

# **EQUAL EMPLOYMENT OPPORTUNITY**

## **EEO ASSURANCES, PART I**

### **EEO CONTRACT COMPLIANCE PROGRAM**

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## SECTION I CONTRACT COMPLIANCE - CONSTRUCTION

The Idaho Transportation Department (ITD) will monitor the operations of all construction companies under contract with the Department on Federal Aid (FA) projects to ensure that all aspects of their employment practices do not discriminate on the basis of race, color, religion, sex, national origin, disability or age. The Department will also take appropriate action when contractors are found to be out of compliance with required contract provisions.

### I. Organization and Structure (see **Exhibit A**)

#### A. Administrator, Division of Administration

The Administrator, Division of Administration (ADA) has the responsibility of coordinating and implementing the Contract Compliance Program and ensuring that ITD and construction firms comply with all Civil Rights Special Provisions.

#### B. EEO Manager

The EEO Manager (EEOM), reports to the ADA and is responsible for coordinating the activities of the Contract Compliance Officer (CCO) and the Resident/Regional Engineers in monitoring contractor operations and practices related to Equal Employment Opportunity (EEO) provisions.

#### C. Contract Compliance Officer

The CCO is responsible for executing the enforcement/compliance activities associated with EEO on construction contracts. In conjunction with District, headquarters and FHWA Division personnel, the CCO conducts Compliance Reviews, reviews EEO reports, monitors Disadvantaged Business Enterprise activities, prepares ITD reports to FHWA and administers the internal DBE Supportive Service Program. The person in this position is working on External EEO-related activities 100% of the time. The CCO attends courses on EEO programs and requirements (including FHWA-sponsored seminars).

#### D. District Personnel

Each District Engineer has appointed an EEO/Safety Training (EEO/ST) Coordinator or designated District Records Inspector (DRI) through whom information and instruction from the CCO and the EEOM are channeled. The District EEO/ST Coordinators devote approximately one-third of their time to EEO-related activities. They participate in on-site inspections to assist the Resident/Regional Engineer in determining contractor compliance under all relevant rules and regulations. They initiate and process documents on Contract Compliance Reviews and attend the on-site review meetings. They inform the EEO Office of any complaints and request investigations. They attend state workshops and use the contract documents, this

plan, FHWA regulations and related forms to coordinate and execute their responsibilities under the Contract Compliance Program.

E. Project Personnel

Resident/Regional Engineers are responsible for execution and compliance with all terms and conditions stipulated in construction contracts. Resident/Regional Engineers conduct periodic on-site inspections as outlined in Section I, Subsection II, B, 3, b of this plan. They are required to be alert to any changes in the contractor's operation, which affect the numbers of employees, or employment practices of the contractor, to confirm or verify performance by DBEs of Commercially Useful Functions, and to ensure that operational changes do not result in discrimination or noncompliance with contract provisions.

The Resident/Regional Engineers also report any discrimination complaints in accordance with Section I, Subsection IV of this plan to the District EEO/ST Coordinators or designated DRIs who in turn report the complaints to the EEO Office.

II. Compliance Procedures

A. The authority and basis for compliance procedures are in:

- Construction Contract Equal Opportunity Compliance Procedures, 23 CFR 230, Subpart D
- EEO Special Provisions (23 CFR 230, Subpart A)
- Training Special Provisions (23 CFR 230, Subpart A, Appx B)
- 49 CFR Part 26, Disadvantaged Business Enterprise
- Federal-Aid Policy Guide (FAPG)

B. Implementation

1. The Department complies with the cited regulations by taking the following actions:
  - Notice that the successful bidder is required to comply with special EEO Provisions is included in all bid advertisements that exceed \$10,000.00. (OFCCP 41 CFR 60-4.2)
  - District EEO/ST Coordinators or designated DRIs attend construction conferences to discuss all aspects of Civil Rights Special Provisions.

- Notice that the successful bidder will be required to comply with special Training Provisions is included on bid advertisements on certain projects identified by District personnel in coordination with the CCO.
- District EEO/ST Coordinators, designated DRIs or the Resident/Regional Engineers review the requirements of Civil Rights Special Provisions at preconstruction meetings.

The procedures for effecting compliance with Civil Rights Special Provisions are outlined in Section I, Subsection II,B,3 of this plan

2. Preconstruction Conference

- a. The Resident/Regional Engineer, District EEO/ ST Coordinator or designated DRI presents the contractor with a "package" containing:
  - (1) Federally required job site posters
  - (2) FHWA-1391 in adequate quantities to submit annually for the duration of the project

3. Resident Engineer Guidelines

Instruction to Resident/Regional Engineers on implementing Civil Rights contract provisions is contained in Section 113 of the Contract Administration Manual.

a. EEO Provisions

EEO provisions, as well as DBE and Training (when appropriate), are emphasized by either the Resident/Regional Engineer, EEO/ST Coordinator or designated DRI to elicit confirmation from the contractor that the following requirements are understood (an outline of the following information is contained in the Contract Administration Manual, Chapter 108.03):

- (1) Discrimination based on race, sex, color, national origin, age, disability, or religion is prohibited.
- (2) The contractor must develop and post an equal employment policy statement, which expresses the firm's commitment to affirmative action and equal employment opportunity. All subcontractors must also post their policies.
- (3) In a letter to the Resident/Regional Engineer, the contractor designates an Equal Employment Officer for the project. The

selected individual must have the authority, position and experience to carry out an effective EEO program.

- (4) The contractor's supervisors and employees must be advised (preferably in meetings) of the company's EEO policy before starting the project. Written instructions or record of the meeting will be given to the Resident/Regional Engineer for inclusion in the project file. Subsequent EEO meetings are held every 6 months thereafter during the period of construction.
- (5) The goals for minority and female employment are specified in the contract and have been developed by the Department of Labor. The Department of Labor is responsible in enforcing compliance of these goals. See page 6 of the Civil Rights Special Provisions (see **Exhibit X**).
- (6) The contractor must maintain employment records in a format, which identifies employees by race, sex, craft and work status and hours worked in each craft and apprentice/trainee level, if appropriate. These records may be requested in summary form by ITD.
- (7) All subcontracts over \$10,000.00 must include the same contract EEO provisions as contained in the contract with the prime contractor. In other words, all subcontractors (over \$10,000.00) have the same employment goals and affirmative action goals as the prime contractor and are also subject to Compliance Reviews and penalties if found not to be in compliance.
- (8) Failure to comply with Civil Rights Special Provisions can result in:
  - Withheld progress payments.
  - Suspending the contract until found in compliance.
  - Canceling or terminating the contract.
  - Assessing against the contractor's final payment on this contract or any progress payments on current or future Idaho Federal-Aid projects an administrative remedy by reducing the final payment or future progress payment in an amount equal to 10% of this contract or \$7,700 whichever is less.

Specific procedures for instituting the above sanctions are outlined in Section I, Subsection III of this plan.

- (9) The contractor submits employment data reports (FHWA-1391) each July on all work performed under the contract by the contractor and/or any covered subcontractor.

b. On-site Inspections (Form ITD-2674 attached as **Exhibit B**)

After each project is under way and a majority of the anticipated work force has been employed the Resident/Regional Engineer conducts on-site inspections and records the findings on Form ITD-2674 On-site Inspections. If the Resident/Regional Engineer finds minor items (e.g., EEO policy not posted), the contractor will be requested to take corrective action immediately. If the contractor or subcontractor refuses or if more significant issues that might reflect potential discrimination are found, the Resident/ Regional Engineer should request a Compliance Review by the CCO. Copies of all on-site inspections will be forwarded to the CCO.

- (1) On-site inspections for EEO requirements will be conducted on:
  - All prime contractors.
  - All subcontractors.
- (2) The Resident/Regional Engineer will complete the on-site review form (Form ITD-2674) and distribute as indicated on the form. EEO on-site inspections determine whether:
  - An EEO poster, as prescribed in 113.00 of the Contract Administration Manual, is in place on the project and posted in an area readily accessible to present employees and applicants for employment.
  - The EEO policy of the prime contractor(s) and of all approved, covered subcontractors are posted adjacent to the EEO poster. The text of the EEO policy will be as required in the Civil Rights Special Provisions, or one that includes equivalent wording in addition to describing other general or specific procedures to implement equal opportunity.
  - All employee facilities are desegregated.
  - Minorities/females are employed and integrated into the various crafts of the project/area work force.

- The contractor's and/or subcontractor's supervisors have been advised of the company's EEO commitments. Also, determine whether employees have been advised in meetings or by personal notice that EEO requirements will be honored.
- Minority subcontractors or subcontractors with meaningful minority/female representation among their employees are being utilized on the project.
- The contractor has personnel on the project in an apprenticeship or on-the-job training program. If so, are minority/female employees in the training program? (23 CFR 230.409(g)(3)iii, (v) and (xi).
- The contractor advertised for employees. If advertisements are used, do they include the notation, "An Equal Opportunity Employer," and are they inserted in newspapers or other publications having circulation among minority/female groups?
- There have been any complaints concerning discrimination lodged with the contractor and/or the state.
- The contractor, or an authorized representative, periodically conducts inspections and/or reviews to ensure that discriminatory working conditions and/or employment practices do not exist on the project site.
- The contractor's EEO Officer visits the project site and is known to state project personnel.
- The contractor has furnished the Resident/Regional Engineer copies of records of meetings with company supervisory personnel concerning EEO practices.

(3) Training Special Provisions

- (a) The primary purpose of the Training Special Provisions (TSP), implemented within the On-the-Job Training (OJT) Program, is to train and upgrade minorities and women toward journey level status in crafts where they are under represented. If applicable the contract will specify the number of training slots (1 slot = 1,000 hours) to be filled. Minorities and women in training positions can be counted toward

the Office of Federal Contract Compliance Program's (OFCCP) EEO goals.

CONTRACTORS ARE ENCOURAGED TO BRING TRAINEES INTO THE WORK FORCE EARLY IN THE CONTRACT TO PROVIDE ADEQUATE OPPORTUNITY FOR TRAINEES/ APPRENTICES TO COMPLETE THEIR PROGRAMS AND TO REDUCE THE RISK OF BEING FOUND IN NONCOMPLIANCE WITH THE TRAINING SPECIAL PROVISIONS.

