New Jersey Department of Transportation
Division of Civil Rights & Affirmative Action

CONTRACTOR COMPLIANCE
ON
NJDOT CONSTRUCTION CONTRACTS

March 2019

Purpose

To review prime contractor & subcontractor responsibilities toward complying with the Civil Rights contract provisions related to nondiscrimination in performance of work and employment practices on NJDOT construction contracts, funded with federal or state monies, specifically:

• DBE, ESBE or SBE Subcontracting
• EEO (Equal Employment Opportunity)
• On-the-Job Training (OJT)
• Labor/Wage Rate
Civil Rights Act of 1964

Civil Rights legislation outlawing discrimination based on race, color, religion, sex or national origin, outlawed segregation at the workplace and by facilities that served the general public and prevent discrimination in federally assisted programs:

- Title I – Voting Rights
- Title II – Public Accommodations
- Title III – Desegregation of Public Facilities
- Title IV – Desegregation of Public Education
- Title V – Commission of Civil Rights
- Title VI – Nondiscrimination in Federally Assisted Programs & Activities
- Title VII – Equal Employment Opportunity
- Title VIII – Registration and Voting Statistics
- Title IX – Intervention & Procedure after Removal in Civil Rights Cases
- Title X – Establishment of Community Relations Service
- Title XI – Miscellaneous

What is Title VI?

- Essence of the Federal Law:

"No person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Protections afforded under Title VI apply to anyone regardless of whether the individual is lawfully present in the United States, or a citizen of a state within the United States.

Includes all programs and activities of Federal-aid recipients and contractors whether those programs and activities are federally funded or not.
Program Authorities

49 C.F.R. Part 26 - Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
  • DBE Program regulations

Executive Order 11246 – Equal Employment Opportunity
  • EEO regulations

  • Affirmative Action Regulations

Davis-Bacon Act & Related Acts
  • Payment of prevailing wage rate to all laborers and mechanics on all Federal Aid construction projects.

NJ Prompt Payment Statute

49 CFR 26

§26.53 Addresses what procedures must be followed in situations where there are contract goals, specifically:

1. Awarding the contract to a bidder who makes good faith effort to meet the contract goal.
   a) Bidder must document it has obtained enough DBE participation to meet the goal (CR-266 & CR-273, CR-272 & CR-274 forms); or
   b) Documents it made adequate good faith efforts (GFE) to meet the goal, even though it did not succeed in obtaining enough DBE participation to meet the goal.
   c) Verification from DBE firm that they are participating in the contract in the kind and amount of work provided in the Bidder/Prime Contractor's commitment (CR-286 form), and that the DBE is performing a commercially useful function (CUF).

2. Require that the Prime Contractor not terminate, substitute or replace a DBE that the prime listed as part of their commitment to meet the goal unless the prime has good cause, and NJDOT DCR/AA provides consent. (Contractors must follow a termination/substitution/replacement process outlined in the regulations.)
49 CFR 26

3. Unless NJDOT DCR/AA provides consent, the prime contractor is not entitled to payment for work or material unless it is performed or supplied by the DBE.

4. Require the contractor to utilize the DBEs listed to perform the work & supply the materials for which each is listed unless NJDOT DCR/AA provides written consent.

§26.55 Outlines how DBE participation is counted toward goals

1. Value of DBE work on Contract
2. DBE Role on Contract
3. Commercially Useful Function (CUF)

§26.29 Requires Prime Contractor to promptly pay subcontractors for satisfactory completion of work, including retainage.

Contract Compliance Lifecycle

Contract Goal Setting
Contract Letting Review
Good Faith Efforts (GFE)
Contract Compliance Review
Project Closeout

Commendably Useful Function (CUF)

Davis Bacon/Certified Payroll Reviews
On-the-Job Training
Prompt Payment Audits
Change in DBE/SBE Utilization
Responsibilities

<table>
<thead>
<tr>
<th>Prime Contractor</th>
<th>Civil Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make ongoing good faith efforts (GFE) to meet the contract DBE or SBE goal &amp; document those efforts.</td>
<td>Review &amp; evaluation of prime contractor/subcontractor documentation for conformance with 49 CFR 26, and other Civil Rights regulations.</td>
</tr>
<tr>
<td>Ensure DBE and SBE subcontractors perform a CUF on the project.</td>
<td>Issues determinations of adequacy/inadequacy or issues approval/disapproval.</td>
</tr>
<tr>
<td>Ensure work approved to be performed by DBEs and SBEs is only performed by the DBE or SBE.</td>
<td>Compliance reviews</td>
</tr>
<tr>
<td>Monitor change orders and impacts to contract goals.</td>
<td>Investigations of sexual harassment, discrimination &amp; prompt payment</td>
</tr>
<tr>
<td>Make prompt payments to all subcontractors, including suppliers, etc.</td>
<td>Technical guidance &amp; training on Civil Rights requirements.</td>
</tr>
<tr>
<td>Submit termination and substitution requests.</td>
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<tr>
<td>Submit proof of payment to subcontractors, when requested.</td>
<td></td>
</tr>
<tr>
<td>Maintain records of DBE and SBE activities to comply with DBE and SBE Program requirements.</td>
<td></td>
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</tbody>
</table>

Good Faith Efforts

- Contractors and subcontractors working on NJDOT projects must make every effort (good faith effort) to comply with all of the Civil Rights EEO, DBE or SBE subcontracting, and training contract provisions, including meeting the established project goal and work hour goals for minorities and females.

