

EQUAL OPPORTUNITY TOOLKIT FOR CONTRACTORS

UPDATED FOR 2021



VERMONT AGENCY OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS & LABOR COMPLIANCE



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INTRODUCTION AND PURPOSE

Greetings! The purpose of this toolkit is to help you meet the obligations set out in the required contract provisions (FWHA-1273) attached to federal-aid construction contracts with the Vermont Agency of Transportation (VTrans). This guidance document takes a deep dive into the Equal Employment Opportunity requirements (Section II – Nondiscrimination).

Contractors are required to take affirmative action to ensure that applicants and employees are not discriminated against because of their race, color, religion, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

Although you are required to comply with these provisions as part of your contract obligation with us, we hope that you use this requirement as an opportunity to improve your workforce development systems and practices. Our goal is to help you meet the contract requirements and help you strengthen and diversify your labor force.

This toolkit is a companion resource document to the Contract Compliance Review Process document and the On the Job Training Program Manual. All of the contractor compliance resources can be found on our website at: <https://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/compliance>.

Please do not hesitate to contact us if you need assistance:

Office of Civil Rights & Labor Compliance
<https://vtrans.vermont.gov/civil-rights>

Sonya Boisvert, Civil Rights Program Manager
(802) 279-1330
sonya.boisvert@vermont.gov

Sue Hackney, Civil Rights Deputy Chief and VTrans EEO Officer
(802) 249-9291
susan.hackney@vermont.gov

Lori Valburn, Civil Rights Chief
(802) 777-6262
lori.valburn@vermont.gov



ACHIEVING COMPLIANCE WITH SECTION II OF THE FHWA-1273

The Toolkit provides specific guidance to help you meet the conditions set forth in the Required Contract Provisions (FHWA-1273). The following is by no means an exhaustive list of reasonable actions; however, recommended below are key actions that you should consider when implementing your EEO program.

Each section follows this format:

- **Highlighted box** with exact wording from FHWA-1273 (*These are the requirements you must meet.*)
- **Required Actions** (*These are actions required to satisfy the obligations in the FHWA-1273.*)
- **Suggested Actions** (*These are not requirements; they are helpful suggestions.*)
- **Documentation Examples** (*Examples of documents to demonstrate compliance.*)
- **Resources** (*Links to guidance documents and other resources.*)

NOTE: The provisions of this section are related to 23 CFR Part 230 and are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

1. EQUAL EMPLOYMENT OPPORTUNITY

a. The contractor will work with the contracting agency [VTrans] and the Federal Government [FHWA] to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

Keys to achieving compliance:

Required Actions

- When your company (prime contractor or subcontractor) is under or is part of a contractor compliance review, be sure to provide complete and accurate documents to the VTrans Office of Civil Rights.
- Ensure ready access to EEO-related files, records, and written policies/procedures during an on-site verification (or upon request) to help the VTrans Office of Civil Rights determine your company's compliance status.
- Provide all requested items by the date specified in VTrans' correspondence.

Suggested Actions

- Familiarize yourself with non-FHWA EEO/AA requirements, such as USDOL requirements and your State requirements.

Documentation Examples

- A copy of the company's EEO Policy, Affirmative Action Policy, and Sexual Harassment Policy.
- Copies of any public correspondence including job advertisements, website language, and brochures and publications used for recruiting purposes.
- A copy of the company's Employee Handbook.



Resources

- Contract Provisions for Federal-aid Construction and Service Contracts Required by FHWA or Other Agencies: <https://www.fhwa.dot.gov/construction/contracts/provisions.cfm>
- Executive Order 11246: https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm
- Workplaces For All – laws related to and best practices for preventing sexual harassment and workplace discrimination: <https://workplacesforall.vermont.gov/>
- Vermont EEO Requirements: <https://legislature.vermont.gov/statutes/section/21/005/00495>
- VTrans Contractor Compliance Review Process Guide: <https://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/compliance>
- OFCCP Best Practices: <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/resources>
- OFCCP sample affirmative action programs: <https://www.dol.gov/ofccp/regs/compliance/AAPs/AAPs.htm>
- Federal laws related to equal employment opportunities: <https://www.eeoc.gov/laws/statutes/index.cfm>

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

Keys to achieving compliance:

Required Actions

- Incorporate the above required language in your EEO Statement. You may expand the protected classes to meet other federal and state requirements.
- Post the [EEO Policy Statement poster provided by VTrans](#) (with EEO Officer's contact information) on federal highway construction sites.