- (b) The contractor may use either DOL or ITD/FHWA approved programs to be eligible for the \$.80/hour reimbursement under the TSP/OJT requirements. Other programs may be submitted for approval by DOL or ITD. Trainees or apprentices must be approved by the Resident/Regional Engineer before the contractor is eligible for reimbursement.
- (c) Prime contractors may request additional training hours or may relinquish training slots to subcontractors. (Prime contractor's responsibility to comply with the training special provisions is not relinquished.) However, if the positions are relinquished to a subcontractor, minority/women trainees in those positions cannot be counted toward the EEO goals of the prime contractor - only toward the requirements of the subcontractor.
- (d) Contractors should fill training positions as follows:
  - Minorities and women receive first priority.
  - Disadvantaged persons, as defined by the DOL in **Exhibit C**.
  - Other individuals not represented above are allowed into the TSP/OJT Program only after the contractor has made and documented a good-faith effort to hire minorities, women and the disadvantaged.
- (e) The contractor must identify trainees/apprentices on payrolls by race, sex, craft, status within the program and other relevant information, which may be requested.

- (f) The contractor must furnish trainees who complete programs with some evidence that the trainee has successfully completed the training, e.g., letter, certificate, card, etc.
- (g) Contractors must make an effort to select training programs that address crafts that are underutilized by minorities and women. There will be no Training Special Provision requirement included in the contract if there is no under representation of minorities or women found in any of the contractors' work crafts, or in construction trades based on ITD's evaluation/analysis by geographical areas of the state.

4. DBE Contract Provisions (see DBE Plan for complete information)

- a. The contractor is required to subcontract with the DBEs identified on Commitment Form ITD-2396 (**Exhibit D**) prior to award unless the DBE is unable or unwilling to perform. When a DBE is unable or unwilling to perform, the contract requirement IS NOT REDUCED. The prime contractor must replace the loss with another DBE subcontractor or perform and document good-faith efforts to do so. The substitute DBE need not perform the same work subcontracted to the removed DBE.
- b. The DBE must perform a "Commercially Useful Function (CUF)." ITD Inspectors will monitor and document on Form ITD-1701 whether the DBE: (A copy of all ITD-1701 must be forwarded to the CCO)
  - Is responsible for a distinct element of the work.
  - Is actually performing, managing and supervising the work involved.
  - Is functioning as an INDEPENDENT business.
- c. Sanctions will be imposed for breach of any provision of the DBE Special Provisions. If DBE irregularities are detected, refer to sanction process and procedures outlined in ITD's DBE Program Plan.

5. Compliance Review

a. Purpose

The purpose of a Compliance Review is to determine if the prime contractor(s) and subcontractor(s) maintain nondiscriminatory hiring and employment practices and are taking affirmative action as outlined in the Civil Rights Special Provisions and the Training Special Provisions, and to ensure that applicants are employed and placed, trained, upgraded, promoted and otherwise treated equally during employment without regard to race,

color, religion, sex, national origin, disability or age. The review provides a comprehensive evaluation of all aspects of employment practices and conditions. The review is conducted by the CCO with the assistance of the District EEO/ST Coordinator or designated DRI. The Resident/Regional Engineer and other representatives of the EEO Office, District or FHWA, attend as appropriate.

b. Selection of Contractor

The CCO, in coordination with the EEOM, the Assistant Construction Administration Supervisor, Roadway Design Engineer and appropriate District personnel, identifies projects and contractors early in the calendar year who will be reviewed.

The selection of contractors for Compliance Reviews is based upon one or more of the following criteria:

- Contractors or projects, which offer the greatest potential for employment and promotion of minorities and women, particularly to higher-skilled crafts or occupations.
- Contractors or projects in areas, which have significant minority and female labor forces within a reasonable recruitment area.
- Contractors or projects that have a significant percent of contracts completed (prior to or during peak employment periods and after a meaningful work force becomes active on the projects).
- Contractors or projects that have the type of projects (grading, structures, paving, etc.) as it relates to potential employment on the projects.
- Special request from FHWA.
- Contractors or projects that have contracts that include the training special provisions.
- Contractors who through a review of statistical data on past and/or current minority/female employment indicates a need.
- Contractors or projects that have had an employee complaint.

c. Scheduling Reviews

In coordination with Resident/Regional Engineer, the EEO/ST Coordinators or designated DRIs schedule review dates of the selected contractors, giving primary consideration of the contractor's work schedule to ensure that

Compliance Reviews are conducted shortly before or during peak employment. EEO/ST Coordinators or designated DRIs coordinate schedule dates with the CCO in the EEO Office.

d. Conducting the Review

While the CCO is ultimately responsible for conducting the review, the District EEO/ST Coordinators or designated DRIs are responsible for initiating the review process, preliminary analysis of the documentation submitted and preparation and distribution of all related letters and forms. The CCO will conduct the On-site Conference. Others attending the On-site Conference will be the EEO/ST Coordinator or designated DRIs, representatives of FHWA, appropriate District staff and the Contractors' representatives. The EEO/ST Coordinators or designated DRIs may be requested to conduct the On-site Conference by the CCO or the EEOM if needed. FHWA representatives attending the On-site Conference may ask questions regarding any issues of the compliance review.

e. Phase I – Pre-Compliance Review Responsibilities

(1) The District EEO/ST Coordinator or designated DRI obtains or develops the following information for use in the review:

- (a) Updated census data projecting the composition of the work force in the county(s) where the area/project to be reviewed is located and in contiguous counties. The information is obtained from Affirmative Action Statistics (latest edition) published by the Research and Analysis Bureau of the Idaho Department of Employment.
- (b) Referral sources within a reasonable recruiting area, which are able to refer minorities and females for the project.

(2) Notice to Contractor (see sample notice -**Exhibit H**)

- (a) The District EEO/ST Coordinators or designated DRIs notify the Contractor giving 3 weeks' notice that a Compliance Review will be conducted. The notice advises that the review consists of two parts: (1) an evaluation of the compliance documentation (listed below under Phase I) and (2) a tour of the project, interviews with employees and the on-site conference - all of which is considered as the "on-site" portion of the review.
- (b) In the notice to the contractor, the time of the on-site-conference, the location and any other details agreed upon in preliminary discussions with the contractor will be specified. (See attached sample letter. Exhibit H)

- (c) In the notice to the contractor, it will be requested that the documents (or copies) listed below in Phase I be forwarded to the EEO/ST Coordinator or designated DRI no later than 1 week before the scheduled date of the on-site conference, or Phase II, portion of the review. This should allow time to analyze the material before meeting with the contractor.
- (3) Documentation (Information received from the contractor will be reviewed by the EEO/ST Coordinator or designated DRI for required inclusion and then a copy sent to the CCO. Information will be listed by the CCO on Form ITD-86, Exhibit F when applicable)

The contractor submits the following information:

- (a) List of all Federal-Aid projects currently open in the Standard Metropolitan Statistical Areas and Economic Areas (SMSA/EA) of the review including the value of each.
- (b) Names and titles of personnel that will be representing the contractor's firm at the on-site conference.
- Documentation showing authority of company positions.
  - Name and title of the contractor's Policy Officer.
  - Name and title of the contractor's Project Officer.
  - Name and title of the contractor's EEO Officer (documented by a memorandum).
  - Documentation showing current EEO Officer's job duties and responsibilities.
  - Documentation showing EEO Officer's background, training, and history with company.
- (c) A copy of the company's EEO policy. (Evaluation of content not required or expected.)
- A copy of the Affirmative Action Plan. (Evaluation of content not required or expected.)
  - Documentation that EEO meetings were held - minutes of meetings, diaries, etc.

- (d) A list of the Contractor's suppliers, vendors and subcontractors, for each project being reviewed, that are providing services or supplies valued over \$10,000.00.
- Submit copies of those pages of subcontracts and purchase orders (over \$10,000.00) containing the EEO clauses or other verification that stipulated clauses are included.
  - List of minority or female owned companies contacted as possible subcontractors, vendors, materials suppliers.
- (e) List of all members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees or make recommendation for such actions.
- Documentation of indoctrination of this staff regarding company EEO obligations.
- (f) List of company personnel responsible for recruitment.
- Documentation showing training of recruitment personnel on Company EEO hiring procedures.
- (g) A list of recruiting sources utilized. (The EEO Coordinator or designated DRI should have compiled a list of sources available for comparison.)
- Submit copies of letters, diaries, etc., documenting requests for minorities/women in specific crafts including all follow-up documentation.
  - Submit a copy of employment application.
  - List of any advertisements with verification of publication.
  - Documentation of requests to current employees to refer minorities and or females for work.
- (h) A list showing all hiring opportunities listed by job categories showing total employees, total minorities, and totals by ethnicity (male and female).
- (i) List of all promotions made during the review period by race, sex, previous positions, position promoted into, and corresponding wage rates.

- (j) List of all terminations and layoffs during the review period showing total employees, total minorities, and totals by ethnicity (male and female).
  - (k) If a Union contractor, submit a copy of agreement(s).
  - (l) Construction employment data for the area/project being reviewed for the current construction season up to the review date. The contractor may use a FHWA-1391 to submit this information. (Area would be based on the SMSA or EA as stated in the special provisions of the contract.)
    - Information should be listed by job categories and show total employees (male and female).
    - Information in each job category showing total minorities (male and female) and showing totals (male and female) by ethnicity
  - (m) Copies of annotated payrolls for the review period covered by craft, race, and sex.
  - (n) Amount of training hours allocated to the project(s) if any.
  - (o) Analysis of training data on each trainee/apprentice showing the project, craft, sex, ethnicity and hours worked to date.
  - (p) Documentation of steps taken by contractor promoting training opportunity internally and externally.
  - (q) Status of any discrimination complaint that has been filed against the contractor.
- (4) Evaluation of Documents

The CCO is responsible for conducting the review however when requested documentation has been received, the EEO/ST Coordinator or designated DRI will:

- (a) Review policies, application forms, AA Plan, EEO pages from subcontracts and purchase orders, list of recruiting sources.
- (b) Verify that the contact of minority and female owned companies solicited for subcontracting opportunities actually took place.

- (c) Verify that the DBE firms committed to on the ITD-2396 DBE Commitment Form are actually performing the work items they were committed to do.
- (d) Review Union agreement, if required.
- (e) Review documents provided by the contractor. Compare information and documents with payrolls and other employment data previously submitted to the Resident/Regional Engineer's office to verify accuracy and nondiscrimination in wages.
- (f) Verify that recruiting phone calls, faxes or letters to Unions, Job Service, TEROs, Votech Schools and other sources were actually made by calling the source named in good faith effort documentation. If sources have no knowledge of contractor's efforts, note this to be discussed at the on-site conference.