- If the prime contractor, and/or subcontractors cannot meet these provisions, they MUST submit documented evidence of good faith efforts through the RE, to NJDOT – Civil Rights Civil rights, for final review and approval/disapproval as to why they are not able to meet these provisions.

- Good faith documentation must be provided immediately when it is recognized the provisions will not be met/satisfied, not after the fact.

- Submission of good faith documentation does not automatically absolve prime contractors and subcontractors of their contract EEO, DBE or SBE subcontracting and Training obligations.

- A promise to use DBEs or SBEs after contract award is not considered to be responsive to the Contract solicitation or to constitute good faith effort.
**Good Faith Efforts - DBE/ESBE/SBE Utilization**

Types of Actions to consider as part of Good Faith efforts for DBE or SBE Utilization:

- Solicit the interest of all certified DBEs or SBEs capable of performing the contract work, through all reasonable & available means.
  - Attendance at pre-bid meetings
  - Advertising
  - Written notices
  - Allow DBEs or SBEs sufficient time to respond to solicitation

- Take appropriate steps to follow up initial solicitations to determine with certainty if DBEs or SBEs are interested.

- Provide interested DBEs or SBEs with adequate information about contract documents and requirements in a timely manner.

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**Good Faith Efforts - DBE/ESBE/SBE Utilization**

- Select portions of work to be performed by DBEs or SBEs.
  - Break out contract work items into economically feasible units to facilitate DBE or SBE participation, even when Prime Contractor might otherwise prefer to perform the work

- Negotiate in good faith with interested DBEs or SBEs. Evidence of such negotiation includes:
  - Names, addresses, and telephone numbers of considered DBEs or SBEs
  - Description of the information provided regarding the plans and specifications for the work selected for subcontracting
  - Evidence as to why additional agreements could not be reached for DBEs or SBEs to perform the work.

- Make efforts to assist interested DBEs or SBEs in obtaining bonding, lines of credit, or insurance as required by the NJDOT or Contractor.
Good Faith Efforts - DBE/ESBE/SBE Utilization

- Make efforts to assist interested DBEs or SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Don’t reject DBEs or SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. Causes which are not legitimate for the rejection or non-solicitation of bids in the contractor’s efforts to meet the project goal:
  - Contractor’s stand within its industry
  - Membership in specific groups, organization, or associations
  - Political or social affiliations (for example union vs. non-union employee status)
- Effectively using the services of the following available resources as allowed on a case-by-case basis:
  - Minority/women community organizations
  - Minority/women contractors’ groups
  - Local, state, and Federal minority/women business assistance offices
  - Other organizations providing assistance in the recruitment and placement of DBEs or SBEs.

Good Faith Efforts - DBE/ESBE/SBE Utilization

- Use good business judgment - Consider a number of factors in negotiating with subcontractors:
  - A firm’s price and capabilities
  - Contract goals
- The fact that there may be some additional costs involved in finding and using DBEs or SBEs is not in itself sufficient reason for a contractor’s failure to meet the contract DBE or SBE goal, as long as such costs are reasonable.
- The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes for DBEs or SBEs if the price difference is excessive or unreasonable.

Good faith effort documentation should be detailed to include dates, times, names of people spoken to, copies of correspondence such as letters, emails, etc. It is not to be created after the fact, but should be documented evidence of on-going effort(s) to comply with meeting the civil rights contract requirements.
DBE or SBE Utilization

DBE OR SBE PARTICIPATION VERIFICATION OF FIRMS
COUNTING PARTICIPATION TOWARD CONTRACT GOAL COMMERCIAL USEFUL FUNCTION (CUF)
DBE OR SBE SUBCONTRACTOR UTILIZATION PROMPT PAYMENT/VERIFICATION OF PAYMENTS TO DBE OR SBE FIRMS
REVISIONS TO DBE OR SBE PROGRAM TERMINATION, SUBSTITUTION, REPLACEMENT OF DBE/ESBE OR SBE FIRMS GOOD FAITH EFFORTS ENFORCEMENT ACTIONS FALSE OR FRAUDULENT STATEMENTS

Certifications

<table>
<thead>
<tr>
<th>Disadvantaged Business Enterprise (DBE)</th>
<th>Emerging Small Business Enterprise (ESBE)</th>
<th>Small Business Enterprise (SBE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federally Funded Contracting Opportunities</td>
<td>Federally Funded Contracting Opportunities</td>
<td>State Funded Contracting Opportunities</td>
</tr>
<tr>
<td>Race Conscious - Measures or programs focusing on specifically assisting only DBEs.</td>
<td>Race Neutral – Activities/programs benefitting/assisting all small businesses, including DBEs.</td>
<td>Activities/programs benefitting/assisting all small businesses</td>
</tr>
<tr>
<td>Women &amp; minority owned</td>
<td>Non-minority, male owned</td>
<td>Race and gender neutral</td>
</tr>
<tr>
<td>Certified by NJ/CP Partners – NIDOT, NJ Transit or The Port Authority of RI/NJ</td>
<td>Certified by NIDOT</td>
<td>Registered by NJ Treasury, Division of Revenue &amp; Enterprise Services</td>
</tr>
</tbody>
</table>

Certification decisions address the nature of a firm's ownership and structure.
CR-266 Schedule of DBE/ESBE/SBE Participation

Bidder/Contractor’s commitments to meet the Contract goal.

