office manager and the contractor's EEO Officer will also be interviewed.

NDOT EEO staff will, on a sample basis, 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).

NDOT EEO staff will determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

NDOT EEO staff will determine, and the final report will indicate, the following:

- 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 to provide equal employment opportunity?
- What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?
- Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?
- Is there impartiality in treatment of minorities and women?
- Are affirmative action measures of an isolated nature or are they continuing?
- Have the contractor's efforts produced results?

2.3.6 Exit Conference

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

- Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan (VCAP), would necessitate a determination of non-compliance;
- The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews);
- Any other matters that would best be resolved before concluding the onsite portion of the review.

VCAPs may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the NDOT Civil Rights Office will prepare the review report and make a determination of either:

- Compliance, and so notify the contractor; or
- Noncompliance, and issue a 30 day show cause notice.

The acceptance of a VCAP 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 VCAP should be accepted with the understanding that it only addresses those problems uncovered prior to the exit conference.

2.3.7 Compliance Determination

The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the NDOT EEO staff 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.

Compliance determinations on contractors working in a Hometown Planning Area shall reflect the status of those crafts covered by part II of the plan bid conditions. Findings regarding part I crafts shall be transmitted through channels to the FHWA Washington Headquarters, Office of Civil Rights.

The compliance status of the contractor will be reflected by good faith efforts in the following areas:

- The contractor's equal employment opportunity (EEO) policy;
- Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;
- The authority and responsibilities of the EEO Officer;
- The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;
- The extent of participation and minority and female utilization in FHWA training programs;
- The contractor's review of personnel actions to ensure equal opportunities;
- The contractor's participation in apprenticeship or other training;
- The contractor's relationship (if any) with unions and minority and female union membership;
- Effective measures to assure non-segregated facilities, as required by contract provisions;
- The contractor's procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and/or
- The adequacy of the contractor's records and reports. (As required in 23 CFR Appendix A, Subpart A (10)(b) – All such records must be retained for a period of three years following completion of contract work and shall be available at reasonable times and places for inspection by authorized representatives of the NDOT and the Federal Highway Administration.)

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 to be in noncompliance when:

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

2.3.8 Show Cause Procedures

Once the on-site verification and exit conference have been completed and a compliance determination made, the contractor will be notified in writing of the compliance determination. This written notification will 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 will advise the contractor to show cause within 30 days why sanctions should not be imposed.

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

- The findings of a compliance review;
- The results of an investigation which verifies the existence of discrimination; and/or
- Areawide plan reports that show an underutilization of minorities (based on criteria of D.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).

Show cause notices will normally be issued by the NDOT to contractors on federal-aid projects when the NDOT 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, the Federal Highway Division Administrator or a designee may exercise primary compliance responsibility by issuing the notice directly to the contractor.

A show cause notice must:

- Notify the contractor of the determination of noncompliance;
- Provide the basis for the determination of noncompliance;
- Notify the contractor of the obligation to show cause within 30 days why contract sanctions or referral to the Department of Labor should not be instituted;
- Schedule (date, time and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;
- 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;
- Advise the contractor of the availability and willingness of the NDOT to conciliate within the time limits of the show cause notice.

Show cause notices issued by the NDOT will 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. The date of the contractor's receipt of the show cause notice shall begin the 30 day show cause period. The 30 day show cause notice will be issued directly to the noncompliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.

The NDOT Civil Rights Office will attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts will be directed toward correcting contractor program deficiencies and initiating corrective action which will maintain and assure equal opportunity. Records shall be maintained in the State or FHWA division office's case files, as appropriate, including actions and reactions of the contractor, a brief synopsis of any meetings with the contractor, notes on verbal communication and written correspondence, requests for assistance or interpretation, and other relevant matters.

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.

2.3.9 Corrective Action Plans

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.

When a contractor submits an acceptable written corrective action plan, the contractor will be considered in compliance during the plan's effective implementation and submission of required progress reports. 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 by the NDOT Civil Rights Office immediately upon expiration of the 30 day show cause period.

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. 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 will be recommended immediately. A contractor operating under an approved voluntary corrective action plan must be issued a 30 day show cause notice in the situations referred to in this paragraph; namely, if there is failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

2.3.10 Follow-Up Procedures

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 will only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

Follow-up reviews will be reported as a narrative summary referencing the initial review report.