Suggested Actions

- Post the company's EEO Policy (including the above required language), signed and dated by the company's EEO Officer, in areas of the home office where employees regularly congregate.
- Identify locations where job seekers, applicants, and interviewees most often visit, and place the company's EEO Policy there.
- Add a *voluntary* information form to your employment applications to collect demographic data on applicants. Explain to the applicants why this information is being collected and assure them that you will not make any employment decisions based on their answers. See the Resources section for sample forms.

Documentation Examples

- An EEO Policy Statement (which includes the above language) posted on the jobsite and in areas of the home office where employees regularly congregate.
- Copies of voluntary EEO information received from applicants.



Resources

- Contractor EEO Policy Statement Poster:
<https://vtrans.vermont.gov/sites/aot/files/civilrights/documents/laborcompliance/ContractorEEOStatementPoster.pdf>
- FHWA-1273: <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>,
- U.S. Equal Employment Opportunity Commission (EEOC) Tips on Creating Employee Policies:
https://www.eeoc.gov/employers/smallbusiness/checklists/employee_policies.cfm
- EEOC sample race/ethnicity self-identification forms:
https://www.eeoc.gov/employers/eo1survey/sample_self_identification.cfm
- Protected Veteran Self-ID (41 CFR Appendix B to Part 60-300):
https://www.law.cornell.edu/cfr/text/41/appendix-B_to_part_60-300
- USDOL sample voluntary self-identification of disability forms:
https://www.dol.gov/ofccp/regs/compliance/sec503/self_id_forms/selfidforms.htm
- Video: Voluntary Self-Identification, OFCCP: <https://www.dol.gov/ofccp/SelfIdVideo.html>

2. EEO OFFICER

The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program, and who must be assigned adequate authority and responsibility to do so.

Keys to achieving compliance:

Required Actions

- Designate an EEO Officer who already has, or is given, the authority to make EEO-related decisions, evaluate/propose changes to official company policies, speak on behalf of the company in EEO compliance matters and reviews, and inform all employees of the EEO Officer's duties and role. The EEO Officer must be allowed adequate time in their schedule to implement the FHWA-1273 EO requirements.
- Include the EEO Officer's name and contact information on all posted and distributed EEO-related policies and announcements.
- Make sure the VTrans Resident Engineer and the Office of Civil Rights know the name and contact information of your EEO Officer.

Suggested Actions

- Ensure that the EEO Officer has or acquires (through formal training) the experience and expertise necessary to implement a compliant EEO program.
- Create and maintain a desk reference guide of Standard Operating Procedures for the EEO Officer to use.

Documentation Examples

- The posted company EEO policy which includes the EEO Officer's contact information.
- Copies of EEO materials sent to employees with dissemination dates and distribution methods noted.
- Job description of the EEO Officer.
- Certification of the EEO Officer's experience and/or completion of any EEO-related training.
- Attendance sheets, meeting agendas and minutes outlining what EEO matters were discussed at meetings with supervisors and other employees.



Resources

- Sample EEO Officer Job Description:
<https://vtrans.vermont.gov/sites/aot/files/civilrights/documents/ContractorCompliance/SampleEEOOfficeJobDescription.docx>
- OFCCP Best Practices: <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/resources>
- EEOC Small Business Resource Center:
<https://www.eeoc.gov/employers/smallbusiness/index.cfm>
- EEOC Training Institute:
<https://eeotraining.eeoc.gov/profile/web/index.cfm?PKWebId=0x2547b105>

3. DISSEMINATION OF POLICY

All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

Keys to achieving compliance:

Required Actions

- Within 30 days of start date, hold orientation meetings, conducted by the EEO Officer, with all new supervisors and HR personnel to review the contractor's EEO policy, program, and contract obligations.
- Hold semi-annual EEO-related meetings, conducted by the EEO Officer, with management, supervisors, and office staff who are responsible for personnel actions.
- Hold periodic meetings, conducted by the EEO Officer, with personnel involved in recruitment to provide instruction on the company's recruitment goals and procedures.

Suggested Actions

- Meeting topics may include but are not limited to reviewing the company's EEO policies; ensuring equity in employment decisions; creating a welcoming and inclusive work environment; sexual harassment and discrimination prevention and the company complaint process.
- Be creative with how you hold these meetings. They can be in person or via teleconference or video conference.



- In addition to the required meetings, the EEO Officer is encouraged to send out periodic tips and reminders through email, text message, or other electronic media.
- Use a Policy Acknowledgement Form (see example in Resources section) for documentation of attendance at meetings and understanding of the EEO policy.
- Create an orientation process that includes a discussion about the FHWA-1273's EEO obligations.
- Develop written procedures for locating and hiring minorities and women (recruitment process/plan).