CR-266 Schedule of DBE/ESBE/SBE Participation

Complies with 49 CFR part 26.53 (b)(2) & 26.55

Pre-Award: Filled out by the Bidder & submitted as part of their response to bid letting. This is their initial commitment, and once approved by DCR/AA, it cannot be revised without CF approval.

Post Award: Filled out by the Contractor & required to be submitted any time there is a revision in a Contractor’s commitment of DBE or SBE firms on a project.

Once NJDOT issues approval of the CR-266, there can be no changes without the written approval from NJDOT Civil Rights.

- Only the DBE or SBE firms providing confirmation of intent to participate (Form CR-273) can be listed on the CR-266, and counted toward the goal commitment

- A promise to use DBEs or SBEs after contract award is not considered to be responsive to the Contract solicitation or to constitute good faith effort.

- Revisions cannot include cases where the Contractor or others performed work that a DBE or SBE was approved to perform, without prior written approval of NJDOT Civil Rights.

- DCR/AA must approve all revisions to the CR-266 prior to Contractor implementation.
CR-266 Schedule of DBE/ESBE/SBE Participation

The Bidder/Prime contractor must clearly provide information about each DBE or SBE they list on their commitment (CR-266):

1. Classification (DBE's role on contract)
2. Firm's certification status – Indicate whether they are a DBE, ESBE or SBE.
3. Firm's information as shown in the UCP or SAVI directories – complete name, address, phone number, etc.
4. NAICS Codes (North American Industry Classification System) for the specific type of work/materials being supplied by the DBE firm for their performance on the contract.
   - In order for firm's performance on the contract to count toward the goal, the firm must be certified for that particular work/supply of material.
5. Specific type of work – furnish & install rebar for bridge deck; furnish and installing construction signs; concrete sidewalk, supply of lumber; hauling of regulated material; landscape planting

CR-266 Schedule of DBE/ESBE/SBE Participation

6. Proposed dollar value of firm's subcontract, price agreed upon between the Contractor and the firm for the work to be or being performed on the contract. In cases where a DBE acts as a broker, the dollar amount is the fee or commission, as per 49 CFR 26.

7. Specific work items (Contract sequence number & Item Name). **Clearly identify all partial work items with (P) after each specific item.**
   - e.g.: Item 12(P) – Clearing Site; Item 52 - Concrete Sidewalk; Items 56 – Chain Link Fence; Items 163(P) - 167(P) – Turf Work

8. Dollar value of subcontract work. **NOTE:** This is NOT the bid price, but the actual price agreed upon between the Contractor and the DBE or SBE firm for the work to be or being performed on the contract. In cases where a DBE acts as a broker, the dollar amount is the fee or commission, as per 49 CFR 26.

9. Projected start date and completion date of DBE or SBE firm's work on the contract.
CR-266 Schedule of DBE/ESBE/SBE Participation

49 CFR 26 (DBE regulations) require:
1. Verification from each DBE or SBE firm that they will be performing the kind and amount of work the Contractor committed them to perform on the CR-266
2. The DBE or SBE performs a commercially useful function (CUF).

NJDOT’s forms for the verification process are:
- CR-273 – Confirmation of DBE/ESBE/SBE Firm (Required for all firms listed on CR-266)
- CR-272-DBE/ESBE/SBE Regular Dealer/Supplier Verification
- CR-274-DBE/ESBE/SBE Trucking Verification

Each DBE must complete the forms in entirety, and sign them. CONTRACTORS ARE NOT PERMITTED TO COMPLETE ANY PORTION OF THE CONFIRMATION OR VERIFICATION FORMS. The DBE’s signature is certification that the information is accurate and true.

Falsifying the information on forms constitutes fraudulent behavior.
Under 49 C.F.R. 26.107 dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

CR-273 Confirmation of DBE/SBE/SBE Firm

- Complies with 49 CFR part 26.53 (b) (2) (v)
- Obtain a completed confirmation Form CR-273 from each DBE, ESBE or SBE firm listed on the CR-266. Each DBE or SBE must complete the form in entirety, as well as sign the form. Prime contractors are not to complete any portion of the form.
- A firm listed on Form CR-266 will not be counted toward DBE or SBE goal commitment unless a completed Form CR-273 is submitted. The firm must be certified to perform the kind and type of work the Contractor has listed them to perform.
- Same form will be used for:
  - Both Federal & State funded projects
  - Both original submissions and any post-award revisions
- Form CR-273 must be submitted post award with CR-266 revisions, when there are new DBE or SBE firms added to the CR-266, changes in work items to the DBE or SBE, or changes in dollar value of the DBE or SBE work.
CR-273 Confirmation of DBE/SBE/SBE Firm

Name of DBE/SBE/SBE Firm: [Name]
DBE/SBE/SBE Firm’s Contact Information:
Address: [Address]
Phone: [Phone]
E-mail Address: [E-mail]

Are all of your employees covered by your firm’s policy?

Is your firm’s equipment registered in your name?

Is any of your firm’s equipment also working for the hidden/prime contractor?