2.3.11 Hearing Process

When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing contractors into compliance within the prescribed 30 days, the reviewer or other appropriate person will immediately recommend, through channels, that the Nebraska Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs (OFCCP) for a formal hearing. The NDOT will issue a notice of this action to the contractor.

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:

- Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;
- Copies of any contractor or subcontractor certifications;
- Copy of show cause notice;
- Copies of any corrective action plans; and
- Copies of all pertinent Manpower Utilization Reports, if applicable.

NDOT, through FHWA Division Office, will be advised of decisions and directions affecting contractors by the FHWA Washington Headquarters, Office of Civil Rights, for USDOT.

2.3.12 Responsibility Determinations

In instances where requests for formal hearings are pending OFCCP approval, the contractor may be declared a non-responsible contractor for inability to comply with the equal opportunity requirements.

NDOT will refrain from entering into any contract or contract modification subject to EO 11246, as amended, with a contractor who has not demonstrated eligibility for government contracts and federally assisted construction contracts pursuant to EO 11246, as amended.

2.3.13 Compliance Review Report

The NDOT Civil Rights Office will maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed. The completed compliance review report will contain documentary evidence to support the determination of a contractor's or subcontractor's compliance status. Findings, conclusions, and recommendations will be explicitly stated and, when necessary, supported by documentary evidence.

The compliance review report will contain at least the following information:

- Name and address of contractor reviewed. Indicate whether the contractor is a prime or subcontractor, vendor, material supplier, or consultant.
- Project. Identify the contract number, location, and dollar amount of the contract for the project on which the contractor being reviewed is working. Note whether or not the project is a federal-aid project.
- Basis for the review, i.e. area work force, project work force, home office work force, and target area work force.
- Dates of the review.
- Employment data by job craft, classification, or occupation by race and sex. This will be the data verified during the on-site;
- Identification of local unions involved with contractor, when applicable;
- Determination of compliance status: compliance or noncompliance;
- Copy of show cause notice or compliance notification sent to contractor;
- Name of the NDOT EEO staff member who conducted the review; and

- Concurrences at appropriate levels. The NDOT EEO reviewer will sign the Report when completed and forward the Report to the Civil Rights Highway Programs Administrator for final review. After the Civil Rights Coordinator approves the Report, the Report and all supporting documentation will be forwarded to the FHWA.

Each contractor will be reported separately. When a project review is conducted, the reports will be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor.

When a project review is conducted, the project work force shall be reported. When an areawide review is conducted (all Federal-aid, Federal, and non-Federal projects in an area) then areawide work force shall be reported. When a home office review is conducted, only home office work force shall be reported.

2.3.14 Contract Sanctions

In the State of Nebraska, a combination of common law and the provision of the Nebraska State Constitution concerning penalties (Article VII, Section 5) underlie a rule against providing for penalties in a contract. Therefore, it is the policy of NDOT to use the term “remedies” in place of “sanctions” when referring to consequences of a material breach of contract.

Failure by the contractor to carry out the EEO and affirmative action requirements is a material breach of the contract, and may result in the termination of the contract or such other remedy as the NDOT deems appropriate, which may include, but is not limited to:

- Withholding of progress payments;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.

Non-compliant contractors may also be referred to the Department of Justice or the Department of Labor for legal proceedings.

In FY20 and FY21, no contractors were subject to these actions as a result of failure to carry out the EEO and affirmative action requirements.

2.4 General Administrative Requirements

For NDOT-conducted reviews, within 15 days from the completion of the on-site verification and exit conference, the NDOT Civil Rights Office will:

- Prepare the compliance review report, based on information obtained;
- Determine the contractor’s compliance status;
- Notify the contractor of the compliance determination, i.e. send the contractor either notification of compliance or show cause notice; and
- Forward the compliance review report, including the compliance notification show cause notice, to the FHWA division office.

2.5 Compliance Training and Technical Assistance

The NDOT Civil Rights Office will provide training to contractor personnel as well as other NDOT compliance staff regarding the requirements of NDOT’s Contractor Compliance Manual. A minimum of one training workshop will be provided per federal fiscal year to contractors with current NDOT

contracts. The NDOT Civil Rights Office will provide technical assistance as needed regarding the requirements of NDOT's Contractor Compliance Manual.