Some points to consider:

- How and when does the contractor disseminate EEO policy: posting on boards, employee handbooks, meetings? At time of employment or day before EEO review?
- Does the designated EEO Officer: Understand EEO responsibilities? Have the authority to accomplish the objectives? Have other duties? Was his/her name submitted at the preconference meeting? Is he/she known to employees as the EEO Officer and where he/she can be contacted?
- Which recruiting sources were used? Did the contractor advertise in publications? Did advertisements include EEO clause? Does the application form solicit voluntary response to ethnicity/sex identification? (The employer is not prohibited from maintaining this information on completed applications if the information is kept solely for affirmative action or statistical purposes and is not subject to misuse.)
- Does the contractor encourage current employees to refer minority/female applicants?
- How often does the contractor's representative inspect the project for compliance with EEO requirements? When was the last time?

- Which training programs are being used? Do trainees have copies of their programs? Is the journeyman/trainee ratio being maintained? How does the contractor advertise and select trainees? Are trainees in programs where there is under representation of minorities/ women? How many trainees/ apprentices have graduated from programs conducted by this contractor during the last 3 years? Were these trainees retained in the contractor's workforce?
- What was the nature of complaint(s), if any? How many were there? How were they resolved?
- Are EEO clauses contained in Union agreements? Are agreements exclusive? Has the contractor resorted to outside referrals because the Union would or could not provide minority/women referrals?
- Have all required forms and documents been submitted to the Resident/Regional Engineer
  - FHWA-1391, EEO Report (due in July)
  - Weekly Safety Meeting Reports
  - Certified payrolls
  - Training information
- Other information obtained through the Resident/Regional Office.
  - Pre-construction meeting minutes
  - ITD-2396, DBE Commitment
  - ITD-1701, Commercially Useful Function
  - ITD-2674, Resident/Regional Engineer On-Site Inspection Report

(g) The EEO/ST Coordinator or designated DRI will make copies of the requested documentation and submit to the CCO. Allow time before the on-site portion of the review for the CCO to evaluate information and become familiar with the preliminary findings.

- (h) The EEO/ST Coordinator or designated DRI will make a list of any questions, inconsistencies or discrepancies and submit/review them with the CCO to determine if they need to be discussed at the on-site conference.

f. Phase II - On-Site Review

- (1) While the CCO is responsible for conducting the review the EEO/ST Coordinator or designated DRI and/or the CCO will tour the project to:

- (a) Verify that posters are conspicuously displayed and legible and that facilities are not segregated. (This opportunity is used to observe general working conditions and workers - who is operating equipment? How are they supervised? Are minorities and women visible? Does the EEO information provided by the contractor agree with what is seen on the project? If not, can it be explained?)

- (b) One minority, one non-minority, one woman and one supervisor will be interviewed to determine:

- Name and Social Security number.
- For whom they work.
- In what craft they were hired.
- How they got their job on this project.
- Whether they attended a meeting at which EEO obligations were discussed.
- If a Union contractor, request to see Union ID.

(A suggested format is attached as **Exhibit V.**)

In the letter sent by the EEO/ST Coordinator or designated DRI scheduling the review (see example, **Exhibit H**), the contractor should be asked to have the four people available for a very brief interview, at the contractor's convenience. The interviews should be completed with the least amount of disruption possible. If the contractor's work, or work schedule, is such that it would cause a great deal of inconvenience to conduct interviews all at once, or on the same day as the on-site conference, make other arrangements. However, do not compromise the integrity of the interviews. Take appropriate measures to ensure that the interviewed

employees' responses accurately reflect THEIR perceptions and experiences, not anyone else's.

(c) On-Site Conference

The contractor shall provide a place for the on-site conference. Preferably, this meeting should take place at the Contractor's office or on the project site. This is to enable the Contractor access to any additional information that may be requested during the on-site conference.

The EEO/ST Coordinator or designated DRI will obtain a list of those people in attendance. The Project Engineer should be present, along with other representatives of ITD, FHWA representatives (on selected projects) and the representatives of the contractor.

The CCO will:

- 1) Explain the purpose of the review (to determine compliance with EEO contract provisions) and the authority under which it is conducted (23 CFR 230).
- 2) Go through the ITD-86 to obtain any information from the Contractor that is needed to complete the ITD-86 and to discuss information already submitted by the Contractor and listed on the ITD-86 by the CCO.
- 3) Ask questions developed in the analysis of the documentation that was submitted before the on-site conference.
- 4) Clarify any inconsistencies between documentation and payrolls or other information previously submitted to the Resident/Regional Engineer.
- 5) Ask any unanswered questions that may have arisen as a result of the interviews with employees or due to observations made during the tour of the project.

An on-site conference will be held to discuss the preliminary findings from the material that was submitted before the on-site portion of the review and any preliminary findings resulting from the on-site portion of the review.

If a Voluntary Corrective Action Plan (VCAP) can be used (according to the criteria listed in item 32 of the instructions to ITD-86 Exhibit F) to remedy minor deficiencies, that plan

may be completed at the on-site conference (or within 5 days). The contractor should understand that the VCAP addresses only those minor deficiencies, which have been identified during the preliminary evaluation of documents, on-site observations and interviews, and the on-site conference. These deficiencies will be issues that can be corrected by the Contractor within 30 days. In all other cases, a Show Cause Notice (SCN) will be issued and a Corrective Action Plan (CAP) required (see 3. .a. and b. below). Execution of a VCAP does not preclude a later finding of noncompliance when all the information has been thoroughly examined.

Inform the contractor that, within 15 days, ITD will send a completed copy of the ITD-86 showing the determination that was made and a letter specifying what, if anything is expected of the contractor.

(2) Evaluation of All Information

The CCO will evaluate all the information obtained against the criteria established in this plan and the ITD-86 to determine whether the contractor is:

- In compliance - no further action is required;
- In compliance - VCAP required; or
- Not in compliance - SCN required.

The CCO will justify the determination in the summary of the ITD-86, using additional sheets as necessary, according to the instructions. Any deficiencies that have been identified will be listed. Good-faith efforts made will be described on the ITD-86 and have supporting documentation.

(3) Processing Documents

All documentation such as Form ITD-86, the VCAP the proposed SCN, etc., will be compiled by the CCO. The CCO will obtain the required ITD signatures and send a copy to the District EEO/ST Coordinator or designated DRI for the district files. Copies will then be sent to FHWA informing them of ITD's determination.

If it is determined by ITD that the contractor is in compliance, with no further action needed, a memo will be sent by the CCO instructing the EEO/ST Coordinator or designated DRI to send a transmittal letter commending the contractor with a copy of the ITD-86 report.

If a VCAP is executed, a transmittal letter will be sent by the EEO/ST Coordinator or designated DRI referring to anticipated correction of the deficiencies by the date indicated on the VCAP.

If the contractor is found in noncompliance by ITD, the CCO will instruct the EEO/ST Coordinator or designated DRI to send a copy of the ITD-86 to the contractor with a SCN signed by the District Engineer. The SCN will specify what is expected of the contractor and will be sent via certified mail, return receipt requested. (see **Exhibit L**)

(a) Show Cause Notice (see **Exhibit L**)

A proposed SCN need not be reviewed by ITD Legal Counsel before being sent by certified mail to the contractor unless it differs significantly from **Exhibit L**. The 30-day period stated in the SCN begins on the day the contractor receives the notice.

During the 30-day period stated in the SCN, the EEO/ST Coordinator or designated DRI will be required to attempt conciliation with the contractor. These conciliation and negotiation efforts shall be directed toward correcting the contractor's deficiencies and initiating a Corrective Action Plan.

(b) Corrective Action Plan (see **Exhibits N and O**)

Although the CCO is responsible for conducting the review, it is the EEO/ST Coordinator or designated DRI that should be available to assist the contractor in developing a Corrective Action Plan (CAP), which addresses the deficiencies identified in the SCN. In the SCN a compliance conference is scheduled - usually 2 weeks from the issuance of the SCN - to discuss the plan the contractor has developed to correct the deficiencies. The plan must specify what action is going to be taken and when that action can reasonably be expected to be completed. If there is insufficient time remaining to correct the deficiencies on the project(s) found in noncompliance, it should be addressed in the CAP that the contractor is required to meet the conditions of the CAP until a follow-up review can take place on a future project(s). Each item in the plan should correct the deficiencies stated in the SCN. The contractor will also be required to submit monthly progress reports as part of the process to correct the deficiencies stated in the SCN. The EEO/ST Coordinator or designated DRI will send a copy of the CAP to the CCO for approval. When

necessary the CAP will be reviewed by ITD Legal Counsel. Once the CAP is approved by the CCO the EEO/ ST Coordinator or designated DRI will be notified that the plan is accepted and should be implemented.

**If the contractor does not correct deficiencies and fails to develop, sign and implement a CAP within the 30-day period stated in the SCN, progress payments will be withheld by the Resident/Regional Engineer commencing the day after the expiration of the 30-day period. (See Section I, Subsection III Contract Sanctions) No CAP is necessary if corrections can be made within the 30-day SCN period, otherwise a CAP with specific commitments and time frames for accomplishments is needed.**

If the contractor implements a CAP, it will be considered that the contractor is in compliance as long as the monthly reports and other documentation required by the CAP indicate that real progress is being made toward eliminating the deficiencies identified in the SCN or that a good-faith effort is being made. CAPs can be amended if the contractor has carried out each committed action and those actions are not producing the intended results.

(c) Rescission of Show Cause Notice (see **Exhibit R**)

When the CAP is accepted by ITD, the SCN is rescinded. The CAP remains in effect until a follow-up review can be conducted. Follow-up reviews will be conducted by the EEO/ST Coordinator or designated DRI.

(4) Follow-Up

(a) Corrective Action Plans

Although the CCO is responsible for conducting the original review, follow-up reviews are made by the EEO/ST Coordinator or designated DRI. The follow-up review is made at the earliest possible date after the contractor has had hiring opportunities (determined by monitoring the ITD-2876 forms). Follow-up reviews can be conducted on future project(s) when there is insufficient time remaining on the project(s) found in non-compliance and should be noted in the CAP. The EEO/ST Coordinator or designated DRI will submit a narrative report to the CCO on their findings.