Is any firm’s equipment also working for the hidden/prime contractor under the contract or sub-contract?

Proposed Date of DBE/SBE/SBE Firm’s Voluntary Proposal for SBE

Proposed Number of Jobs/Total Work if Contractor is Involved in Jobs

Proposed EDU/DBE/SBE Firm’s Work History:

Signature of DBE/SBE/SBE Firm Representative:

Title:

Date: [Date]

CR-273 - DBE/ESBE/SBE Regular Dealer/Supplier Verification

- Complies with 49 C.F.R. Part 26.55 (e)
- A Regular Dealer/Supplier firm owns, operates or maintains a store warehouse where the materials, supplies, etc. of the type required under the contract are bought, stocked & sold/leased to the public.
- Same form will be used for:
  o Both Federal & State funded projects
  o Both original submissions and any post-award revisions
  o Form CR-272 is to accompany the CR-273, when applicable, and must be completed in entirety as well as signed by the DBE or SBE firm.
CR-274 DBE/ESBE/SBE Trucking Verification

- **Form must be completed in entirety and signed by the 1st Tier DBE or SBE.** Information is required for all DBE or Non-DBE trucking firms it will subcontract or lease from, such as:
  - Name of Owner/Operator/Trucking Company
  - No. of trucks
  - For each truck:
    - VIN#
    - Make, Model and Year

- Copies of lease agreements, titles, registrations, insurance cards and apportioned cab cards for all trucks must be submitted with the form.

- **DBE or SBE must own & operate at least one fully licensed, insured, and operational truck used on the contract.**
CR-274 DBE/ESBE/SBE Trucking Verification

- All DBE-leased trucks are required to reflect the DBE firm's company name and identification number.

- Subcontracting to a Non-DBE trucker means that the Non-DBE will perform a portion of the DBE firm's subcontract.

- 2nd Tier DBE trucking firms must perform 100% of their total subcontract value.

- All DBE-leased trucks are required to reflect the DBE firm's company name and identification number.

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NEW JERSEY DEPARTMENT OF TRANSPORTATION
DBE/ESBE/SBE TRUCKING VERIFICATION

This agreement is subject to the award and receipt of a signed contract from the New Jersey Department of Transportation for the subject project. A copy of all supporting documents must be placed.

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Date of Receipt</th>
<th>DBE/ESBE/SBE Trucking Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tbody>
</table>

The DBE/ESBE/SBE Trucking Firms will perform the following described work on the project.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tbody>
</table>

Total Contract Amount (Amount of DBE/ESBE/SBE Subcontract): $  

Location (Street, city, state, zip code):

Total number of trucks listed on the DBE/ESBE/SBE Trucking Firms: 5

Number of trucks listed in this agreement:

<table>
<thead>
<tr>
<th>Number of Trucks</th>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

Copies of lease agreements, titles, registrations, insurance cards and apportioned cab cards for all trucks must be submitted with the firm.
Counting Participation Toward Contract Goal

When a DBE or SBE participates in a contract, only the value of work actually performed by the DBE or SBE is counted toward the DBE or SBE goal.

1. Work performed by DBE's or SBE's own forces
   - Cost of supplies and materials obtained by the DBE or SBE for the work of the contract.
   - Supplies purchased or equipment leased by the DBE or SBE
   - Not supplies or equipment purchased or leased from the prime contractor or its affiliates.

2. Entire amount of fees or commissions charged by a DBE or SBE firm for providing a bona fide service.
   - professional, technical, consultant, or managerial services
   - providing bonds or insurance specifically required for the performance of a DOT-assisted contract
   - Fees must be reasonable & not excessive - compared with fees customarily allowed for similar services
Counting Participation Toward Contract Goal

3. Work that a DBE or SBE subcontracts to a non-DBE or non-SBE firm does not count toward DBE or SBE goals.

4. When a DBE or SBE performs as a participant in a joint venture, the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE or SBE performs with its own forces is counted toward the DBE or SBE goal.

5. Expenditures to a DBE or SBE contractor are counted only if the DBE or SBE is performing a commercially useful function (CUF) on the contract.

6. Credit for trucking is given based on the particular scenario on the project. 100% goal commitment credit for transportation services provided by the 1st tier firm, and the 2nd tier DBE firm. Additional credit for 2nd/3rd tier Non-DBE firms (not to exceed the value of the credit provided by the 1st tier DBE/SBE firm). For Non-DBE/ESBE leased trucks, credit will only be given for the fee/commission that is received for arranging the transportation services.

7. Counting DBE or SBE participation on a contract correlates to the DBE's or SBE's particular function on that specific contract. One main basic question is: What is the role of the DBE or SBE on this contract?