Documentation Examples

- Copies of meeting agendas, minutes or notes, sign-in sheets, and meeting handouts.
- Dates and documentation to verify that meetings have occurred at the time of hire and no less than once every six months.
- Copies of Policy Acknowledgement Forms signed by employees confirming that they understand their EEO responsibilities and the company's responsibilities regarding EEO.
- Written procedure for locating and hiring minorities and women (recruitment process/plan).

Resources

- Sample EEO Policy Acknowledgement Form:
<https://vtrans.vermont.gov/sites/aot/files/civilrights/documents/ContractorCompliance/SampleEEOPolicyAcknowledgementForm.docx>
- EEOC Manager Training Tips:
https://www.eeoc.gov/employers/smallbusiness/checklists/manager_training_tips.cfm

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

Keys to achieving compliance:

Required Actions

- Post the company's EEO policy that includes the name of and contact information for the EEO Officer, discrimination complaint procedures, and the required federal or state posters on bulletin boards at your home office in locations where employees congregate, in your job trailers, and on an outside bulletin board at all job sites.

Suggested Actions

- Identify other locations where employees frequent or congregate and where job seekers, applicants, and interviewees most visit, and place bulletin boards or policies there.
- Ensure that posters, policies and complaint procedures are translated (when necessary) into languages that employees and applicants can read and understand.

Documentation Examples

- Copies of the company EEO policy and discrimination complaint procedures translated, if applicable.
- Pictures of bulletin boards with required posters, EEO policies, procedures, and contacts.



Resources

- Federal posters (provided by VTrans Office of Civil Rights for all federally funded projects): <https://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/poster-packages>
- Vermont State Department of Labor Mandatory Workplace Posters: <https://labor.vermont.gov/mandatory-workplace-posters>
- Vermont State Whistleblower Statute: <https://humanresources.vermont.gov/sites/humanresources/files/documents/Vermont%20Whistleblower%20Statute%202014.pdf>

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

Keys to achieving compliance:

Required Actions

- Review EEO program policies and procedures in periodic meetings with all employees.

Suggested Actions

- Include EEO policies and implementation procedures in employee handbooks and mass mailings (paycheck stuffers, newsletters, email blasts, etc.).
- Ensure that above materials are readable, understandable by all employees, and translated when appropriate.
- Have the EEO officer conduct “Know Your Rights” sessions with all employees, reviewing your company’s discrimination complaint procedures in detail, and share information about State and Federal agencies that may also be contacted.
- Arrange for a company official to speak to employees about how important EEO issues (equity, respect, fairness, diversity, inclusion, civility, etc.) are to the company.
- Be creative with how you hold these meetings. Do periodic, on-site toolbox/tailgate talks about your EEO program, include an EEO section at your annual safety meeting, have supervisors check in with their employees in one-on-one meetings, etc.
- Add EEO expectations and feedback to the employee performance evaluation process.

Documentation Examples

- Copies of handbooks, newsletters, paycheck stuffers (translated if applicable) with dates of distribution noted.
- Meeting agendas, minutes or notes, sign-in sheets and copies of meeting handouts.
- Employees’ signed confirmation that they understand the company’s EEO program and procedures.
- Records showing when and how updates to the EEO policy were distributed to employees.

Resources

- EEOC Employee Training Tips: https://www.eeoc.gov/employers/smallbusiness/checklists/employee_training_tips.cfm
- VTrans Office of Civil Rights Discrimination Complaint Procedure and Form: <https://vtrans.vermont.gov/civil-rights/compliance/titlevi/complaint>



4. RECRUITMENT

When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

Keys to achieving compliance:

Required Actions

- Ensure that all advertisements and internal postings contain the "An Equal Opportunity Employer" tagline.
- Identify publications and other media (radio stations, social media, etc.) in the recruitment area with high minority and/or female readerships and place ads in them for employment and training positions.

Suggested Actions

- Consider adding an additional tagline on your job announcements that includes all of the legally protected classes. For example, "All qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, sex, sexual orientation, gender identity, national origin, place of birth, crime victim status, age, disability, or status as a protected veteran."
- Identify and partner with organizations that serve predominantly women and/or minorities and let them know about your openings.

Documentation Examples

- Copies of actual job announcements, EOE tagline(s), date of contact and name of media outlet, and a list of recruitment partners.

