

I. GENERAL POLICY

The Office of Equal Employment Opportunity / Contract Management (EEO/CM) implements external policies concerning equal employment opportunity (EEO) and equal access to contracting opportunity. EEO/CM assists people of color, women and other protected class persons to participate as full and equal partners in Mn/DOT's planning, construction and management of the Minnesota transportation system. This includes insuring equal opportunity both in access to contracting for Disadvantaged Business Enterprises (DBEs) on Federally assisted contracts and insuring access to the opportunity for employment with contractors performing on Mn/DOT construction projects. EEO/CM monitors and reviews the application of both Federal and State laws and rules concerning EEO and the DBE Programs.

Internally, EEO/CM provides initial review and resolution of Mn/DOT employee issues involving possible violations of Mn/DOT's discrimination, harassment, and appropriate workplace behavior policies.

EEO/CM also provides consultation and oversight concerning the application of Title VI, a Federal requirement for affirmative action, to Mn/DOT programs, activities, services and benefits. Full implementation of Title VI at Mn/DOT is a precondition to receipt of Federal transportation funding. EEO/CM staffs the position of Title VI Coordinator, and devotes resources to providing guidance on Title VI throughout Mn/DOT

II. INTERNAL EQUAL OPPORTUNITY – EMPLOYMENT

- EEO/CM provides initial review of Mn/DOT employee concerns about unequal treatment based on protected class status, which may be identified by EEO/CM during a construction project review.
- Concerns are heard, evaluated, and resolution is attempted.
- If resolution is not obtained, concerns are referred to the appropriate office at Mn/DOT or the employees are referred to outside agencies.

III. INTERNAL EQUAL OPPORTUNITY – TITLE VI

Title VI is a broad Federal requirement based on the Civil Rights Act of 1964, as amended. It requires that all Mn/DOT programs, activities, services and benefits take place without discrimination based on protected class status and with affirmative action for inclusiveness of all elements of Minnesota's population. Mn/DOT is required to implement Title VI in order to receive Federal funds; failure to implement Title VI may result in a loss of all Federal funding.

EEO/CM staffs the position of Title VI Coordinator, as required by FHWA regulations. EEO/CM files the annual Assurance with U.S.DOT/FHWA, concerning the application of Title VI throughout Mn/DOT, and is responsible for documentation, training and annual

reports about Title VI. The Title VI Coordinator is required to have direct access to Commissioner level staff.

IV. EXTERNAL EQUAL OPPORTUNITY – CONTRACTING

A. Federal Program and Laws

U.S. DOT/Federal Highway Administration (FHWA) regulations include participation percentage goals on Federally assisted contracts for the use of Disadvantaged Business Enterprises (DBEs), which are businesses owned by socially and economically disadvantaged persons. In addition, it is Mn/DOT's policy to maximize opportunities for participation by DBEs. DBE participation goals apply to federally funded highway construction projects, consultant contracts and other types of business opportunities with Mn/DOT. The regulations for the DBE Program are contained in the U.S. Code of Federal Regulations (CFR) at 49 CFR Part 26. Mn/DOT updates the aspirational DBE goal for federally assisted contracts each year.

Pursuant to the federal DBE regulations, EEO/CM is part of the Minnesota Unified Certification Program (Mn/UCP), which provides a "one-stop" certification process. As part of the Mn/UCP, Mn/DOT's EEO/CM, along with the Metropolitan Council (Met Council) and the Metropolitan Airports Commission (MAC), follows U.S.DOT approved procedures to certify businesses that meet the certification requirements of the DBE Program. On behalf of the Mn/UCP, EEO/CM publishes the firms in a DBE Directory available to the general public on Mn/DOT's Website.

EEO/CM sets DBE participation goals for individual highway construction projects and consultant contracts, and monitors DBEs and other contractors for compliance with the DBE Program. EEO/CM provides support services to DBEs to improve their understanding of the construction industry, enhance their business capacity and capability, and assist them in participating in construction and consultant contracting. EEO/CM reports the dollar value of DBE participation to FHWA. If Mn/DOT's participation in the DBE Program does not fully meet FHWA requirements, the Federal government may bring sanctions against Mn/DOT, including denial of future transportation funding.