Possible Roles on Contract

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>Regular Dealer/Supplier</th>
<th>Service Provider</th>
<th>Manufacturer</th>
<th>Tracker/Healer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performs specific tasks with links to contract agreement with prime contractor</td>
<td>Supports and delivers products (projects)</td>
<td>Prime times DBE to provide a service or facilitate procurement of materials and supplies</td>
<td>Owns and operates material from DBE manufacturer</td>
<td>Limited credit for non-DBE trucks</td>
</tr>
<tr>
<td>Must perform at least 40%</td>
<td>Must approve a store or warehouse that contains product it sells to public.</td>
<td>A firm times DBE to provide a service or facilitate procurement of materials and supplies</td>
<td>Owns or operates material to meet contract specifications, takes product and alters to meet contract specifications</td>
<td>Credit can be given if DBE owns non-DBE trucks and pays DBE employees/owners.</td>
</tr>
<tr>
<td>Furnish &amp; Install</td>
<td>Regular dealer or subcontractor, or a manufacturer or supplier</td>
<td>Credit: 100% credit</td>
<td>Credit: 100% credit</td>
<td>Credit: Amount of truck performance, plus a percentage that equals 10% not to exceed value of trucking/planning services provided by DBE</td>
</tr>
<tr>
<td>Credit: 100% credit in delivery &amp; transportation</td>
<td>Credit: 100% credit</td>
<td>Credit: 100% credit</td>
<td>Credit: 100% credit</td>
<td>Credit: 100% credit</td>
</tr>
</tbody>
</table>
Commercially Useful Function (CUF)

Verifies that every DBE or SBE firm performing work on the contract is actually performing the work they were hired for, and that work is counting towards attaining the DBE or SBE goal set for the project. (The role the firm has played in a particular transaction.)

Commercially Useful Function is obtained when:
1. a DBE or SBE is responsible for execution of a distinct element of the work of a contract
2. is carrying out its responsibility by actually performing, managing and supervising the work involved.
3. with respect for materials and supplies used on the contract, negotiates price, determines quality, quantity, orders the material and installs (where applicable), and pays for the material itself.

Commercially Useful Function (CUF)

A DBE or SBE does NOT perform a commercially useful function (CUF) if
- Their role is that as a pass through of funds in order to obtain the appearance of DBE or SBE participation.

Key Factors to Consider:
- Amount of work subcontracted
- Standard Industry practice
- DBE’s or SBE’s role

Operations that MUST be considered/evaluated in order to determine whether a DBE or SBE subcontractor is performing a CUF:
1. Management/Supervision
2. Workforce/Labor
3. Equipment
4. Materials/Supplies
5. Performance
CUF EVALUATION FACTORS – Does the DBE or SBE...?

**Management**
- Schedule work operations
- Receive quotes, order equipment & materials
- Prepare & submit payrolls
- Hire/retire employees
- Make operational & managerial decisions
- Supervise daily operations (owner or knowledgeable full-time superintendent)

**Workforce**
- Keep a regular workforce
- Have employees under firm’s control
- Share employees with non-DBE/SBE firms
- Have responsibility for payroll & labor compliance of employees on contract
- Perform at least 30% of total cost of contract with own workforce.

**Equipment**
- Use equipment (owned/leased) – NOT that of prime or leased from prime
- Operate equipment under DBE/SBE control
- Lease specialized equipment that is consistent with industry practice
- Control & operate specialized equipment with an operator they provide

**Materials**
- Negotiate prices, arrange delivery, take ownership & pay for the materials & supplies themselves
- Prepare estimates, order material – determine quantity & is responsible for quality
- Materials, supplies, equipment purchased/leased from prime is not counted toward contract goal

**Performance**
- Have responsibility for performance, management & supervision of a distinct element of work.

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**Commercially Useful Function**

<table>
<thead>
<tr>
<th>Management</th>
<th>Red Flags</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Supervise daily operations (owner or skilled &amp; knowledgeable superintendent employed by DBE or SBE)</td>
<td>• DBE or SBE owner or superintendent provides little or no supervision of the work.</td>
</tr>
<tr>
<td>• Scheduling work operations</td>
<td>• DBE’s or SBE’s superintendent is not a regular employee of the firm or supervision is performed by personnel associated with the prime contractor, or another business.</td>
</tr>
<tr>
<td>• Ordering equipment &amp; materials</td>
<td>• Key staff and personnel are not under the control of the DBE or SBE.</td>
</tr>
<tr>
<td>• Preparing &amp; submitting certified payrolls</td>
<td>• The DBE or SBE owner is not aware of the status of the work or the performance of the business.</td>
</tr>
<tr>
<td>• Hiring &amp; firing employees</td>
<td>• Inquiries by NJDOT or FHWA representatives are answered by the prime contractor.</td>
</tr>
</tbody>
</table>
# Commercially Useful Function

## Workforce

- No sharing of employees with non-DBE or non-SBE contractors, particularly the prime contractor.
- Perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force.
- Must not subcontract a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

## Red Flags

- Supervision of DBE or SBE employees by another contractor.
- Actual work is performed by personnel normally employed by the prime contractor or another business.
- Employees are paid by the DBE or SBE and the prime contractor.

## Commercially Useful Function

## Equipment

- May lease specialized equipment from a contractor, but not the prime contractor, if it is consistent with normal industry practices & at rates competitive for the area.
- Lease must specify the terms of the agreement.
- Lease must be for a short period of time & involve a specialized piece of equipment to be used at the job site.
- Lease may include an operator for the equipment who remains on the lessor’s payroll if this is a generally acceptable practice within the industry.
- Operation of the equipment must be subject to the full control of the DBE or SBE.