Resources

- See *Hiring and Retaining a Diverse Workforce* for advertising tips and contact information for commonly used online resources, organizations and publications:
<http://vtrans.vermont.gov/sites/aot/files/civilrights/documents/edhc/Hiring%20and%20Retaining%20a%20Diverse%20Workforce.pdf>
- See section (a)(2) of 21 V.S.A. § 495 for Vermont Fair Employment Practice advertising requirements: <https://legislature.vermont.gov/statutes/section/21/005/00495>
- OFCCP Postings & Notice requirements (including taglines):
<https://www.dol.gov/ofccp/CAGuides/files/Postings&NoticesGuide-CONTR508c.pdf>

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

Keys to achieving compliance:

Required Actions

- Develop partnerships with schools and/or organizations to locate qualified candidates, including women and minorities (in either your project or home recruitment area): e.g.,



technical schools, colleges (Vermont Tech and Norwich University both have construction programs), Job Corps (Vergennes), Career Resource Centers, local community organizations, churches and social services agencies.

Suggested Actions

- Develop written recruitment procedures (recruitment plan) describing roles and responsibilities of internal staff.
- When you are deciding where to post flyers and ads for open positions, think outside the box! Post flyers in places like community centers, libraries, laundromats, childcare centers, farming supply stores, ethnic food stores and restaurants.
- Place job announcements on internet sites (including social media), and radio stations that reach diverse demographic groups.
- Feed the pipeline – partner with local schools and talk with students about the benefits of working in the industry. Invite minority and female employees to represent the company at these events.
- Maintain a system to track applicants, including their name, position applied for, date applied, race (if known), gender (if known), referral source, and hiring decision. Keep track of all efforts made to locate minority and female applicants.
- Use a “walk-in log” to track potential applicants who inquire about employment opportunities at the jobsites.

Documentation Examples

- Referral procedures and documentation of recent referrals.
- Recruitment procedures/plan.
- Lists of publications and referral sources identified or used.
- Documentation of other efforts to locate minority and female applicants.
- Applicant tracking documentation.

Resources

- See *Hiring and Retaining a Diverse Workforce* for recommended recruitment strategies and referral sources:
<http://vtrans.vermont.gov/sites/aot/files/civilrights/documents/edhc/Hiring%20and%20Retaining%20a%20Diverse%20Workforce.pdf>
- Find your regional Vermont Career Resource Center here: <https://labor.vermont.gov/workforce-development/find-your-local-career-resource-center>
- Post a free ad on the Vermont Department of Labor’s online job board, *Job Link*, here: <https://www.vermontjoblink.com>

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

Keys to achieving compliance:

Actions

- Not Applicable for Vermont-based companies.



- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

Keys to achieving compliance:

Required Actions

- Encourage current employees to refer minorities and women as applicants for employment and discuss procedures for doing so.

Suggested Actions

- Discuss with current employees the importance and benefits of a diverse workforce.
- Make sure your employees know about job openings and minimum qualifications.
- Provide recruitment cards or brochures that employees can give their friends and family. The cards should include EEO language and steps for applying for positions.
- Post openings via social media and encourage employees to share the posts on their personal social media account.
- Follow through on the referrals that employees make in a timely manner.
- Track referrals and outcomes and acknowledge the incumbent employees' successful contribution.

Documentation Examples

- Meeting agendas, minutes or notes, sign-in sheets and copies of meeting handouts.
- Log of conversations with employees regarding referral of minorities and women.
- Annotated database of all referred employees and those making recommendations.
- Procedures and other documentation for the employee referral program.
- *Please note: During on-site labor compliance visits, Labor Compliance Officers will ask employees if the company has encouraged them to recruit women and minorities.*

Resources

- *Diversity Toolkit: Your Guide to Best Practices for Recruiting a Diverse Membership*, North America's Building Trades Union: <https://nabtu.org/wp-content/uploads/2017/06/Diversity-Toolkit-draft-6-15-17.pdf>

5. PERSONNEL ACTIONS

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

Keys to achieving compliance:

Required Actions

- The EEO Officer, or designated employee, should routinely visit jobsites, sometimes unannounced, to ensure that work environments, facilities, tools, and privileges do not indicate discriminatory treatment of project site personnel.

Suggested Actions

- Incorporate EEO language and expectations into all company policies and practices.
- Check in with employees working on project sites about EEO issues to make sure things are going okay.
- Ensure female employees have PPE that fits well since unisex PPE does not work for some women.
- Develop an inspection checklist for project site visits and make it available to VTrans during the compliance review process.

Documentation Examples

- Written records of site visit observations (e.g., checklist) and conclusions.
- Notes from conversations with employees, if applicable.