B. State Program and Laws

Minnesota Statutes , , and contain regulations for the Targeted Group Business (TGB) program. These rules call for maximizing opportunities for TGB certified firms on State-only funded projects. The Minnesota Department of Administration certifies women and minority owned businesses as TGBs. At the present time, Mn/DOT does not apply TGB goals on state funded contracts.

C. DBE Special Provisions

The requirements for the DBE Program on Federally assisted contracts are contained in Mn/DOT contracts in the DBE Special Provisions. EEO/CM has developed separate DBE Special Provisions for construction and consulting contracts with DBE participation goals as well as DBE Special Provisions for contracts with Race/Gender Neutral goals.

D. Staff Assignment

Each application for certification as a DBE is assigned to a Transportation Program Specialist III/DBE Specialist (TPS/DBE) for investigation and consideration for admission to the DBE Program. In addition, each contract with numerical DBE goals and Race/Gender Neutral goals is assigned to a TPS/DBE. Questions about the DBE Program or individual projects with DBE requirements may be directed to the TPS/DBE staff.

V. EXTERNAL EQUAL OPPORTUNITY – EMPLOYMENT

EEO/CM implements mandated employment programs on Federal and State funded construction projects, On-The-Job Training (OJT) employment programs on Federally- funded construction projects, and cooperates in Tribal Employment Rights Ordinance (TERO) implementation on construction projects on Tribal reservations. Federal regulations and laws require contractors to provide equal access to construction employment and to maintain a construction work environment free from discrimination based on protected class status. In addition, it is Mn/DOT policy that contractors and subcontractors maximize opportunities for employment of minorities and women and other protected class persons on Mn/DOT construction projects. Mn/DOT policy also requires appropriate workplace behavior (non-discrimination, non-harassment, and non-violence) on Mn/DOT construction projects.

A. Federal EEO Programs and Laws

Numerous Federal laws and policies require equal employment practices by contractors working on federally funded projects. EEO/CM has the responsibility for implementing certain FHWA Federal regulations in Mn/DOT's construction and other contracting, and in Mn/DOT internally. FHWA regulations (in the Code of Federal Regulations at 23 CFR Part 200, Part 230, Part 630, and Part 633) contain equal employment requirements pertaining to contractors and subcontractors on FHWA highway construction projects. The regulations cover a broad range of contractor employment practices and procedures, and require a strong good faith effort to offer meaningful employment opportunity to women and minority applicants. EEO/CM is required to monitor and review all Federally assisted highway construction projects under the FHWA regulations. EEO/CM maintains project employment data to identify the percentage of overall work in each trade on each project that is performed by protected class employees.

In addition, EEO/CM implements Title VI of the Civil Rights Act of 1964, as amended, prohibiting discrimination on the basis of race, color, national origin or sex in programs or activities receiving Federal financial assistance, and covering both external and internal application to Mn/DOT. EEO/CM maintains the position of Title VI Coordinator, as required under Federal rules, to coordinate and implement Mn/DOT's Title VI Program.

Certain Federal laws apply to contractors as private employers, including Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classifications, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin; the Americans with Disabilities Act of 1990, as amended, which protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classifications, referral, and other aspects of employment on the basis of disability; the Age Discrimination Act of 1967, as amended, which protects applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment; the Equal Pay Act of 1963 which prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Since contractors are required to maintain work environments free from illegal discrimination, discrimination under any of these laws may have a negative impact on a contractor's eligibility to participate in federally-assisted contracting.

1. Construction Employment Program

EEO/CM monitors construction projects for compliance with Federal and State EEO programs; performs spot-checks and in-depth reviews on selected projects to verify compliance; creates and institutes corrective action plans to achieve compliance; and may, when non-compliance is found to be uncorrected, request or institute sanctions against contractors. Individual complaints about unequal treatment in construction employment are evaluated, and either resolved or referred to the Minnesota Department of Human Rights or the Equal Employment Opportunities Commission for resolution.