If the contractor fails to comply with the terms of a CAP, a formal hearing will be held as outlined in Section I,

Subsection III. Contract Sanctions of this plan. At this hearing, the contractor will be given the opportunity to offer a rebuttal to the findings. The formal hearing panel will consist of designated EEO, District and Roadway Design personnel, and shall include ITD Legal Counsel.

After considering the evidence presented at the hearing, the panel will determine whether:

- (1) Payments will be withheld from the contractor.
- (2) The contract will be suspended until the contractor complies.
- (3) The contract will be terminated.
- (4) Assess against the contractor's final payment on this contract or any progress payments on current or future Idaho Federal-Aid projects an administrative remedy by reducing the final payment or future progress payment in an amount equal to 10% of this contract or \$7,700 whichever is less.

There are no provisions to reinstate a SCN. See Section I, Subsection III for appeal process.

(b) Voluntary Corrective Action Plan

A review is conducted by the EEO/ST Coordinator or designated DRI at the termination of the VCAP to determine whether commitments have been met. If they have been met, the EEO/ST Coordinator or designated DRI prepares a written report on actions taken and results of those actions. The EEO/ST Coordinator or designated DRI then advises the contractor in a letter that the requirements of the plan have been met and the review is completed. Copies of the report and letter are forwarded to the CCO.

If a contractor fails to comply with the terms of a VCAP, the EEO/ST Coordinator or designated DRI should request approval from the CCO to declare the contractor in noncompliance and issue a SCN.

Contractors operating under CAPs or VCAPs should be closely monitored by the EEO/ST Coordinator or designated DRI and the Resident/Regional Engineer to ensure that the commitments contained in them are actually honored and are effective.

## C. Distribution of Reports

### 1. Resident/Regional Engineer "On-Site" Inspection

- The Resident/Regional Engineer's District On-Site Inspection Reports are entered in the project file. Other copies are distributed by the Resident/Regional Engineer as indicated on the form. Central office files are available to FHWA personnel at any time.

### 2. Contract Compliance Report - ITD-86

Completed ITD-86 forms are distributed as follows:

- Copy with letter and/or VCAP or SCN if appropriate to the contractor.
- Copy with all documents required by the form (e.g., extended list of subcontractors, extended summary statements, copies of ITD-1701s [see **Exhibit S**], notices to Unions, recruiting publications, summaries of interviews, etc.) and SCN or VCAP, if required, to the CCO.
- Copy with all supporting documentation will be retained in the District file for the required 3 years.

### 3. Contractor's Annual EEO Report (Form FHWA-1391, **Exhibit T**)

- a. The Contract Civil Rights Special Provisions require submission of an Annual EEO Report by contractors and covered subcontractors on federal-aid contracts. (Includes consultants working as a subcontractor on projects) Two copies of each report are submitted to the Resident/Regional Engineer (see **Exhibit T**.) A separate report is required for each project the contractor has under contract in Idaho during the month of July, whether or not the contractor is active during July. Contractors with projects under contract but with no work under way are required to submit a form stating "no activity."
- b. The staffing figures to be reported should represent the project workforce on board in all or any part of the last payroll period preceding the end of July.
- c. The prime contractor provides employment data for his employees only on this report. Each subcontractor with a subcontract of \$10,000.00 or more submits the annual report with the employment data on those people he employs at the project site. A subcontractor may submit this report through the prime contractor or it may be submitted directly to the Resident/Regional Engineer.

- d. The Resident/Regional Engineer or the ITD Project Manager signs Form FHWA-1391 as the "Reviewer" after examining the reports to determine:
- The basic posture of each contractor and/ or subcontractor in regard to distribution of minority/female group personnel throughout the work classifications being utilized on the project.
  - If there are changes in number and/or distribution of minority/female group personnel among the various work classifications as the work force is expanded to meet the demands of increased construction activity.
- e. Distribution is as follows:
- One copy to the District project file.
  - One copy forwarded to the CCO.
- f. The CCO examines the annual submissions of Form FHWA-1391 to determine:
- (1) The basic posture of the contractor in regard to distribution of minority/female group personnel throughout the work classifications being utilized on the project.
  - (2) If there are significant changes in number and/or distribution of minority/ female group personnel among the various work classifications as the work force is expanded to meet the demands of increased construction activity.
  - (3) When, in the opinion of the CCO, a FHWA-1391 report shows a contractor or subcontractor in need of improvement in the number and/or distribution of minorities and/or females, that report will be flagged in the project file so that future reports may be given special examination by the Resident/Regional Engineer.
- g. The information obtained from the appraisal of the annual reports is used (if necessary) to:
- (1) Request additional reports at a future date when the work force has expanded to a level that would be more representative of the number and distribution of minority/female personnel within the contractor's work force.

- (2) Assist, when combined with other project information, in the decision to select a particular contractor for Compliance Review.
- (3) Determine the need for spot-checking the field office procedure used in reviewing the reports. If necessary, the CCO will counsel with Resident/Regional Engineers concerning the meaningful analysis of these reports and subsequent recommendations that might be made to a contractor regarding improvements in the company EEO posture.

4. Summary of Annual Employment Data (Form FHWA-1392, **Exhibit U**)

The following procedures are used for compilation, evaluation and submittal to the FHWA of the annual employment data report:

- a. The CCO will review each FHWA-1391 collected by the Resident/Regional Engineers from contractors and/or subcontractors required to submit the annual employment data report.
- c. The CCO evaluates the individual FHWA-1391s to determine:
  - The distribution of minorities and/or females throughout the job classifications being used
  - The number of minorities and/or females in the total construction work force
  - The completeness of information submitted.
- d. The FHWA-1391s submitted by each District are consolidated by the CCO on a master Form FHWA-1392 for transmission to the Federal Highway Administration. Copies of the FHWA-1392 are sent to the Administrator Division of Administration, Construction Administration Engineer, and the EEO Manager.

### III. Contract Sanctions

The Idaho Transportation Department has included in the Civil Rights Special Provisions of all federal aid contracts the stipulation that noncompliance findings will result in sanctions.

- A. If a contractor or subcontractor fails to show cause within 30 days of notification why sanctions should not be imposed for failure to comply with the EEO portions of the contract, the Resident/Regional Engineer, in coordination with the District Engineer, will withhold project progress payments until the contractor or subcontractor responds in an acceptable manner.

Unless the contractor can immediately produce relevant documentation supporting a good-faith effort or determination of compliance, the contractor's standard response is the development and implementation of a CAP. The plan must be designed to correct deficiencies at the earliest possible date. (If an acceptable CAP does not produce the desired results, after a follow-up review, then ITD and the contractor may amend the CAP.)

B. If a contractor or subcontractor fails to meet the conditions of a CAP, the Resident/Regional Engineer will advise the District Engineer, who will immediately request a formal hearing before a panel consisting of a selected member of ITD's Legal Counsel, representatives from Roadway Design, EEO, and the District. The contractor shall be extended an invitation to attend to offer rebuttal to the findings. The purpose of the hearing will be to examine all documentation and determine which of the following sanctions will be imposed - not whether they will be imposed. After consideration of the findings and any rebuttal, the panel shall impose one of the following sanctions. Generally, sanctions will be imposed in sequential order for each incident that EEO contract provision violations occur, and are brought before a hearing panel. However, ITD reserves the right to impose any sanction listed depending on the severity of the contractor's deficiency.

- (1) Withhold progress payments until it is determined that the contractor is found in compliance.
- (2) Suspend the contract, in whole or in part, until the contractor or subcontractor is found to be in compliance with no progress payment being made during this time and no time extension made.
- (3) Cancel or terminate the contract for cause in accordance with section 108.08 of the Contract Specifications.
- (4) Assess against the contractor's final payment on this contract or any progress payments on current or future Idaho Federal-Aid projects an administrative remedy by reducing the final payment or future progress payment in an amount equal to 10% of this contract or \$7,700 whichever is less.

The contractor or subcontractor will be advised of the determination of the panel within 30 days.

The decision of the panel is final unless the contractor appeals to the Chief Engineer, in writing, within 30 days of the panel's decision.

The Chief Engineer's decision will be final and conclusive unless subsequently changed by a court of competent jurisdiction or by binding arbitration as stated in the Contract Specifications, 105.17.

## IV. Complaints

### External Discrimination Complaint Procedures

- A. Purpose: These procedures are designed to provide guidelines for filing, processing and investigating complaints of discrimination and harassment filed by employees and applicants of contractors working on ITD contracts.
- B. Department commitment: The Idaho Transportation Department is committed to thoroughly and promptly investigating the merit of each complaint in a confidential manner employing a process that treats all parties involved with respect. Contractors who are found to have discriminated shall be deemed in noncompliance with the EEO contract requirements and shall be required to promptly take corrective action or be subject to contract sanctions.
- C. Individuals eligible to file complaints: Applicable parties include all employees and applicants of prime and subcontractors possessing ITD federal and/or state contracts. Any employee of a contractor working on an ITD contract who believes they have been sexually harassed or discriminated against in their employment on the basis of race, color, national origin, religion, age, disability or sex may file a complaint. A complaint is filed by submitting a written statement outlining the basis of the complaint to the ITD's CCO or to any of ITD's six District EEO/ST Coordinators. The complaint must be filed no later than 180 days of the alleged event(s). A copy of these procedures shall be provided upon request.
- D. Retaliatory actions prohibited: Retaliatory action against a person(s) who has filed a complaint, testified, or in any way participated in reporting alleged discriminatory practices is prohibited. The Contractor/Respondent shall be advised that such retaliation, if substantiated, shall constitute a violation of the EEO requirements and is subject to a finding of noncompliance and/or sanctions.
- E. Intake: When a discrimination complaint is filed with the Department, the District EEO/ST Coordinator or designated DRI notifies the CCO or the EEOM. The EEOM, in turn, notifies the Federal Highway Administration including a list of federal aid contracts the contractor holds in Idaho and the value and location of each. (Complaints filed by a contractor or a contractor employee against an ITD employee will be forwarded and investigated by FHWA.)

At a minimum, the following information is compiled by the District EEO/ST Coordinator or designated DRI and included in each report of discrimination:

1. Name, address and telephone number of the complainant.
2. Contractor involved and location where the complaint originated (project site, home office, etc.).
3. Basis of complaint (i.e., race, color, religion, sex, national origin, age, or disability).
4. Date(s) of the last occurrence of alleged discriminatory event(s).
5. Date complaint was received.