Resources

- Safety & Health Empowerment for Women in Trades Fact Sheet: http://deohs.washington.edu/sites/default/files/documents/SHEWT_fact_sheet.pdf
- Women in Construction: Personal Protective Equipment, USDOL: <https://www.osha.gov/doc/topics/women/ppe.html>
- Providing Safety and Health Protection for a Diverse Construction Workforce: Issues and Ideas: <https://www.cdc.gov/niosh/docs/99-140/>
- Employer Best Practices for Workers with Caregiving Responsibilities, EEOC: <https://www.eeoc.gov/policy/docs/caregiver-best-practices.html>
- Webinar on Respectful Workplaces and Health & Safety Empowerment for Women in Trades: <http://wrtwc.org/news/2017/tradeswomen/>
- EEOC Select Task Force on the Study of Harassment in the Workplace Report Executive Summary & Recommendations: https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm

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|--|
| b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices. |
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Keys to achieving compliance:

Required Actions

- Periodically evaluate wages paid within each classification to determine if there is evidence of discriminatory wage practices.

Suggested Actions

- Use spreadsheets annotated by job classification, race and gender to identify and document whether discrepancies exist.
- Document corrective actions taken to remedy wage discrepancies (among races and genders, including individuals), or the reasons why any differences in rates are justified.



- Identify all personnel involved and ensure EEO Officer's involvement.
- When pay fluctuates from project to project because of Davis-Bacon requirements, examine the company's procedures for deciding where employees work to ensure they are equitable.

Documentation Examples

- Written records of evaluations complete with tables, findings and conclusions, and corrective actions taken, if applicable.

Resources

- EEOC: Facts About Equal Pay and Compensation Discrimination: <https://www.eeoc.gov/eeoc/publications/fs-epa.cfm>
- See section (a)(7) of 21 V.S.A § 495 for Vermont Fair Employment Practice non-discriminatory wage rate requirements: <https://legislature.vermont.gov/statutes/section/21/005/00495>

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

Keys to achieving compliance:

Required Actions

- Periodically review all personnel actions (e.g., hiring, interviews, promotions, layoffs, callbacks, etc.) and practices to determine whether there is evidence of discrimination.
- When evidence of discrimination is found, promptly take corrective action for all affected employees.

Suggested Actions

- Use spreadsheets annotated by project, job classification, race and gender to determine and document if all actions are being administered fairly.
- Evaluate company policies to determine their effects, positive or negative, on the opportunities of minorities and women.
- Provide training to supervisors on fair practices and include these expectations in supervisor annual performance evaluations.
- Develop corrective action procedures, including decision-making channels, to follow when evidence of discrimination is discovered. Document corrective actions, whenever taken. Identify all personnel involved and ensure EEO Officer's involvement.

Documentation Examples

- Records of employees trained, hired, promoted, demoted and terminated in each trade by gender and race.
- Written records of reviews complete with tables, observations, findings and conclusions, and corrective actions taken, if required.

Resources

- EEOC advice for avoiding discrimination when making employment decisions: <https://www.eeoc.gov/employers/smallbusiness/checklists/index.cfm>
- EEO Interview Guidelines: <https://vtrans.vermont.gov/sites/aot/files/civilrights/documents/ContractorCompliance/EEOInterviewingGuidelines.pdf>



- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

Keys to achieving compliance:

Required Actions

- Promptly investigate all complaints of alleged discrimination.
- Attempt to resolve such complaints.
- Take appropriate corrective action with all affected parties within a reasonable time.
- Ensure every complainant is informed of all of their opportunities to appeal.

Suggested Actions

- Promptly notify the VTrans Resident Engineer and the VTrans Office of Civil Rights about the complaint.
- Identify the EEO Officer as the company contact for discrimination complaints in postings and procedures.
- Develop a complaint procedure that includes the basis for filing a complaint (e.g., race, gender, disability, etc.). Include a process for appeals in the procedure.
- Include reasonable timeframes for filing, processing, and investigating complaints, state and federal contacts and avenues of appeal, and a form to log complaints.
- Post the discrimination complaint procedures on bulletin boards at offices and jobsites in locations accessible to all employees. Disseminate the procedures through newsletters, by adding it to the company handbook, and other effective means.
- Discuss the discrimination complaint procedures in meetings with employees.
- Make sure the EEO Officer and/or another appropriate employee is trained in conducting workplace investigations.

Documentation Examples

- Copy of discrimination complaint procedures with date posted and distribution methods.
- Copy of complaint log with complainant's name, race, gender, complaint basis (e.g., race, national origin, age, etc.), date complaint filed, resolution, and whether appealed, if known.
- Materials from complaint investigations that corroborate the content in the complaints log.