2. On-the-Job Training - Standard Program

EEO/CM is required to review all federally-assisted highway construction projects and select those suitable for providing training opportunities. Appropriate projects are assigned a specific number of On-The-Job Trainees as part of a contractor's affirmative action program with the objective of upgrading members of minority groups and women and providing trained journey-workers in the trades. Proposals/contracts for the selected projects contain special On-The-Job Training provisions and a bidding line item for Training. The prime contractor must submit a training proposal in writing to the Mn/DOT Project Engineer at the pre-construction conference outlining the Training Program to be used and the number of trainees to be trained. The Project Engineer

sends a copy of the Training Program to the EEO/CM Transportation Program Specialist III/Contract Compliance Specialist (TPS/CCS).

Trainees under approved programs are paid at least the percentages of the journey-worker's rate provided in the contract or other reduced rates included in the approved program. Unless otherwise provided in the approved program, the rate used to determine the trainees' minimum salary will be a percentage of the base rate for a journey-worker.

The contractor is reimbursed for each hour of training at the rate specified in the contract line item provided that all of the requirements of the training provisions in the contract are met.

3. On-The-Job Training - Roads Opportunities & Diversity Success (ROADS)

The ROADS program allows contractors to identify themselves as participants early in the construction season each year, agreeing to employ a specific number of Trainees in their highway construction work throughout the season. Trainee identification and orientation to the construction industry will be performed by an approved group of community-based organizations in consultation with EEO/CM. Trainee work hours will be tracked on all projects on which Trainees work; reimbursement will occur from the projects on which they work with standard OJT program assignments.

4. T.E.R.O. and Indian Preference Programs

It is the policy of Mn/DOT to cooperate with the 11 tribal governments to allow for the preferential employment of American Indians on projects on or near Indian Reservations. Tribal governments may request inclusion of Indian Employment Preference on any project. EEO/CM will review each request on a project-by-project basis. Language concerning TERO or Indian Employment Preference requirements must be approved by EEO/CM prior to inclusion in Mn/DOT contracts (including delegated authority projects that are administered by individual cities and counties).

B. State EEO Programs and Laws

Minnesota law requires that a project in excess of \$100,000, funded in whole or in part by State funds, must comply with the Minnesota Human Rights Act (MHRA – Minn. Stat. §§ 363A.01 *et seq.*) which prohibits job discrimination against applicants or employees on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Minnesota Human Rights Act requires a Certificate of Compliance for any business with more than 40 full-time employees on a single working day during the previous 12 months, which bids on or executes a state contract for goods or services in excess of \$100,000. Certificates of Compliance are issued to businesses which have an Affirmative Action Plan approved by the Commissioner of the Minnesota Department of

Human Rights (MDHR) for the employment of minorities, women, and disabled individuals. Rules governing Certificates of Compliance are found at Minnesota Rules 5000.3400-3600.

Minnesota Rules give the Commissioner of Human Rights the authority to set employment goals for minorities and women on State funded construction projects. The current applicable percentages of minority and women employment, computed as percentages of the total hours of employment, are contained in each Mn/DOT proposal/contract in the EEO Special Provisions, and are based on the geographic location of the project. EEO/CM maintains project employment data to identify the percentage of overall work in each trade on each project that is performed by protected class employees.

EEO/CM monitors construction projects for compliance with Minnesota requirements. Findings of noncompliance may be referred to the Minnesota Department of Human Rights for resolution. Available sanctions include revocation of a contractor's Certificate of Compliance.

C. EEO Special Provisions

The requirements for equal employment are contained in Mn/DOT contracts in the EEO Special Provisions, and are currently dated 03/07 in upper right corner (EEO Page 1-21 for County/Municipal State-Aid (CSA/MSA) Projects or EEO Page 1-34 for State Aid or Federal Aid projects). If OJT is required, OJT provisions are located in Division S of the proposal, under Item Number (0041) "On The Job Training Program", and in the schedule of prices under Pay Item 0041.606 "Trainees", which contains the contract bid price.