The requirement to include FHWA 1273 in all contracts, subcontracts, and lower-tier subcontracts is posted on the [NDOT Subcontracts Information](#) webpage. Training sessions may be held for contractors bidding for future contracts as needed or at any preconstruction conference held in connection with a Federal-aid contract as needed.

Section 3: Accomplishments

3.1 Compliance Reviews Conducted in FY21

In FY21, the NDOT conducted six compliance reviews.

- Five contractors were found to be in compliance with the EEO contract requirements in the FHWA 1273 provisions.
- NDOT identified some deficiencies with one contractor and agreed to a Voluntary Corrective Action Plan (VCAP). The contractor implemented all of the corrective measures in the VCAP.

NDOT has provided all documentation from all contractor compliance reviews to FHWA.

The NDOT did not conduct any consolidated compliance reviews or home office reviews in FY21.

3.2 Major Problems Encountered

There were no major problems encountered in FY21. In general, most contractors could benefit from increased attention to data collection/analysis, and increased training for their EEO Officers. Contractors were advised of this during their compliance reviews and training courses were recommended.

3.3 Major Breakthroughs

There were no major breakthroughs in FY21. The NDOT successfully completed six contractor EEO compliance reviews. The reviews were largely ordinary, with few deficiencies encountered and no serious compliance or communication issues identified.

Section 4: Complaint Procedures

The Nebraska Department of Transportation is required, under Appendix A to Subpart C of 23 CFR 230, to develop procedures for prompt processing and disposition of discrimination complaints against contractors on NDOT projects. NDOT and its contractors shall not discriminate on the basis of race, color, religion, sex, nation origin, age or disability in the award and performance of federal aid contracts.

Complaints may be against NDOT itself, a contractor or their subcontractor on an NDOT project funded with Federal-aid highway funding. All complaints filed with NDOT are forwarded to FHWA. FHWA will then decide which agency will investigate the complaint.

Contractors are responsible for not only EEO compliance of their own company, but also the compliance of their subcontractors. Contractors must ensure that:

- A prompt internal investigation is conducted and documented.

- An attempt to resolve complaints and take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect a person other than the complainant, corrective action shall include such other persons.
- The matter has been resolved. If the complaint has not been resolved, the contractor will notify the NDOT Civil Rights Office and a decision will be made based on the information gathered during the follow-up inquiry. If unlawful discrimination has occurred, the CRO will be responsible for bringing the matter to the attention of the FHWA.
- The investigator issues one of two letters to the complainant: a closure letter or a letter of finding (LOF). A closure letter summarizes the allegations and states that there was not a Discrimination violation and that the case will be closed. An LOF summarizes the allegations and the interviews regarding the alleged incident, and explains whether any disciplinary action, additional training of the staff member or other action will occur.
- On active Federally-funded projects, a copy of either the closure letter or LOF must be submitted to NDOT Civil Rights Office within 72 hours of that decision. Letters may be submitted by hardcopy or email. When a contractor's employee files a complaint of discrimination or harassment to any NDOT personnel alleging discriminatory practices by the contractor on a Federally-funded project, the complaint should be referred to the contractor for investigation. If requested by the contractor, the Civil Rights Engineer or designee may assist the contractor with the processing of the complaint.

4.1 Complaints in Federal Fiscal Year 2020

The NDOT received no discrimination complaints against its contractors or subcontractors during FY20. No discrimination complaints against NDOT contractors were referred to outside agencies for processing.

4.2 Complaints in Federal Fiscal Year 2021

The NDOT received no discrimination complaints against its contractors or subcontractors during FY21. No discrimination complaints against NDOT contractors were referred to outside agencies for processing.