6. The complaint, signed by the complainant, and the issues involved.
- F. Investigation: The EEOM will investigate or assign an investigator trained in performing civil rights fact-finding investigations who will promptly investigate each alleged act of discrimination. The investigation will be coordinated by the EEO Office to assure that the necessary information is gathered and reported. The EEOM will keep the Chief Engineer and the District Engineer informed of the status of the complaint during the investigation.
1. The investigator, following an investigative plan, will gather all relevant information in a fair and impartial manner, including meeting with the complainant, respondent and witnesses to investigate the charges as part of the fact-finding review.
  2. The complainant may have a representative present to assist in presenting information. It is the complainant's responsibility to keep his/her representative informed at all times. The representative may not be the investigator or staff member of the EEO Office or other ITD staff involved in EEO matters.
- G. Findings Report: At the conclusion of the findings of fact, the investigator will complete a Findings Report. The investigation will be completed in as timely a manner as possible so that a recommendations report can be sent to FHWA within 60 days.
- H. Investigative Summary and Recommendations Report: The EEOM will review the Findings Report and make other requests for information as necessary. The EEOM will prepare an Investigative Summary and Recommendations Report showing findings and conclusions and present it to the Chief Engineer and the Administrator Division of Administration.
- I. Statement of Department's Decision: The Administrator Division of Administration will review the report on the investigation and make a final determination of the department's decision. The EEOM will prepare a Statement of the Department's Decision reflecting the department's final determination. The EEOM will inform the complainant and the respondent of the department's decision and their right to appeal.
- J. Discrimination Determination: Where discrimination is determined, a "30-Day SCN" shall be issued and the Contractor/Respondent is required to take appropriate corrective or disciplinary action to eliminate discrimination and/or correct inappropriate behavior, plus develop a CAP. If the Contractor/Respondent fails to take the required steps identified a formal hearing will be held as outlined in Section I, Subsection III. Contract Sanctions of this plan
- K. Appeal: If the complainant feels the agency decision is adverse to the complainant, the complainant can appeal to the Federal Highway Administration, the U.S. Department of Transportation or the U.S. Department of Justice. If the contractor feels the agency decision is adverse to the contractor, the standard contract sanctions appeal channel, as described in Section I, Subsection III of this plan, can be pursued by the contractor.

- L. Dissemination: The EEOM will send copies of the complaint, Investigative Summary and Recommendations Report, and Statement of Agency Decision to FHWA within 60 days of receipt of the complaint.

**EXTERNAL CIVIL RIGHTS COMPLAINTS CAN BE FILED NO LATER THAN 180 DAYS OF THE ALLEGED INCIDENT.**

Complainants may file complaints simultaneously with ITD, OFCCP, EEOC and the USDOT. If simultaneous complaints are filed, each agency conducts its own investigation.

V. External Training

A. Identification of Projects for Inclusion of Training Special Provisions (Exhibit Z)

1. The Roadway Design Engineer, in coordination with District personnel and the CCO, determines which construction contracts will contain the training special provision and the number of training positions that can be accommodated on each project.
2. Before and throughout each construction season, the Roadway Design Engineer, in coordination with District Design Personnel, makes an evaluation of the potential availability of work under the contracts, the duration of the work (to ensure adequate time for completion of training) and the potential long-term benefits to the trainees. Assignment of training "slots" to specific contracts is based on:
  - The availability of minorities, women and disadvantaged
  - The potential for effective training
  - Duration of the contract
  - Dollar amount of the contract
  - Total normal work force the average bidder is expected to use
  - Geographic location
  - Type of work
  - Need for additional journeymen in the area
  - Total training hours established and committed to FHWA
  - Ratio of journeymen to trainees during normal operations
3. If it is determined that the crafts on a project are not under-represented by minorities and women then training requirements will be removed from the contract.

B. Construction Contract Training Procedures

1. Contract provisions require that contractors submit name, Social Security number, craft, ethnicity and sex of all proposed trainees expected, along with the training program(s) for approval by the Resident/Regional Engineer. A copy of this information is also furnished to the EEO/ST Coordinator or designated DRI.
2. Contractors may utilize OJT programs approved by the U.S. Department of Labor. Contractors may also develop their own programs, but DOL or ITD/FHWA must approve them before training commences on the project. Resident/Regional Engineers may contact the Bureau of Apprenticeship and Training, USDOL, Boise, Idaho, telephone (208) 321-2972, to verify Department of Labor programs.

The contractor's payroll records furnished to ITD must include all information necessary to identify minorities, women and disadvantaged trainees and must monitor trainee apprentice progress.

3. From payroll information furnished by the contractor, trainee/apprentice information and activity will be transferred to the Field Ledger System by the Residency/Regional staff and monitored to ensure compliance with the provisions of the contract and the individual training programs.

Residency/Regional personnel will establish individual ledger sheets for each trainee/apprentice, which contains the following information:

- Name
- Social Security number
- Wage rate
- Training hours accumulated on previous jobs
- Job category (craft)
- Number of hours in approved training program
- Age
- Sex
- Ethnicity
- Hire date
- Name of contractor
- Changes in work status
- Transfer to other project
- Termination - reason

4. Residency/Regional personnel will monitor payroll reports and trainee performance to ensure that:
  - The pay rate is increased at time increments specified in the training program.
  - Training is being given in the craft specified.
  - All phases of a training program are being incorporated into the work program of each employee.
5. Data furnished by the District on each trainee are compiled and monitored by the EEO Office and used by the CCO to report to FHWA. It is important that all trainee ledger information be submitted in a timely manner to meet reporting deadlines.
6. When a trainee completes all requirements of a training program, the contractor should advise the trainee/apprentice by letter (or by issuance of a certificate). A trainee/apprentice's graduation from a program should be entered on the individual's ledger sheet.
7. Reimbursement to the contractor under the Training Special Provision is made at the rate of \$.80 per hour of acceptable training given each trainee under an approved program. An entry is made to the automated field ledger (which is separate from individual trainee ledgers) to include this amount in the progress payment.
8. Information compiled from the field ledger files for individual trainees is compiled by the EEO Office and included in the annual Training Special Provision report each year for submission to FHWA.

## SECTION II

### CONTRACT COMPLIANCE - CONSULTANT AGREEMENTS

The Idaho Transportation Department (ITD) will monitor the operations of all consultant companies under agreement contracts with the Department on Federal Aid (FA) projects to ensure that all aspects of their employment practices do not discriminate on the basis of race, color, religion, sex, national origin, disability or age. The Department will also take appropriate action when consultants are found to be out of compliance with required agreement contract provisions.

#### I. Organization and Structure (see **Exhibit A**)

##### A. Administrator, Division of Administration

The Administrator, Division of Administration (ADA) has the responsibility of coordinating and implementing the Contract Compliance Program and ensuring that ITD and consultant firms comply with all Civil Rights Special Provisions.

##### B. EEO Manager

The EEO Manager (EEOM), reports to the ADA and is responsible for coordinating the activities of the Contract Compliance Officer (CCO) and the Agreement Administrators in monitoring consultant operations and practices related to Equal Employment Opportunity (EEO) provisions.

##### C. Contract Compliance Officer

The CCO is responsible for executing the enforcement/compliance activities associated with EEO on consultant agreement contracts. In conjunction with District, Headquarters and FHWA Division personnel, the CCO conducts Compliance Reviews, reviews EEO reports, monitors Disadvantaged Business Enterprise activities, prepares ITD reports to FHWA and administers the internal DBE Supportive Service Program. The person in this position is working on External EEO-related activities 100% of the time. The CCO attends courses on EEO programs and requirements (including FHWA-sponsored seminars).

##### D. District Personnel

Each District Engineer has appointed an EEO/Safety Training (EEO/ST) Coordinator or designated District Records Inspector (DRI) through whom information and instruction from the CCO and the EEOM are channeled. The District EEO/ST Coordinators devote approximately one-third of their time to EEO-related activities. They assist the Agreement Administrators in determining consultant compliance under all relevant rules and regulations. They initiate and process documents on Contract Compliance Reviews and attend the on-site review meetings. They inform the EEO Office of any complaints and request investigations. They attend state workshops and use the agreement contract documents, this plan, FHWA regulations

and related forms to coordinate and execute their responsibilities under the Contract Compliance Program.

E. Agreement Administrator

Agreement Administrators are responsible for execution and compliance with all terms and conditions stipulated in consultant agreement contracts. Agreement Administrators monitor the requirements and work of the consultant agreement contracts. They are required to be alert to any changes in the consultant's operation, which affect the numbers of employees, or employment practices of the consultant, and to ensure that operational changes do not result in discrimination or noncompliance with the consultant agreement contract provisions.

The consultant will be required to provide Certification of Payment on all sub-consultants working under the agreement. This Certification of Payment will serve as the verification of DBE performance.

The Agreement Administrators also report any discrimination complaints in accordance with Part II, Subsection IV of this plan to the District EEO/ST Coordinators or designated DRIs who in turn report the complaints to the EEO Office.

## II. Compliance Procedures

A. The authority and basis for compliance procedures are in:

- Construction Contract Equal Opportunity Compliance Procedures, 23 CFR 230, Subpart D
- EEO Special Provisions (23 CFR 230, Subpart A)
- 49 CFR Part 26, Disadvantaged Business Enterprise
- Federal-Aid Policy Guide (FAPG)

B. Implementation

1. The Department complies with the cited regulations by taking the following actions:
  - Notice that the successful consultant is required to comply with the ITD Civil Rights Special Provisions (Exhibit X) is included in all agreement contracts that exceed \$10,000.00. (OFCCP 41 CFR 60-4.2)
  - The Agreement Administrator will, at the pre-operational conferences, discuss all aspects of the Civil Rights Special Provisions.

The procedures for effecting compliance with Civil Rights Special Provisions are outlined in Section II, Subsection II, B, 3 Agreement Administrator Guidelines, of this plan.

2. Pre-operational Conference

If needed the Agreement Administrator, presents the consultant with a “package” containing federally required job site posters.

3. Agreement Administrator Guidelines

The ITD Professional Services Agreement Manual directs the Agreement Administrator to this document for guidelines regarding the responsibilities for monitoring the EEO requirements of ITD agreements.

a. EEO Provisions

EEO provisions, as well as DBE (when appropriate), are emphasized by the Agreement Administrator to elicit confirmation from the consultant that the following requirements are understood.