C. Staff Assignment

Based on project location, each project is assigned to a Transportation Program Specialist/Contract Compliance Specialist (TPS/CCS) for employment review. Questions about the employment programs may be directed to the TPS/CCS staff.

D. Other Agencies

Other agencies also maintain oversight of EEO application to construction projects. EEO/CM is required to share information with other agencies, may be required to report violations to other agencies, and voluntarily coordinates EEO activities with other agencies to reduce the burden on the construction industry.

The Office of Federal Contract Compliance Programs (OFCCP) monitors the following programs:

- Executive Order 11246 prohibits employment discrimination against applicants or employees of contractors or subcontractors on the basis of race, color, religion, sex or national origin, for all projects exceeding \$10,000, funded in whole or in

part by Federal funds, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

- Section 503 of the Rehabilitation Act of 1973, as amended, prohibits job discrimination because of handicap and requires affirmative action to employ and advance in employment-qualified individuals with handicaps who, with reasonable accommodation, can perform the essential functions of a job.
- The Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 4212) prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam Era veterans and qualified special disabled veterans.

EEO/CM is required to notify OFCCP when violations of these programs are observed on Federally assisted highway construction projects.

The OFCCP also applies Federal goals for the employment of minorities and women on highway construction projects based on the geographic location of the project. Current applicable percentages are contained in each Mn/DOT contract in the EEO Special Provisions. EEO/CM is required to notify OFCCP when violations of these laws are observed on Mn/DOT projects.

VI. COMPLIANCE

A. General Program Compliance

All parties responsible for preparing contracts utilizing State of Minnesota and/or FHWA funds must insure that appropriate equal opportunity in contracting and employment contract language is included. Each contract requires that all regulations regarding equal opportunity in employment and contracting be properly followed. Design-build projects, joint partnerships, lump sum contracts, and other forms of contracting are subject to the same requirements.

The employment goals (on all projects), and DBE/OJT Programs (on selected projects) are contract specifications, and must be adhered to in the same manner as other contract specifications. The contractor expects a working knowledge of the regulations referenced in the contract proposal of state personnel involved with assuring compliance, particularly to enable identification of violations. (Examples of possible violations include, but are not limited to moving protected class employees from site to site to meet employment goals, i.e. not for a legitimate business reason; using prime or other contractor's equipment or employees to do DBE subcontracted work; fraudulently obtaining DBE certification; allowing DBE contractors to perform work outside their areas of certification; instances or allegations of discrimination, harassment, violence between contractor employees, among different contractor employees, or involving Mn/DOT employees.) Possible or suspected violations, including anonymous complaints, must be brought to the attention of EEO/CM. EEO/CM will provide training concerning the DBE and equal opportunity requirements upon request. In addition, EEO/CM provides training during the District Updates on an annual basis to Mn/DOT

District staff and Local Public Agencies (participating in the Delegated Contracting Process, DCP).

B. Specific Program Compliance- EEO/CM Responsibility

Before advertisement of projects, all projects must be evaluated by EEO/CM to determine DBE participation goals and whether Trainees are required. Those individuals preparing contracts must submit contract information in a timely fashion to obtain EEO/CM input before advertisement deadlines.

After letting but before award, all projects identified as having a DBE participation goal must be cleared by EEO/CM. Close coordination between contractors and EEO/CM is necessary to make timely awards.

During construction, EEO/CM performs FHWA required project reviews to determine the level of compliance with EEO regulations by contractors. These scheduled in-depth reviews include on-site interviews with employees, extensive review of Prime contractor employment practices, and detailed review of employment statistics (both project based and company-wide). These reviews occur with notice to the Prime Contractor and the Project Engineer, and follow FHWA and Minnesota Department of Human Rights (MDHR) regulations and policies. Mn/DOT staff is not required to participate in these reviews, although they may be asked for information about the project. The Project Engineer receives a copy of the Notification of Review letter and the final review report. Sanctions may be brought against contractors who are in noncompliance with FHWA's or MDHR's EEO regulations.