## Red Flags

- Equipment used by the DBE or SBE belongs to the prime contractor or another contractor with no formal lease agreement.
- The equipment signs and markings cover another owner’s identity, usually through the use of magnetic signs.
- A DBE or SBE trucking business uses trucks owned by the prime contractor.
### Commercially Useful Function

**Materials**

- For DBE or SBE contractors (furnish and install) to receive credit for supplying materials, they **must perform all** of the following four functions:
  1. negotiate price;
  2. determine quality and quantity;
  3. order the materials; and
  4. pay for the material itself

- If they do not, they are not performing a CUF with respect to obtaining the materials and the cost of the materials may not be counted toward the DBE or SBE goal.

- Invoices for the materials should show the payer as the DBE or SBE.

<table>
<thead>
<tr>
<th>Red Flags</th>
</tr>
</thead>
<tbody>
<tr>
<td>Materials for the DBE or SBE are ordered, or paid for, by the prime contractor;</td>
</tr>
<tr>
<td>Two party checks or joint checks are sent by the prime to the supplier or manufacturer, instead of sent by the DBE or SBE;</td>
</tr>
<tr>
<td>Materials or supplies necessary for the DBE’s or SBE’s performance are delivered to, billed to, or paid by another business;</td>
</tr>
<tr>
<td>Materials are delivered to the jobsite by a party separate from the DBE or SBE;</td>
</tr>
<tr>
<td>Payment for materials is deducted by the prime contractor from payments to the DBE or SBE for work performed;</td>
</tr>
<tr>
<td>A DBE SBE prime contractor only purchases materials while performing little or no work.</td>
</tr>
</tbody>
</table>

### Commercially Useful Function

<table>
<thead>
<tr>
<th>Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>DBE or SBE must be responsible for the performance, management and supervision of a distinct element of the work, in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Red Flags</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work is being done jointly by the DBE or SBE and another contractor;</td>
</tr>
<tr>
<td>The work to be performed by the DBE or SBE is outside of the DBE’s or SBE’s known experience or capability;</td>
</tr>
<tr>
<td>Any portion of the work designated to be performed by a DBE or SBE subcontractor is performed by the prime contractor or any other firm;</td>
</tr>
<tr>
<td>The DBE or SBE is working without a subcontract approved by the department, except in the case of trucking;</td>
</tr>
</tbody>
</table>
## Commercially Useful Function

<table>
<thead>
<tr>
<th>Red Flags cont’d. (Performance)</th>
<th>What is Normal Industry Practice?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A DBE or SBE primecontractor subcontracts more than 50% of the contract value;</td>
<td>• Determining if the DBE or SBE is performing the work or services in the manner normally performed by all contractors—DBE or SBEs and non-DBE or non-SBEs.</td>
</tr>
<tr>
<td>• The agreement between the prime contractor and DBE or SBE artificially inflates the DBE or SBE participation;</td>
<td>• Even if a DBE or SBE is performing pursuant to normal industry practices if those practices, in fact, erode the ability of the DBE or SBE to control its work and remain independent, the practice may affect how much can be credited toward the DBE or SBE goal and may raise questions about the DBE or SBE eligibility.</td>
</tr>
<tr>
<td>• An agreement that erodes the ownership, control or independence of the DBE or SBE subcontractor;</td>
<td></td>
</tr>
<tr>
<td>• A DBE or SBE works for only one prime contractor, or a large portion of the firm’s contracts are with one contractor;</td>
<td></td>
</tr>
<tr>
<td>• The volume of work is beyond the capacity of the DBE or SBE</td>
<td></td>
</tr>
</tbody>
</table>

## Documentation Used to Evaluate CUF
- Subcontracts/written contracts
- Leases
- Equipment titles of ownership
- Equipment lease/rental agreements
- Purchase Orders
- Invoices
- Shipping tickets
- Delivery tickets
- Material/supply agreements
- Invoices of materials/supplies
- Hauling tickets
- Bill of lading
- Daily inspection reports and project diaries
- Certified Payrolls & Payroll records
- Copies of cancelled checks
Prompt Payment – Why? & Whom?

**Why:**
- To address the barriers created by delays in payment to subcontractors
- Slow payment is a problem affecting many subcontractors, not just DBEs
- Prompt payment provisions are an important race-neutral mechanism that can benefit DBEs & all other small businesses
- Need to support small businesses which include DBEs

**Applies to Whom?**
- All subcontractors - On-site & off-site, DBEs & non-DBEs
- All firms associated with the project - Truckers, suppliers, engineering services, manufacturers, brokers, etc.

Prompt Payment Requirements

- 49 CFR 26 requires NJDOT to ensure prime contractors:
  - Promptly pay subcontractors, including retainage (no later than 30* days of receipt of each payment made to prime by NJDOT) for the subcontractor's satisfactorily completed work.

- NJ Prompt Payment Statute requires prompt payment, including retainage in 10 days.

NJDOT's 2019 Standard Specifications for Road & Bridge Construction will require prime contractors to pay subcontractors within 10 days after subcontractor's work is satisfactorily completed. *Subsection 109.05*

Subcontractor's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented as required by NJDOT.

When NJDOT makes an incremental payment of a portion of the Contract, the work of a subcontractor covered by that payment is deemed to be satisfactorily completed. When the prime has been paid, then the subcontractors providing any work under that estimate must be paid.

Prime Contractors cannot hold subcontractor retainage until the end of the project.
Change Orders & Prompt Payment

- Prompt payment inquiries/complaints can be tied to work associated with change orders.