- (1) Discrimination based on race, sex, color, national origin, age, disability, or religion is prohibited.
- (2) The consultant must develop and post an equal employment policy statement, which expresses the firm's commitment to affirmative action and equal employment opportunity. All sub-consultants must also post their policies.
- (3) In a letter to the Agreement Administrator, the consultant designates an Equal Employment Officer for the contract. The selected individual must have the authority, position and experience to carry out an effective EEO program.
- (4) The consultant’s employees must be advised (preferably in meetings) of the company's EEO policy before starting the contract. Written instructions or record of the meeting will be given to the Agreement Administrator for inclusion in the contract file. Subsequent EEO meetings are held every 6 months thereafter during the period of the contract.
- (5) The consultant must maintain employment records in a format, which identifies employees by race, sex, work classification and work status and hours worked in each classification and trainee level, if appropriate. These records may be requested in summary form by ITD.
- (6) All sub-agreement contracts over \$10,000.00 must include the same EEO provisions as contained in the agreement contract

with the prime consultant. In other words, all sub-consultants (over \$10,000.00) have the same employment goals and affirmative action goals as the prime consultant and are also subject to Compliance Reviews and penalties if found not to be in compliance.

- (7) Failure to comply with Civil Rights Special Provisions can result in:
- Withheld progress payments.
  - Suspending the agreement until found in compliance.
  - Canceling or terminating the agreement.
  - Assessing against the consultant's final payment of the agreement or any progress payments on current or future Idaho Federal-Aid agreements an administrative remedy by reducing the final payment or future progress payment in an amount equal to 10% of the agreement or \$7,700 whichever is less.

Specific procedures for instituting the above sanctions are outlined in Section II, Subsection III of this plan.

4. DBE Contract Provisions (see DBE Plan for complete information)
- a. The consultant is required to develop sub-consultant agreement contracts with the DBEs identified on the ITD-2398 DBE Commitment Form (**Exhibit E**) prior to award unless the DBE is unable or unwilling to perform. When a DBE is unable or unwilling to perform, the DBE requirement IS NOT REDUCED. The prime consultant must replace the loss with another DBE sub-consultant or perform and document good-faith efforts to do so. The substitute DBE need not perform the same work as the removed DBE.
  - b. The DBE must perform a "Commercially Useful Function (CUF)." Through the Consultant's Certification of Payment documentation, ITD Agreement Administrators will verify that the DBE:
    - Is responsible for a distinct element of the work.
    - Is actually performing, managing and supervising the work involved.
    - Is functioning as an INDEPENDENT business.
  - c. Sanctions will be imposed for breach of any provision of the DBE Special Provisions. If DBE irregularities are detected, refer to sanction process and procedures outlined in ITD's DBE Program Plan.

5. Compliance Review by the EEO Office

a. Purpose

The purpose of a Compliance Review is to determine if the prime consultant(s) and/ or sub-consultant(s) maintain nondiscriminatory hiring and employment practices and are taking affirmative action as outlined in the Civil Rights Special Provisions and to ensure that applicants are employed and placed, trained, upgraded, promoted and otherwise treated during employment without regard to race, color, religion, sex, national origin, disability or age. The review provides a comprehensive evaluation of all aspects of employment practices and conditions. The review is conducted by the CCO with the assistance of the District EEO/ST Coordinator or designated DRI. The Agreement Administrator and other representatives of the EEO Office, District or FHWA, attend as appropriate.

b. Selection of Consultant

The CCO, in coordination with the EEOM, the Consultant Administration Engineer, Roadway Design Engineer and appropriate District personnel, identifies projects and consultants early in the calendar year that will be reviewed.

The selection of consultants for Compliance Reviews is based upon one or more of the following criteria:

- Consultants or projects, which offer the greatest potential for employment and promotion of minorities and women.
- Consultants or projects in areas, which have significant minority and female labor forces within a reasonable recruitment area.
- Consultants or projects that have a significant percent of contracts completed (prior to or during peak employment periods and after a meaningful work force becomes active on the projects).
- Consultants or projects that have the type of projects as it relates to potential employment on the projects.
- Special request from FHWA.
- Consultants who through a review of statistical data on past and/or current minority/female employment indicates a need.
- Consultants or projects that have had an employee complaint.

c. Scheduling Reviews

In coordination with the Agreement Administrators, the EEO/ST Coordinators or designated DRIs schedule review dates of the selected consultants, giving primary consideration of the consultant's work schedule to ensure that Compliance Reviews are conducted shortly before or during peak employment. EEO/ST Coordinators or designated DRIs coordinate schedule dates with the CCO in the EEO Office.

d. Conducting the Review

While the CCO is ultimately responsible for conducting the review, the District EEO/ST Coordinators or designated DRIs are responsible for initiating the review process, preliminary analysis of the documentation submitted and preparation and distribution of all related letters and forms. The CCO will conduct the On-site Conference. Others attending the On-site Conference will be the EEO/ST Coordinator or designated DRI, representatives of FHWA, appropriate District staff and the Consultants' representatives. The EEO/ST Coordinators or designated DRIs may be requested to conduct the On-site Conference by the CCO or the EEOM if needed. FHWA representatives attending the On-site Conference may ask questions regarding any issues of the compliance review.

e. Phase I – Pre-Compliance Review Responsibilities

(1) The District EEO/ST Coordinator or designated DRI obtains or develops the following information for use in the review:

- (a) Updated census data projecting the composition of the work force in the county(s) where the area/project to be reviewed is located and in contiguous counties. The information is obtained from Affirmative Action Statistics (latest edition) published by the Research and Analysis Bureau of the Idaho Department of Employment.
- (b) Referral sources within a reasonable recruiting area, which are able to refer minorities and females for the project.

(2) Notice to Consultant (see sample notice -**Exhibit I**)

- (a) The District EEO/ST Coordinators or designated DRIs notify the consultant giving 3 weeks' notice that a Compliance Review will be conducted. The notice advises that the review consists of two parts: (1) an evaluation of the compliance documentation (listed below under Phase I) and (2) a tour of the consultant's facilities (if feasible), interviews with employees and the on-site conference - all of which is considered as the "on-site" portion of the review.

- (b) In the notice to the consultant, the time of the on-site-conference, the location and any other details agreed upon in preliminary discussions with the consultant will be specified. (See attached sample letter, Exhibit I)
  - (c) In the notice to the consultant, it will be requested that the documents (or copies) listed below in Phase I be forwarded to the EEO/ST Coordinator or designated DRI no later than 1 week before the scheduled date of the on-site conference, or Phase II, portion of the review. This should allow time to analyze the material before meeting with the consultant.
- (3) Documentation (Information received from the consultant will be reviewed by the EEO/ST Coordinator or designated DRI for required inclusion and then a copy sent to the CCO. Information will be listed by the CCO on Form ITD-0136, Exhibit G when applicable)

The consultant submits the following information:

- (a) List of all Federal-Aid contracts currently open in the Standard Metropolitan Statistical Areas and Economic Areas (SMSA/EA) of the review including the value of each.
- (b) Names and titles of personnel that will be representing the consultant's firm at the on-site conference.
  - Documentation showing authority of company positions.
  - Name and title of the consultant's Policy Officer.
  - Name and title of the consultant's Project Officer.
  - Name and title of the consultant's EEO Officer (documented by a memorandum).
  - Documentation showing current EEO Officer's job duties and responsibilities.
  - Documentation showing EEO Officer's background, training, and history with company.
- (c) A copy of the company's EEO policy. (Evaluation of content not required or expected.)
  - A copy of the Affirmative Action Plan. (Evaluation of content not required or expected.)

- Documentation that EEO meetings were held - minutes of meetings, diaries, etc.
- (d) A list of the consultant's suppliers, vendors and sub-consultants, for each project being reviewed, that are providing services or supplies valued over \$10,000.00.
- Submit copies of those pages of agreements and purchase orders (over \$10,000.00) containing the EEO clauses or other verification that stipulated clauses are included.
  - List of minority or female owned companies contacted as possible sub-consultants.
- (e) List of all members of the consultant's staff who are authorized to hire, supervise, promote, and discharge employees or make recommendation for such actions.
- Documentation of indoctrination of this staff regarding company EEO obligations.
- (f) List of company personnel responsible for recruitment.
- Documentation showing training of recruitment personnel on Company EEO hiring procedures.
- (g) A list of recruiting sources utilized. (The EEO Coordinator or designated DRI should have compiled a list of sources available for comparison.)
- Submit copies of letters, diaries, etc., documenting requests for minorities/women in specific classifications including all follow-up documentation.
  - Submit a copy of employment application.
  - List of any advertisements with verification of publication.
  - Documentation of requests to current employees to refer minorities and or females for work.
- (h) A list showing all hiring opportunities listed by job classifications showing total employees, total minorities, and totals by ethnicity (male and female).

- (i) List of all promotions made during the review period by race, sex, previous positions, position promoted into, and corresponding wage rates.
  - (j) List of all terminations and layoffs during the review period showing total employees, total minorities, and totals by ethnicity (male and female).
  - (k) Employment data for the area/contract being reviewed up to the review date. (Area would be based on the SMSA or EA as stated in the special provisions of the contract.)
    - Information should be listed by job classification and show total employees (male and female).
    - Information in each job classification showing total minorities (male and female) and showing totals (male and female) by ethnicity
  - (l) Copies of annotated payrolls for the review period covered by classifications, race, and sex.
  - (m) If applicable, a copy of training data on all trainees showing the job classification, sex, ethnicity and hours worked to date.
  - (n) Documentation of steps taken by consultant promoting training opportunity internally and externally.
  - (o) Status of any discrimination complaint that has been filed against the consultant.
- (4) Evaluation of Documents

The CCO is responsible for conducting the review however when requested documentation has been received, the EEO/ST Coordinator or designated DRI will:

- (a) Review policies, application forms, AA Plan, EEO pages from sub-agreements and purchase orders, list of recruiting sources.
- (b) Verify that the contact of minority and female owned companies solicited for subcontracting opportunities actually took place.
- (c) Verify that the DBE firms committed to on the ITD-2398 DBE Commitment Form are actually performing the work items they were committed to do.