Resources

- Sample Complaint Policy:
<https://vtrans.vermont.gov/sites/aot/files/civilrights/documents/ContractorCompliance/SampleComplaintPolicy.docx>
- Sample Complaint Form:
<https://vtrans.vermont.gov/sites/aot/files/civilrights/documents/ContractorCompliance/SampleComplaintForm.docx>
- EEOC Promising Practices for Preventing Harassment:
<https://www.eeoc.gov/eeoc/publications/promising-practices.cfm>
- EEOC general harassment policy tips:
https://www.eeoc.gov/employers/smallbusiness/checklists/harassment_policy_tips.cfm



- EEOC general non-discrimination policy tips: https://www.eeoc.gov/employers/smallbusiness/checklists/general_non-discrimination_policy.cfm
- Ten Steps to a Successful Workplace Investigation, Lisa Guerin: <https://www.nolo.com/legal-encyclopedia/investigate-workplace-complaint-29475.html>

6. TRAINING AND PROMOTION

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

Keys to achieving compliance:

Required Actions

- Assist minority and female employees and applicants by locating and qualifying them for training opportunities that will help them develop to full journey level status in a trade or job classification.

Suggested Actions

- Make use of your company's recruitment process/plan to attract minorities and women for training opportunities.
- Note on your applicant log if an applicant was placed in a training position.
- Train and develop existing female and minority employees (upskilling).
- Track the progress, graduation, and promotion (i.e., status changes) of trainees.
- See 6(c) & (d) for further guidance regarding current employees.

Documentation Examples

- Ads or other communications mentioning training opportunities.
- Applicant logs and training reports.
- Records of employee and trainee participation.

Resources

- Mentoring and Mentorship that Works for Tradeswomen, Oregon Tradeswomen, Inc.: <http://womensequitycenter.org/wp-content/uploads/2016/11/Mentoring.pdf>
- Women, minority and other disadvantaged employees can participate in the VTrans Employment Diversity in Highway Construction (EDHC) training subsidy program. See our website for more information: <https://vtrans.vermont.gov/civil-rights/employment/edhc/training>.



b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

Keys to achieving compliance:

Required Actions

- Make full use of training programs such as apprenticeship and on-the-job training.

Suggested Actions

- Provide training opportunities with the goal of assisting employees to move up to higher paying job classifications.
- Place notices for training opportunities in the geographical area where the project is located, on bulletin boards at social services offices, and at other organizations that serve women and minorities.
- Establish working relationships with vocational and technical schools, and develop programs that offer summer jobs, internships, and other training opportunities to female and minority students.

Documentation Examples

- Copies of actual notices, including dates and locations where posted.
- Communications to employees on skill development opportunities and the applicable entrance requirements.
- Copies of written communications and/or notes from telephone calls or meetings with organization representatives (include dates, names, and results of the contact).

Resources

- VTrans OJT website for contractors:
<http://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/information>
- Become a registered apprentice sponsor through the Vermont Department of Labor:
<https://labor.vermont.gov/workforce-development/job-training-education-and-apprenticeship/apprenticeship>
- USDOL resources on Registered Apprenticeship: <https://www.apprenticeship.gov/>

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

Keys to achieving compliance:

Required Actions

- Let employees and job applicants know about the availability of training programs and the entrance requirements.

Suggested Actions

- Create (and put in writing) entrance requirements for training programs and opportunities.
- Consider starting a registered apprenticeship program.



- If applicable, let current employees and applicants know about your company's On-the-Job Training (OJT) opportunities.
- Use posters, meetings, paycheck stuffers, etc. to ensure that all employees know that your company provides internal training (skill development). Include information about entrance requirements and how to apply.
- Post training opportunities with entrance requirements and application procedures on office and jobsite bulletin boards.

Documentation Examples

- Written criteria for training programs.
- Copies of announcements documenting methods and dates of distribution.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

Keys to achieving compliance:

Required Actions

- Periodically review and analyze the training and promotion potential of current female and minority employees.
- Encourage eligible employees to apply for such opportunities.

Suggested Actions

- Utilize spreadsheets annotated by job classification, race, and gender to determine whether minorities and women are being underrepresented in training and promotion.
- Request information from employees regarding their professional and career goals. Use this information to expand your training offerings, if deemed company-related.
- Establish a process whereby you regularly meet with employees to discuss training and career paths. The performance evaluation process is a good start.

Documentation Examples

- Written records of employee performance data, complete with tables, findings and conclusions, and corrective actions, if taken.
- Written records of one-on-one or group meetings with employees.
- Copies of employee performance evaluations that document conversations about training and promotion.

Resources

- EEOC tips on recruiting, hiring or promoting:
https://www.eeoc.gov/employers/smallbusiness/checklists/recruiting_hiring_promoting.cfm

7. UNIONS – (Due to the length of this section, refer to FHWA-1273) - Not applicable for Vermont-based construction firms.