4.3 Contact Information

Complaint forms are available on the NDOT website or by contacting the NDOT Civil Rights Office. Complaints and substantiating information should be sent to:

Nebraska Department of Transportation
Civil Rights Engineer
1500 Highway 2
PO Box 94759
Lincoln, NE 68509-4759
402-479-4468
ndot.hcro-eeo@nebraska.gov

Section 5: External On-the-Job Training Program

The NDOT's On-the-Job Training Program is specified by the NDOT Training Special Provisions and seeks to address the under-representation of minority and female workers in the construction trades through the assignment of OJT training goals. The NDOT Training Special Provisions were developed to fulfill the Training Special Provisions requirements of federal-aid construction contracts under 23

CFR Part 230. The NDOT Training Special Provisions are available on the NDOT Civil Rights website. <https://dot.nebraska.gov/media/12808/ndor-ojt-training-special-provisions.pdf>

The NDOT maintains a database of approved OJT trainees and contractor specific OJT goal progress. The NDOT uses this database to monitor the reasonable distribution of work classifications among approved trainees and to identify the number of minorities and women who have successfully completed training programs. The NDOT submits annual reports to FHWA on OJT training goals, accomplishments, findings of contractor non-compliance, and the quantity and demographic distribution of approved trainees.

Section 6: On-the-Job Training Supportive Services

In FY 22, the NDOT deobligated all OJTSS funds.

The NDOT Construction Division ensures specific Required Contract Provisions (FHWA-1273) are included in all federal aid contracts.

Section 7: Minority Business Enterprise Program

The NDOT's comprehensive policies and procedures for administration of the Disadvantaged Business Enterprise (DBE) Program are found in the NDOT DBE Program Plan, located on the NDOT Civil Rights website. <https://dot.nebraska.gov/media/10735/ndot-dbe-program-plan.pdf>

The NDOT DBE Program is closely patterned after the requirements found at 49 CFR 26 and 49 CFR 23.