- (d) Review documents provided by the consultant. Compare information and documents with payrolls and other employment data previously submitted to the Agreement Administrator to verify accuracy and nondiscrimination in wages.
- (e) Verify that recruiting phone calls, faxes or letters to Job Service, TEROs, Votech Schools and other sources were actually made by calling the source named in good faith effort documentation. If sources have no knowledge of consultant's efforts, note this to be discussed at the on-site conference.

Some points to consider:

- How and when does the consultant disseminate EEO policy: posting on boards, employee handbooks, meetings, etc? At time of employment or day before EEO review?
- Does the designated EEO Officer: Understand EEO responsibilities? Have the authority to accomplish the objectives? Have other duties? Was his/her name submitted at the pre-operational meeting? Is he/she known to employees as the EEO Officer and where he/she can be contacted?
- Which recruiting sources were used? Did the consultant advertise in publications? Did advertisements include EEO clause? Does the application form solicit voluntary response to ethnicity/sex identification? (The employer is not prohibited from maintaining this information on completed applications if the information is kept solely for affirmative action or statistical purposes and is not subject to misuse.)
- Does the consultant encourage current employees to refer minority/female applicants?
- How often does the consultant's representative inspect the project for compliance with EEO requirements? When was the last time?
- How does the consultant advertise and select trainees? How many trainees/ apprentices have their training with this consultant? Were these trainees retained in the consultant's workforce?

- What was the nature of complaint(s), if any? How many were there? How were they resolved?
  - Have all required forms and documents been submitted to the Agreement Administrator?
    - Employee Meeting Reports
    - Certified payrolls
  - Other information obtained through the Agreement Administrator.
    - Pre-Operational Meeting minutes
    - ITD-2398 DBE Commitment Form
    - ITD-2892, Certification of Payment
- (f) The EEO/ST Coordinator or designated DRI will make copies of the requested documentation and submit to the CCO. Allow time before the on-site portion of the review for the CCO to evaluate information and become familiar with the preliminary findings.
- (g) The EEO/ST Coordinator or designated DRI will make a list of any questions, inconsistencies or discrepancies and submit/review them with the CCO to determine if they need to be discussed at the on-site conference.

h. Phase II - On-Site Review

1. While the CCO is responsible for conducting the review the EEO/ST Coordinator or designated DRI and/or the CCO will tour the Consultant's facilities (if feasible) to:
- (a) Verify that posters are conspicuously displayed and legible and that facilities are not segregated. (This opportunity is used to observe general working conditions and workers - Are minorities and women visible? Does the EEO information provided by the consultant agree with what is seen on the project? If not, can it be explained?)
  - (b) One minority, one non-minority, one woman and one supervisor will be interviewed to determine:
    - Name and Social Security number.

- For whom they work.
- In what classification they were hired.
- How they got their job on this project.
- Whether they attended a meeting at which EEO obligations were discussed.

In the letter sent by the EEO/ST Coordinator or designated DRI scheduling the review (see example, **Exhibit I**), the consultant should be asked to have the four people available for a very brief interview, at the consultant's convenience. The interviews should be completed with the least amount of disruption possible. If the consultant's work, or work schedule, is such that it would cause a great deal of inconvenience to conduct interviews all at once, or on the same day as the on-site conference, make other arrangements. However, do not compromise the integrity of the interviews. Take appropriate measures to ensure that the interviewed employees' responses accurately reflect THEIR perceptions and experiences, not anyone else's.

(c) On-Site Conference

The consultant shall provide a place for the on-site conference. Preferably, this meeting should take place at the consultant's office. This is to enable the consultant access to any additional information that may be requested during the on-site conference.

The EEO/ST Coordinator or designated DRI will obtain a list of those people in attendance. The Agreement Administrator should be present, along with other representatives of ITD, FHWA representatives (on selected projects) and the representatives of the consultant.

The CCO will:

- (1) Explain the purpose of the review (to determine compliance with EEO contract provisions) and the authority under which it is conducted (23 CFR 230).
- (2) Go through the ITD-0136 to obtain any information from the consultant that is needed to complete the ITD-0136 and to discuss information already submitted by the consultant and listed on the ITD-0136 by the CCO.

- (3) Ask questions developed in the analysis of the documentation that was submitted before the on-site conference.
- (4) Clarify any inconsistencies between documentation and payrolls or other information previously submitted to the Agreement Administrator.
- (5) Ask any unanswered questions that may have arisen as a result of the interviews with employees or due to observations made during the tour of the consultant's facilities.

An on-site conference will be held to discuss the preliminary findings from the material that was submitted before the on-site portion of the review and any preliminary findings resulting from the on-site portion of the review.

If a Voluntary Corrective Action Plan (VCAP) can be used (according to the criteria listed in item 28 of the instructions to ITD-0136 Exhibit G) to remedy minor deficiencies, that plan may be completed at the on-site conference (or within 5 days). The consultant should understand that the VCAP addresses only those minor deficiencies, which have been identified during the preliminary evaluation of documents, on-site observations and interviews, and the on-site conference. These deficiencies will be issues that can be corrected by the consultant within 30 days. In all other cases, a Show Cause Notice (SCN) will be issued and a Corrective Action Plan (CAP) required (see j.1. and 2. below). Execution of a VCAP does not preclude a later finding of noncompliance when all the information has been thoroughly examined.

Inform the consultant that, within 15 days, ITD will send a completed copy of the ITD-0136 showing the determination that was made and a letter specifying what, if anything is expected of the consultant.

i. Evaluation of All Information

The CCO will evaluate all the information obtained against the criteria established in this plan and the ITD-0136 to determine whether the consultant is:

- In compliance - no further action is required;

- In compliance - VCAP required; or
- Not in compliance - SCN required.

The CCO will justify the determination in the summary of the ITD-0136, using additional sheets as necessary, according to the instructions. Any deficiencies that have been identified will be listed. Good-faith efforts made will be described on the ITD-0136 and have supporting documentation.

j. Processing Documents

All documentation such as Form ITD-0136, the VCAP the proposed SCN, etc., will be compiled by the CCO. The CCO will obtain the required ITD signatures and send a copy to the District EEO/ST Coordinator or designated DRI for the district files. Copies will then be sent to FHWA informing them of ITD's determination.

If it is determined by ITD that the consultant is in compliance, with no further action needed, a memo will be sent by the CCO instructing the EEO/ST Coordinator or designated DRI to send a transmittal letter commending the consultant with a copy of the ITD-0136 report.

If a VCAP is executed, a transmittal letter will be sent by the EEO/ST Coordinator or designated DRI referring to anticipated correction of the deficiencies by the date indicated on the VCAP.

If the consultant is found in noncompliance by ITD, the CCO will instruct the EEO/ST Coordinator or designated DRI to send a copy of the ITD-0136 to the consultant with a SCN signed by the District Engineer. The SCN will specify what is expected of the consultant and will be sent via certified mail, return receipt requested. (see **Exhibit M**)

1. Show Cause Notice (see **Exhibit M**)

A proposed SCN need not be reviewed by ITD Legal Counsel before being sent by certified mail to the consultant unless it differs significantly from **Exhibit M**. The 30-day period stated in the SCN begins on the day the consultant receives the notice.

During the 30-day period stated in the SCN, the EEO/ST Coordinator or designated DRI will be required to attempt conciliation with the consultant. These conciliation and negotiation efforts shall be directed toward correcting the consultant's deficiencies and initiating a Corrective Action Plan.

2. Corrective Action Plan (see **Exhibits P and Q**)

Although the CCO is responsible for conducting the review, it is the EEO/ST Coordinator or designated DRI that should be available to assist the consultant in developing a Corrective Action Plan (CAP), which addresses the deficiencies identified in the SCN. In the SCN a compliance conference is scheduled - usually 2 weeks from the issuance of the SCN - to discuss the plan the consultant has developed to correct the deficiencies. The plan must specify what action is going to be taken and when that action can reasonably be expected to be completed. If there is insufficient time remaining to correct the deficiencies on the project(s) found in noncompliance, it should be addressed in the CAP that the consultant is required to meet the conditions of the CAP until a follow-up review can take place on a future project(s). Each item in the plan should correct the deficiencies stated in the SCN. The consultant will also be required to submit monthly progress reports as part of the process to correct the deficiencies stated in the SCN. The EEO/ST Coordinator or designated DRI will send a copy of the CAP to the CCO for approval. When necessary the CAP will be reviewed by ITD Legal Counsel. Once the CAP is approved by the CCO the EEO/ST Coordinator or designated DRI will be notified that the plan is accepted and should be implemented.

**If the consultant does not correct deficiencies and fails to develop, sign and implement a CAP within the 30-day period stated in the SCN, progress payments will be withheld by the Agreement Administrator commencing the day after the expiration of the 30-day period. (See Section II Subsection III Contract Sanctions) No CAP is necessary if corrections can be made within the 30-day SCN period; otherwise a CAP with specific commitments and time frames for accomplishments is needed.**

If the consultant implements a CAP, it will be considered that the consultant is in compliance as long as the monthly reports and other

documentation required by the CAP indicate that real progress is being made toward eliminating the deficiencies identified in the SCN or that a good-faith effort is being made. CAPs can be amended if the consultant has carried out each committed action and those actions are not producing the intended results.

3. Rescission of Show Cause Notice (see **Exhibit R**)

When the CAP is accepted by ITD, the SCN is rescinded. The CAP remains in effect until a follow-up review can be conducted. Follow-up reviews will be conducted by the EEO/ST Coordinator or designated DRI.

4. Follow-Up

(a) Corrective Action Plans

Although the CCO is responsible for conducting the original review, follow-up reviews are made by the EEO/ST Coordinator or designated DRI. The follow-up review is made at the earliest possible date after the consultant has had hiring opportunities (determined by monitoring the required monthly employment data provided by the consultant). Follow-up reviews can be conducted on future project(s) when there is insufficient time remaining on the project(s) found in non-compliance and should be noted in the CAP. The EEO/ST Coordinator or designated DRI will submit a narrative report to the CCO on their findings.

If the consultant fails to comply with the terms of a CAP, a formal hearing will be held as outlined in Section II, Subsection III Contract Sanctions of this plan. At this hearing, the consultant will be given the opportunity to offer a rebuttal to the findings. The formal hearing panel will consist of designated EEO, District and Roadway Design personnel, and shall include ITD Legal Counsel.