8. REASONABLE ACCOMMODATION FOR APPLICANTS/EMPLOYEES WITH DISABILITIES

The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

Keys to achieving compliance:

Required Actions

- Ensure the company is familiar with and complies with the Americans with Disabilities Act (ADA).

Suggested Actions

- Develop written Reasonable Accommodation procedures that consider all job classifications and support EEO/AA obligations.
- Inform all employees of ADA and Reasonable Accommodation policies and procedures. Provide internal training, as needed.
- Secure ADA training for the EEO Officer and remain current on changes to the ADA.
- If necessary, contact the VTrans Office of Civil Rights for further ADA guidance, technical assistance, or training.

Documentation Examples

- Certificates and other records confirming ADA training for the EEO Officer and internal staff.
- Written policies and procedures for requesting Reasonable Accommodation.
- Documentation for reasonable accommodation requests, including determinations, and actions.
- Meeting minutes and attendance reports verifying discussion of any reasonable accommodation requests.

Resources

- Americans with Disabilities Act of 1990, as amended: <https://www.ada.gov/pubs/ada.htm>
- EEOC resources on disability discrimination in the workplace: <https://www.eeoc.gov/laws/types/disability.cfm>
- EEOC resource on Procedures for Providing Reasonable Accommodation for Individuals with Disabilities: <https://www.eeoc.gov/laws/guidance/small-employers-and-reasonable-accommodation>
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9. SELECTION OF SUBCONTRACTORS, PROCUREMENT OF MATERIALS AND LEASING OF EQUIPMENT UNIONS – (Refer to FHWA-1273)

<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>,



10. ASSURANCE REQUIRED BY 49 CFR 26.13(B)

- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
- b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

Keys to achieving compliance:

Actions

- The Vermont Agency of Transportation (VTrans) has established a Disadvantaged Business Enterprise (DBE) participation rate of 7.2%, for the Agency's overall annual goal for FY 2019 – FY 2021, on FHWA-funded projects. It is the policy of the United States Department of Transportation (USDOT) that Disadvantaged Business Enterprises (DBE) as defined by 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The state and its contractors agree to ensure the contract requirements as stated in CR-110.
- View the VTrans online DBE Directory for a complete list of certified DBE firms.
<https://vtrans.vermont.gov/civil-rights/doing-business/dbe-center/directory>.

Resources

- VTrans DBE Program:
<https://vtrans.vermont.gov/sites/aot/files/civilrights/documents/dbe/VTransDBEProgram.pdf>
- 49 CFR Part 26:
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

11. RECORDS AND REPORTS

The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

- a. The records kept by the contractor shall document the following:
 1. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.



Keys to achieving compliance:

Required Actions

- Retain copies of all compliance records for three years following the date of the final payment for each project.

Suggested Actions

- Note the race, gender, and job category for each of your employees on all certified payrolls when submitting them to the VTrans Office of Civil Rights & Labor Compliance. If using WH347 payroll form, write it in prior to submitting.
- Create and maintain printable spreadsheets or databases, and record all personnel actions taken while on federal-aid projects; include columns for job category, race, and gender. Personnel actions include, at a minimum; hiring, upgrading, promoting, transfer, demotion, layoff, and termination.
- Make sure documents have dates on them verifying project records have been kept for three years.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

Keys to achieving compliance:

Required Actions

- Provide complete and accurate data for the last full week pay period ending in July for work performed on VTrans federally funded highway construction projects.
- Complete and submit the annual 1391 report using the VTrans online reporting system. <http://apps.vtrans.vermont.gov/promptpay>

Resources

- VTrans Contractor Compliance, Annual EEO Report (FHWA 1391) <https://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/compliance>
- FHWA-1273 <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>



GLOSSARY OF ABBREVIATIONS

AA	Affirmative Action
AAP	Affirmative Action Plan
ADA	Americans with Disabilities Act of 1990
CFR	Code of Federal Regulations
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DOT	Department of Transportation
EEO	Equal Employment Opportunity
EEOC	U.S. Equal Employment Opportunity Commission
EO	Equal Opportunity
EOE	Equal Opportunity Employer
FHWA	Federal Highway Administration (U.S. Department of Transportation)
OFCCP	Office of Federal Contract Compliance Programs (U.S. Department of Labor)
PPE	Personal Protective Equipment
STA	State Transportation Agency
USDOL	United States Department of Labor
USDOT	United States Department of Transportation
VTrans	Vermont Agency of Transportation

GLOSSARY OF TERMS

Affirmative Action – efforts exerted toward achieving equal opportunity positive, aggressive and continuous results-oriented measures to correct past and present discriminatory practices and the effects on the conditions and privileges of employment and contracting.