EEO/CM reports to the Minnesota Department of Human Rights (MDHR) concerning the results of the formal reviews. MDHR has the authority to suspend the Certificate of Compliance of a contractor who is in noncompliance with the State EEO laws and regulations.

EEO/CM also performs spot checks on projects, including site-visits, informal interviews with project staff, and general review of EEO progress. These spot-checks are less formal than the FHWA reviews, and are performed without notice.

EEO/CM investigates concerns raised by employees on project sites, contractors, third parties, and anonymous complaints concerning DBE program operation and allegations of discrimination, harassment, or violence on project sites. Complaints involving Mn/DOT personnel are referred within Mn/DOT. Cases involving non-Mn/DOT personnel are reviewed and resolution is attempted. If resolution is not obtained, parties are referred to the Minnesota Department of Human Rights, the Equal Employment Opportunities Commission (EEOC) or to private counsel for filing formal complaints. Contractors may be sanctioned for work environments that do not meet the required standards of DBE participation, On-The-Job Training program operation and worksite non-discrimination, non-harassment, and nonviolence.

C. Specific Program Compliance- Project Engineer Responsibility

The following is a summary of compliance efforts required of Project Engineers.

1. Sends notice of pre-construction meeting to the attention of the Office of EEO/CM.
2. Identifies EEO/CM staff (both TPS/DBE and TPS/CCS) to the contractors if EEO/CM staff is unable to attend Pre-construction meeting.
 - a. Reviews the general purpose of the EEO Program (to maximize employment of minorities and women on highway construction sites, and provide access to contracting opportunities to minority and women owned businesses).
 - b. Reviews the numerical employment goals for minorities and women, (Federal and State, as applicable) assigned to project. If a project covers more than one geographical goal area, the highest goal prevails on entire project.
 - c. Informs about poster display. Information pertaining to non-discrimination must be displayed on construction projects from the first day any work is performed until all work has been completed. The posters must be displayed in a prominent place where the employees gather, in a manner that will permit all interested persons to read all the information without difficulty. Large construction sites may require more than one display. The Engineer usually furnishes Federal and Mn/DOT posters to the prime contractor. The prime contractor is responsible for the posting. The following posters are required by EEO/CM (note that other offices/agencies/regulations require other posters):

“NOTICE OF NONDISCRIMINATION IN EMPLOYMENT” poster, Mn/DOT Central Stores, TP-017244. The contractor or Project Engineer must fill in the company name, EEO Officer’s name, address and telephone numbers; and the

“Equal Employment Opportunity is THE LAW” poster, EEOC-P/E-1, available from the EEOC. ***“CONTRACTOR NON-DISCRIMINATION...is the law”*** poster, supplied directly to the contractor by the Minnesota Department of Human Rights when issuing a Certificate of Compliance. Posters may be obtained from Contract Compliance Unit, Minnesota Department of Human Rights, Army Corps of Engineers Centre, 190 E. 5th Street-Suite 700, St. Paul, MN 55101, (651) 296-5663 or 1-800-657-3704. A list of additional required posters, some of which are available for reproduction from Web sites, is available from EEO/CM.

- d. If OJT positions have been assigned to the project, receives the Training Plan from the prime at the pre-construction meeting or arranges for

submission shortly thereafter, and forwards a copy to TPS/CCS for approval. TPS/CCS sends a copy of approval letter to Engineer. The Engineer may be asked to assist TPS/CCS with questions about appropriate number of trainees, trainee performance, trainee/safety issues, etc.