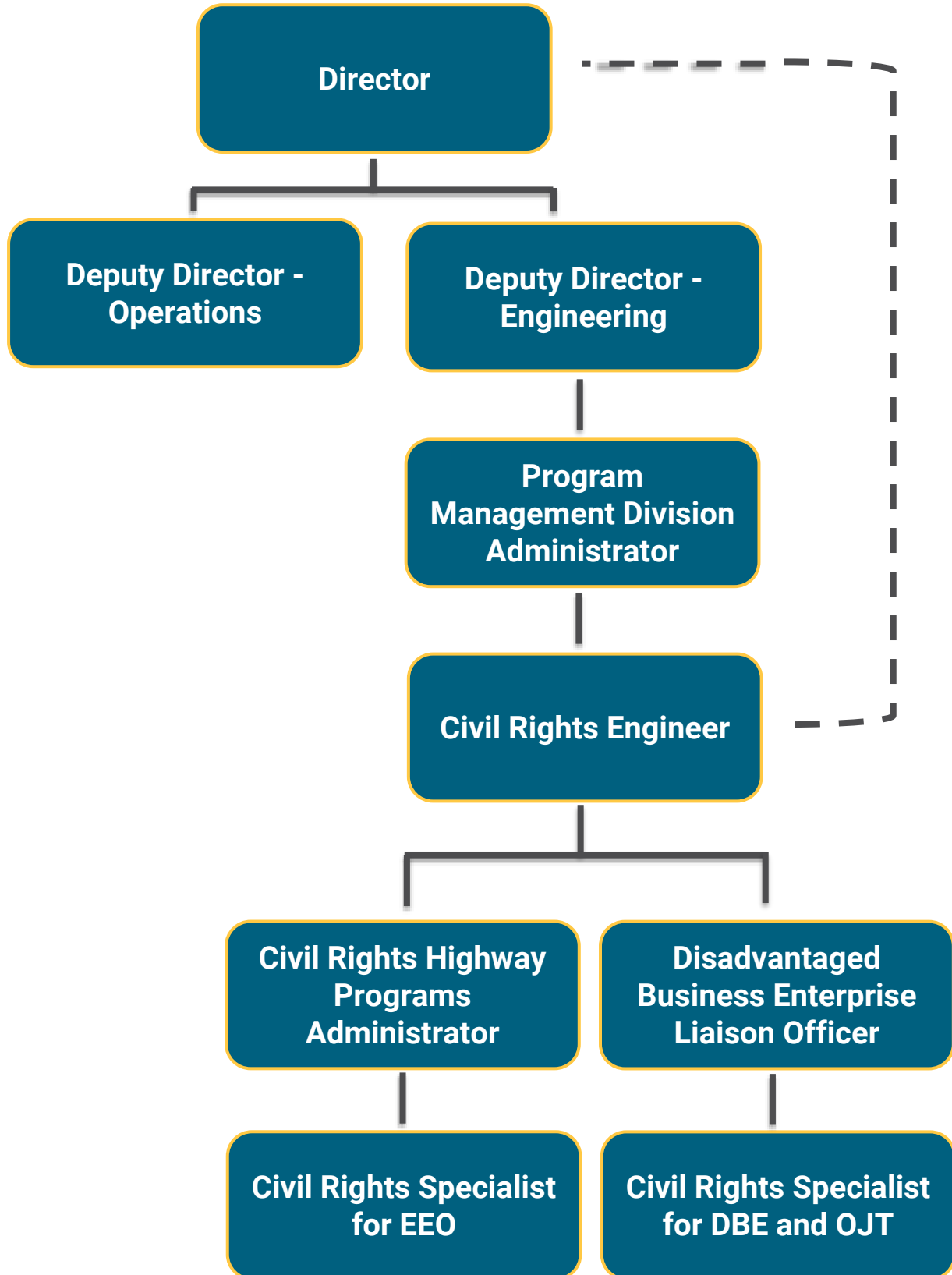
Section 8: Liaison

The NDOT Civil Rights Engineer serves as the primary liaison established by the State between public (State, county, and municipal) agencies and private organizations involved in EEO programs.

Section 9: Innovative Programs

The ongoing goal of NDOT's External EEO program is to ensure that its contractors are providing equal opportunity to their employees without regard to an employee's race, religion, sex, color, national origin, age, or disability. The NDOT Civil Rights Office is responsible for setting policy, issuing guidance, providing training and technical assistance, and monitoring contractors' EEO compliance through on-site visits. In addition, the NDOT Civil Rights Office provides compliance reporting to FHWA.

Appendix A. Location of Civil Rights Unit Within NDOT



Appendix B. Contractor EEO Documentation Checklist

NDOT Contractor EEO Compliance Documentation Checklist

All information requested is company-wide unless specified for the project site.

All information is for the one-year period prior to the review unless otherwise stated.

1. Name, title, telephone, and e-mail of all personnel representing your firm at the compliance review.
2. Copy of the firm's Equal Employment Opportunity Statement and EEO Policy.
3. Documentation of meetings with all employees when EEO, nondiscrimination, Workplace Harassment, and training or promotional opportunities were discussed, including copies of sign-in sheets.
4. List of all current full time employees including home office staff, annotated by date of hire, name, sex, race/color, national origin, job classification, rate(s) of pay, and fringe benefits for each.
5. List of all promotions including home office, annotated by name, sex, race/color, national origin, the previous and current job classifications/craft, and the previous/current and current rates of pay for each.
6. List of all employees, including home office, terminated and/or laid off, annotated by name, sex, race/color, national origin, job classification/craft, and reason(s) for termination/layoff.
7. List all employee referral sources the firm has contacted to secure minority and/or female employees, and provide copies of documents, including copies of advertisements for employees.
8. Provide blank copies of the firm's application form(s) for employment, and related documents.
9. Provide the name, sex, race/color, and national origin of all applicants, and whether hired/not hired.
10. Current project site Form 1391, for payroll period immediately prior to the review.
11. A statement of the status of all discrimination complaints filed against the firm in the past 3 years, including internal complaints and complaints filed with the NEOC, EEOC, or other Federal, State, or Local Agency.
12. Identify the on-the-job training or apprenticeship programs the firm participates in. List all trainees on the project being reviewed by name, annotated by sex, race/color, national origin, job classification/craft.
13. Copies of all collective bargaining agreements on the project being reviewed.
14. Documentation of efforts to work with labor unions in implementing the EEO contractual requirements, including documentation of union referral practices.
15. Provide copies of all documents to and from all minority and/or female owned businesses the firm has contacted for bid quotes as possible subcontractors, vendors, material suppliers, etc.
16. Copies of all purchase orders and subcontracts for this project.
17. Copy of Employee Handbook(s).