Civilian Labor Force (CLF) - the aggregate of employed persons classified in accordance with the criteria established by the Bureau of Census and the US Department of Commerce.

Compliance - a satisfactory condition that exists when a contractor (e.g., prime/sub, material supplier or vendor) has effectively implemented the entire contract EO requirements or can demonstrate that every good faith effort toward achieving them has been made.

Contractor - any person, corporation, partnership, or unincorporated association that holds an FHWA direct or federally assisted construction and/or consultant contract or subcontract regardless of tier, inclusive of material suppliers and vendors.



Disability: A physical or mental disorder, illness or condition (an impairment) that substantially limits one or more major life activities, a record (past history) of a disability, or being regarded as having a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor.

Discrimination - an act or failure to act, whether intentional or unintentional, through which a person in the United States, solely because of race, color, national origin, sex, age, religion, or disability, has been subjected to unequal treatment under any program or activity of a recipient, sub-recipient or contractor receiving financial assistance from FHWA under Title 23 U.S.C.

Equal Employment Opportunity Officer (EEO Officer) – A designated employee who has the authority to make EEO-related decisions, evaluate/propose changes to official company policies, and speak on behalf of the company in EO compliance matters and reviews.

Equal Opportunity (EO) - the absence of partiality or distinction in employment treatment and contractor selection, so that the rights of all persons to compete and perform work, and be employed, trained and advanced on the basis of merit, ability and capability is maintained.

Equal Opportunity Employer (EOE) - an employer who agrees not to discriminate against any employee or job applicant because of race, color, religion, national origin, sex, physical or mental disability, or age.

FHWA Form 1273 - the standard Federal form containing required contract provisions and proposal notices physically required to be incorporated in each Federal-aid highway construction contract and subcontracts at any tier. The FHWA-1273 sets forth the components of an acceptable equal employment and contracting opportunity program meeting Federal legislative and regulatory requirements and can serve as a contractor's affirmative action plan (AAP).

Good Faith Effort - affirmative action measures implemented to meet the established intent and objectives of the equal opportunity provisions of the contract.

Harassment - unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Minority - an individual who appears to belong or is regarded in the community as belonging to generally recognized racial/ethnic minority groups in the U.S., identified as African Americans, Hispanics, American Indians, Asian-Pacific Americans and Subcontinent Asian and Pacific Americans.

Noncompliance - the condition that exists when a contractor has failed to meet required contract specifications and has demonstrated an apparent lack of good faith efforts in implementing all of the equal opportunity requirements.

Reasonable (or Disability) Accommodation - A change to the way things are normally done at work to help an applicant or employee with a disability apply for a job, perform job duties or enjoy job benefits. For example, an employer may provide a sign language interpreter for a deaf applicant,



permit an employee with diabetes to take regular breaks to eat and monitor blood sugar and insulin levels, or allow an employee with cancer to rearrange her schedule around radiation or chemotherapy treatments. You are not required to provide a disability accommodation if it would result in significant difficulty or expense, based on your resources and the operation of your business. In addition, you are not required to provide a disability accommodation that requires you to change the fundamental duties of a job, lower production or performance standards or tolerate misconduct.

Representation - employment rates of minorities and women accumulating work hours in a contractor's workforce is compared to their availability in the relevant Civilian Labor Force.

Sexual Harassment - Unwelcome conduct or comments based on sex (including pregnancy, sexual orientation, or gender identity) that are so frequent or severe that they objectively create a hostile or offensive work environment or result in a negative employment action (such as being fired or demoted). Sexual harassment includes unwelcome sexual advances, unwelcome requests for sexual favors, offensive comments about men or women (including comments that are not sexual in nature) or other offensive conduct based on sex.

Terms and Conditions of Employment - all aspects of the employment relationship between an employee and his or her employer including, but not limited to, recruitment, hiring, tool and equipment assignments, optional or forced over time, compensation, fringe benefits, leave policies, job placement, physical environment, work related rules, work assignments, training and education, opportunities to serve on committees and decision-making bodies, opportunities for promotion, and maintenance of a nondiscriminatory working environment.

Upskill - training and developing existing employees to promote better performance in their current positions and provide opportunities for career advancement.

USDOT - means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Aviation Administration (FAA).

Utilization - For contract compliance purposes, having minorities and/or women accumulating work hours in a particular occupation, craft, and job classification or receiving contracts than would be reasonably expected based on their availability.

Please see the EEOC Glossary for Small Businesses for more EEO related definitions:

<https://www.eeoc.gov/employers/smallbusiness/glossary.cfm>