After considering the evidence presented at the hearing, the panel will determine whether:

- (1) Payments will be withheld from the consultant.
- (2) The agreement will be suspended until the consultant complies.
- (3) The agreement will be terminated.

- (4) Assess against the consultant's final payment on this agreement or any progress payments on current or future Idaho Federal-Aid projects an administrative remedy by reducing the final payment or future progress payment in an amount equal to 10% of this agreement or \$7,700 whichever is less.

There are no provisions to reinstate a SCN. See Section II, Subsection III for arbitration steps.

(b) Voluntary Corrective Action Plan

A review is conducted by the EEO/ST Coordinator or designated DRI at the termination of the VCAP to determine whether commitments have been met. If they have been met, the EEO/ST Coordinator or designated DRI prepares a written report on actions taken and results of those actions. The EEO/ST Coordinator or designated DRI then advises the consultant in a letter that the requirements of the plan have been met and the review is completed. Copies of the report and letter are forwarded to the CCO.

If a consultant fails to comply with the terms of a VCAP, the EEO/ST Coordinator or designated DRI should request approval from the CCO to declare the consultant in noncompliance and issue a SCN.

Consultants operating under CAPs or VCAPs, should be closely monitored by the EEO/ST Coordinator or designated DRI and the Agreement Administrator to ensure that the commitments contained in them are actually honored and are effective.

C. Distribution of Reports

1. Contract Compliance Report - ITD-136

Completed ITD-136 forms are distributed as follows:

- Copy with letter and/or VCAP or SCN if appropriate to the consultant.
- Copy with all documents required by the form (e.g., extended list of sub-consultants, extended summary statements, copies of recruiting publications, summaries of interviews, etc.) and SCN or VCAP, if required, to the CCO.
- Copy with all supporting documentation will be retained in the District file for the required 3 years.

### III. Contract Sanctions

The Idaho Transportation Department has included in the Civil Rights Special Provisions of all federal aid contracts the stipulation that noncompliance findings will result in sanctions.

- A. If a consultant or sub-consultant fails to show cause within 30 days of notification why sanctions should not be imposed for failure to comply with the EEO portions of the contract, the Agreement Administrator, in coordination with the District Engineer, will withhold project progress payments until the consultant or sub-consultant responds in an acceptable manner.

Unless the consultant can immediately produce relevant documentation supporting a good-faith effort or determination of compliance, the consultant's standard response is the development and implementation of a CAP. The plan must be designed to correct deficiencies at the earliest possible date. (If an acceptable CAP does not produce the desired results, after a follow-up review, then ITD and the consultant may amend the CAP.)

- B. If a consultant or sub-consultant fails to meet the conditions of a CAP, the Agreement Administrator will notify the District Engineer, who will immediately request a formal hearing before a panel consisting of a selected member of ITD's Legal Counsel, representatives from Roadway Design, EEO, and the District. The consultant shall be extended an invitation to attend to offer rebuttal to the findings. The purpose of the hearing will be to examine all documentation and determine which of the following sanctions will be imposed - not whether they will be imposed. After consideration of the findings and any rebuttal, the panel shall impose one of the following sanctions. Generally, sanctions will be imposed in sequential order for each incident that EEO contract provision violations occur, and are brought before a hearing panel. However, ITD reserves the right to impose any sanction listed depending on the severity of the consultant's deficiency.

- (1) Withhold progress payments until it is determined that the consultant is found in compliance.
- (2) Suspend the agreement, in whole or in part, until the consultant or sub-consultant is found to be in compliance with no progress payment being made during this time and no time extension made.
- (3) Cancel or terminate the agreement for cause in accordance with Section J.5., of the Agreement Specifications (Exhibit Y).
- (4) Assess against the consultant's final payment on this contract or any progress payments on current or future Idaho Federal-Aid projects an administrative remedy by reducing the final payment or future progress payment in an amount equal to 10% of this agreement or \$7,700 whichever is less.

The consultant or sub-consultant will be advised of the determination of the panel within 30 days. The decision of the panel is final as authorized under Section J., of the Agreement Specifications (Exhibit Y).

#### IV. Complaints

##### External Discrimination Complaint Procedures

- A. Purpose: These procedures are designed to provide guidelines for filing, processing and investigating complaints of discrimination and harassment filed by employees and applicants of consultants working on ITD contracts.
- B. Department commitment: The Idaho Transportation Department is committed to thoroughly and promptly investigating the merit of each complaint in a confidential manner employing a process that treats all parties involved with respect. Consultants who are found to have discriminated shall be deemed in noncompliance with the EEO contract requirements and shall be required to promptly take corrective action or be subject to contract sanctions.
- C. Individuals eligible to file complaints: Applicable parties include all employees and applicants of prime and sub-consultants possessing ITD federal and/or state contracts. Any employee of a consultant working on an ITD contract who believes they have been sexually harassed or discriminated against in their employment on the basis of race, color, national origin, religion, age, disability or sex may file a complaint. A complaint is filed by submitting a written statement outlining the basis of the complaint to the ITD's CCO or to any of ITD's six District EEO/ST Coordinators. The complaint must be filed no later than 180 days of the alleged event(s). A copy of these procedures shall be provided upon request.
- D. Retaliatory actions prohibited: Retaliatory action against a person(s) who has filed a complaint, testified, or in any way participated in reporting alleged discriminatory practices is prohibited. The Consultant/Respondent shall be advised that such retaliation, if substantiated, shall constitute a violation of the EEO requirements and is subject to a finding of noncompliance and/or sanctions.
- E. Intake: When a discrimination complaint is filed with the Department, the District EEO/ST Coordinator or designated DRI notifies the CCO or the EEOM. The EEOM, in turn, notifies the Federal Highway Administration including a list of federal aid contracts the consultant holds in Idaho and the value and location of each. (Complaints filed by a consultant or a consultant employee against an ITD employee will be forwarded and investigated by FHWA.)

At a minimum, the following information is compiled by the District EEO/ST Coordinator or designated DRI and included in each report of discrimination:

1. Name, address and telephone number of the complainant.

2. Consultant involved and location where the complaint originated (project site, home office, etc.).
  3. Basis of complaint (i.e., race, color, religion, sex, national origin, age, and disability).
  4. Date(s) of the last occurrence of alleged discriminatory event(s).
  5. Date complaint was received.
  6. The complaint, signed by the complainant, and the issues involved.
- F. Investigation: The EEOM will assign an investigator trained in performing civil rights fact-finding investigations who will promptly investigate each alleged act of discrimination. The investigation will be coordinated by the EEO Office to assure that the necessary information is gathered and reported to the EEOM. The EEOM will keep the Chief Engineer and the District Engineer informed of the status of the complaint during the investigation.
1. The investigator, following an investigative plan, will gather all relevant information in a fair and impartial manner. Including meeting with the complainant, respondent and witnesses to investigate the charges as part of the fact-finding review.
  2. The complainant may have a representative present to assist in presenting information. It is the complainant's responsibility to keep his/her representative informed at all times. The representative may not be the investigator or staff member of the EEO Office or other ITD staff involved in EEO matters.
- G. Findings Report: At the conclusion of the findings of fact, the investigator will complete a Findings Report and forward it to the EEOM. The investigation will be completed in as timely a manner as possible so that a report can be sent to FHWA within 60 days.
- H. Investigative Summary and Recommendations Report: The EEOM will review the Findings Report and make other requests for information as necessary. The EEOM will prepare an Investigative Summary and Recommendations Report showing findings and conclusions and present it to the Chief Engineer and the Administrator Division of Administration.
- I. Statement of Department's Decision: The Administrator Division of Administration will review the report on the investigation and make a final determination of the department's decision. The EEOM will prepare a Statement of the Department's Decision reflecting the department's final determination. The EEOM will inform the complainant and the respondent of the department's decision and their right to appeal.

- J. **Discrimination Determination:** Where discrimination is determined, a “30-Day SCN” shall be issued and the Consultant/Respondent is required to take appropriate corrective or disciplinary action to eliminate discrimination and/or correct inappropriate behavior, plus develop a CAP. If the Consultant/Respondent fails to take the required steps identified a formal hearing will be held as outlined in section III. Contract Sanctions of this plan
- K. **Appeal:** If the complainant feels the agency decision is adverse to the complainant, the complainant can appeal to the Federal Highway Administration, the U.S. Department of Transportation or the U.S. Department of Justice. If the consultant feels the agency decision is adverse to the consultant, the standard contract sanctions appeal channel, as described in Section III of this plan, can be pursued by the consultant.
- L. **Dissemination:** The EEOM will send copies of the complaint, Investigative Summary and Recommendations Report, and Statement of Agency Decision to FHWA within 60 days of receipt of the complaint.

**EXTERNAL CIVIL RIGHTS COMPLAINTS CAN BE FILED NO LATER THAN 180 DAYS OF THE ALLEGED INCIDENT.**

Complainants may file complaints simultaneously with ITD, OFCCP, EEOC and the USDOT. If simultaneous complaints are filed, each agency conducts its own investigation.

## **EXHIBITS**

- A - Organization Charts
- B - On-Site Inspection Report - Form ITD-2674
- C - DOL Definition of "Disadvantaged"
- D - ITD-2396 DBE Commitment (Construction)
- E – ITD-2398 DBE Commitment (Agreements)
- F - ITD-86 – Construction EEO Compliance Review
- G – ITD-0136\_– Consultant EEO Compliance Review
- H - Sample "Notice to Contractor"
- I – Sample “Notice to Consultant”
- J – Sample Contractor Compliance Letter
- K – Sample Consultant Compliance Letter
- L - Sample "Contractor Show Cause Notice" (SCN)
- M – Sample “Consultant Show Cause Notice” (SCN)
- N - Sample "Contractor Corrective Action Plan" (CAP)
- O – Sample “Contractor Corrective Action Plan” (CAP)
- P – Sample “Consultant Corrective Action Plan” (CAP)
- Q – Sample “Consultant Corrective Action Plan” (CAP)
- R - Sample "Recission of Show Cause Notice"
- S - ITD-1701, "Commercially Useful Function"
- T - FHWA-1391, EEO Report - Contractor
- U - FHWA-1392, EEO Report - Department
- V – ITD-0021 Contractor Employee Interview Form
- W – ITD-0137 Consultant Employee Interview Form

X - Civil Rights Special Provisions

Y – Consultant Agreement Specifications

Z – Training Special Provisions