- e. If the DBE Program applies, identifies the TPS/DBE Specialist assigned to project and reviews DBE requirements: that work must be done by the selected DBE, with its own employees and equipment; that any changes must be discussed with and approved by the Office of EEO/CM through the TPS/DBE Specialist before being made or liquidated damages may be assessed at conclusion of project; that Engineer will review each DBE at mid-completion and report to TPS/DBE using Exhibit A form; that any problems with performance of DBE Program will be reported to TPS/DBE immediately.
3. Sends a copy of the pre-construction meeting notes to assigned TPS/CCS.
 4. Receives, reviews and forwards copies of Monthly Employment Compliance Reports (EEO 13) to designated TPS/CCS. Verifies that the prime and all subcontractors working in a given month have submitted their EEO 13s. Notifies TPS/CCS of difficulty in getting forms submitted, with questions/suggestions about the forms, to request training or to recommend training for a contractor or to report observations that reported numbers of minorities and women do not match observations at the site.
 5. Reports any complaints about or observations of race or sex discrimination or harassment occurring on a project to TPS/CCS immediately. Asks complainant to put complaint in writing. Investigates any allegation of discrimination or harassment promptly. Keeps written notes of all details of such allegations.
 6. Relays any complaints/questions from the public about numbers of protected class employees on the site or other EEO issues to the TPS/CCS.
 7. Assists TPS/CCS with on-site reviews (locating site, identifying foremen or supervisors, understanding any special safety concerns or special problems on the project, etc.). Engineers and Inspectors may be asked to put observations about EEO problems on projects in writing.
 8. Refers contractors with EEO questions or problems which the Engineer cannot resolve or who are not meeting their employment goals to TPS/CCS.
 9. Reviews and makes appropriate payments if OJT positions are assigned to project. Once the TPS/CCS has approved the Training Plan, the contractor selects trainees and notifies TPS/CCS on the ON THE JOB TRAINING

- PROGRAM-OJT ASSIGNMENT FORM. TPS/CCS notifies Engineer of selected trainees, and thereafter contractor submits an original and one copy of "CERTIFICATION OF ON-THE-JOB TRAINING HOURS: FEDERAL-AID PROJECTS" to the Engineer. Engineer forwards copy to TPS/CCS.
10. Reviews, if the DBE Program applies to a project, each DBE at a mid-performance point, sending Exhibit A report form to the TPS/DBE Specialist. Reports any performance problems to the TPS/DBE Specialist. Any changes from the DBE plan must be pre-approved by Director through the TPS/DBE Specialist or liquidated damages may be assessed at conclusion of project. Notifies the TPS/DBE Specialist of any observations or information, including anonymous complaints, that a DBE is not eligible for the DBE Program.
 11. Reviews project sites for poster display.
 12. Withholds funds or implements other sanctions when notified by EEO/CM.

VII. REPORTS

A. Annual Federal Highway Administration (FHWA) Report

EEO/CM will issue a memorandum each May/June, detailing the requirements for the annual FHWA report. The contractor is required to submit to the Project Engineer, in triplicate, form PR-1391, "FEDERAL AID HIGHWAY CONSTRUCTION CONTRACTORS EQUAL EMPLOYMENT OPPORTUNITY REPORT," to cover the last payroll period worked in July on each project. The Engineer will retain the original in the project files, and forward the other copies to the district office or district state-aid office where the reports will be accumulated and summarized.

The district office will summarize the data contained in the forms PR-1391 forwarded by the engineers onto form PR-1392, "SUMMARY OF EMPLOYMENT DATA INCLUDING MINORITY BREAKDOWN FOR ALL FEDERAL AID HIGHWAY PROJECTS FOR ALL OR PART OF THE LAST PAYROLL PERIOD PRECEDING THE END OF JULY, 20 ____." The district office submits one copy of form PR-1392 to EEO/CM where data will be summarized on a statewide basis and forwarded to the Federal Highway Administration.

Form PR-1391 will include all federal-aid prime contracts regardless of contract dollar value, and all federal-aid subcontracts exceeding \$10,000.

B. Additional Reports.

EEO/CM fulfills all federal report requirements concerning employment and contracting programs, including quarterly DBE reports, annual On-The-Job Training reports, individual project review reports and annual Title VI report, among others.

District staff, Engineers, Inspectors and Office Managers may be asked to supply additional data on specific projects or in summary form for other reporting purposes.