  RE's timely processing of change orders is important.

  Untimely processing of change orders often causes payment issues.

  The work was performed.

  Parties are expecting payment for that work.

- Timely processing of change orders helps to minimize:
  - prompt payment complaints
  - undue hardship on the prime and subcontractors.

- In instances where change order work involves work of DBE or SBE firms, prime contractors must follow the process for termination, substitution, or replacement, and submit a Revised CR-266.
Prompt Payment Complaints

- Subcontractors and suppliers on projects have the right to file prompt payment complaints with the public agency.
- NJDOT must investigate. If NJDOT does not respond to the unpaid subcontractor, the subcontractor can contact FHWA for prompt payment issues on federally funded contracts.
- Complaints should be filed in a timely manner. On projects that are closed out, Civil Rights no longer has the ability to investigate and resolve the complaint.

Prompt payment complaints can be directed to NJDOT Civil Rights – Contract Compliance Unit.

**Region North Contracts:**
- Cheryl Talihaferro
  - Cheryl.Talihaferro@dot.nj.gov
  - Phone: (609) 963-2055
- Thomas Jones
  - Thomas.Jones@dot.nj.gov
  - Phone: (609) 963-2054

**Region Central Contracts:**
- Anthony Ricciardi
  - Anthony.Ricciardi@dot.nj.gov
  - Phone: (609) 963-2050

**Region South Contracts:**
- Kwincy Brown
  - Kwincy.Brown@dot.nj.gov
  - Phone: (609) 963-2059

Verification of Payments to DBE or SBE Firms

- NJDOT must verify Contractor payments to DBE, ESBE or SBE firms. Contractors should submit documented evidence of payments they made to DBE, ESBE or SBE firms, including:
  - Copies of cancelled checks (front & back)
  - Invoices/receipts from DBE, ESBE or SBE firms
  - Other supporting documentation proving the payment was tied to specific invoices from the DBE, ESBE or SBE firms.
  - Accounting records, etc. supporting evidence that the payments made is tied to the specific project.

- Only actual monies paid to DBE, ESBE or SBE firms can be credited toward the Contractor’s attainment of the contract goal.
  - Contractors are not entitled to payment for work they perform with their own forces, or others perform, that a DBE, ESBE or SBE was approved to perform, without the prior written consent of NJDOT Civil Rights/AA.

- The participation of a DBE, ESBE or SBE firm cannot count toward the Contractor’s final compliance of the goal until the DBE, ESBE or SBE has been paid by the Contractor.
CR-267 - Monthly DBE or SBE Utilization Report

The Monthly DBE/ESBE Utilization Report (CR-267) is used to track payments to the prime contractor, and to DBE, ESBE or SBE subcontractors on a project. Prime contractors are required to submit a signed, original form to the RE each month, whether or not there is work, and whether payments were made to DBE, ESBE or SBE firms or not. The form should always include the following information:

- Every subcontractor/firm being utilized toward meeting the project goal.
- Check box indicating type of project goal – DBE, EBE or SBE.
- Specific contract item (sequence number & description) for each item paid during the month, including the identification of all Partial items identified with “(P)” after each.
- Actual $ value of subcontract work of DBE, ESBE or SBE.
- Amount Paid to the DBE, ESBE or SBE that particular month for the specific items indicated on the form. If there was no payment, use $0.
- Amount Paid to Date to the DBE, ESBE or SBE.

If there are any differences on this form from the latest approved CR-266, a Revised CR-266 and corresponding documents is needed, and must be submitted to the RE for review and concurrence, then transmittal to Civil Rights for final review and approval/disapproval, otherwise any revisions will not be approved.

---


State of New York
Department of Transportation
DIVISION OF CIVIL RIGHTS & AFFIRMATIVE ACTION
MONTHLY REPORT, UTILIZATION OF DBE/ESBE or SBE

Date:

1. Project Name:
2. Prime Contractor:
3. CIP No.:
4. Project Amount:
5. Estimated Contract Completion Date:

<table>
<thead>
<tr>
<th>Date</th>
<th>Description of Work Performed</th>
<th>Contract Price</th>
<th>Subcontract Amount</th>
<th>Paid This Month</th>
<th>Paid to Date</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
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</table>

TOTAL:

6. Percent of DBE/ESBE or SBE participation or date: ___%

Page 1 of 1

TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE ABOVE INFORMATION IS CORRECT AND ACCURATE.

Signature: ____________________________ Date: ____________________________

NOTE: SIGNATURE OF CONTRACTOR/LIENOFFICER INDICATES CERTIFICATION THAT THE INFORMATION PRESENTED ON THIS FORM IS TRUE AND ACCURATE.

This CR-267 report requires a signed statement by the prime contractor that the information is true and accurate. It is up to the prime contractor to ensure that the information is complete and accurate.

Source: N.Y.C.A. 13-08

Page 25
CR-271 Monthly Trucking Verification

New Jersey Department of Transportation

Division of Civil Rights/Accountability

MONTHLY TRUCKING VERIFICATION

For all trucking on the project

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Contract Number</th>
<th>DP Number</th>
<th>Month &amp; Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Truck Owner</th>
<th>Company Name and Address</th>
<th>Truck Number</th>
<th>Amount Paid</th>
<th>Date Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prime Contractor</th>
<th>Business Address</th>
<th>Business Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Upon request all Lease Agreements shall be made available in accordance with the Special Provisions.

I certify that the statements made and information shown are true, complete and correct. I give absolute assurance of the information contained herein is willingly taken. I am subject to penalties. I further certify that I have full power and authority to execute this certification on behalf of the firm, principal, and that all agreements and other written necessary in connection with the execution of this certification by the above named have been obtained and are in full force and effect.

Under 49 C.F.R. 26.107 dated January 3, 1999, all truckers must ensure that any past or future violations and knowingly present incorrect information or make false statements. The Department may take administrative actions under 49 C.F.R. Part 51, Program Procedures and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 201, which prohibits false statements in Federal programs.

Prime Contractor Representative Signature: Date

Submit to RE for review. Use additional space if necessary.

Revisions to a Project DBE or SBE Participation Plan

FACTORS AFFECTING THE NEED FOR CONTRACTOR TO REVISE THE CR-266 TERMINATION, SUBSTITUTION OR REPLACEMENT OF DBE OR SBE FIRMS PROCESS FOR PRIME CONTRACTOR TO REVISE DBE OR SBE PLAN CHANGE ORDERS & REVISIONS TO DBE OR SBE PLAN

26
Factors Affecting the Need Revise the CR-266

Change in DBE's or SBE's involvement on the contract:
- Addition or deletion of work items the firm will perform
- Increase/decrease in value of DBE or SBE's work being performed on contract
- Change in work items from a full item to partial item, or partial item to full item
- Change in role on contract (supplier vs broker)
- Termination of DBE or SBE
- Replacement of DBE or SBE with another DBE or SBE
- Replacement of DBE or SBE with non-DBE or non-SBE

When prime contractors are requesting a revision to their DBE or SBE Participation Plan for the project, they must explain in detail what each revision is, and provide a detailed explanation of why the revision is being requested.

Termination, Substitution or Replacement of DBE or SBE Firms

- A DBE or SBE firm cannot be terminated without written consent of DCR/AA, including, but not limited to instances in which the Prime Contractor seeks to perform work originally designated for a DBE or SBE subcontractor with its own forces, those of an affiliate, a non-DBE firm, or, with another DBE or SBE firm.
- Notify the DBE or SBE subcontractor in writing, with a copy to NDOT, your intent to request to terminate and/or substitute, and the specific reason(s) for the request.
  - Inform the DBE or SBE that they have five (5) days to respond to your notice and advise NDOT and you of reasons why it objects to the proposed termination of its subcontract and why NDOT should not approve your action.
- NIDOT DCR/AA must review and approve the termination, substitutions and replacement of DBE or SBE firms prior to implementation, otherwise the Prime Contractor will not receive credit toward the DBE goal.
- This process must be followed for:
  - Changes in firms
  - Changes in work items
  - Changes in dollar value of work performed by the DBE or SBE
Good Cause

Prime contractors cannot terminate a DBE, ESBE or SBE subcontractor (or approved substitute) without written consent from NUDOT Civil Rights, including instances when the prime contractor seeks to perform work originally designated for the DBE or SBE with its own forces, or affiliate, a non-DBE or SBE firm, or with another DBE or SBE firm.

- Prime contractors must have good cause to terminate the DBE or SBE firm. Good cause includes the DBE or SBE’s:
  - refusal/failure to execute a subcontract agreement
  - failure or refusal to perform subcontracted work consistent with normal industry standards, as long as the failure to perform the work is not based on bad faith or discriminatory action of the prime contractor.
  - bankruptcy/insolvency or credit unworthiness
  - voluntarily withdrawal from the project, and provided prior written notice to NUDOT Civil Rights of their withdrawal.
  - ineligibility to work on public works projects due to suspension or debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law.
  - determination of not being a responsible contractor.
  - ineligibility to receive DBE or SBE credit for type of work required.

Change Orders

Change Orders

Circumstances may arise during construction requiring changes to the scope of the work contained in the contract. Change Orders often necessitate that Prime Contractors submit a revised CR-266 plan package since work associated with a DBE or SBE firm may be deleted from the contract, or the type of work may change, or the quantity of work may be increased.

- **Increases to Scope of Work**
  
  If the scope of work increases, the Prime Contractor must ensure that it has obtained sufficient DBE or SBE participation to meet the Contract Goal on the final contract value or has made good faith efforts to do so.

- **Reduction to Scope of Work**
  
  When a Change Order eliminates work designated in a DBE or SBE commitment, the Prime Contractor must follow the DBE or SBE termination/substitution/replacement procedures and must make a good faith effort to meet the DBE or SBE goal on the final contract value.
Revisions to DBE, ESBE or SBE Program

A revised CR 266 is needed prior to implementation of any changes in subcontractors, work items, or significant $ changes to any executed agreements between the prime contractor and the DBE or SBE firms.

Prior to implementing any revisions to the Contract’s DBE or SBE Program, contractors must:
- Submit to the RE for review and approval by NJDOT Civil Rights, a DBE or SBE Plan revision package, to include:
  a) Revised CR-266 form, with revision # and date for revision clearly identified
  b) Cover memo requesting revision to DBE or SBE Plan for the project, to include detailed written explanation of each revision and reason for the revision.
  c) Form CR-273, and if applicable, the CR-272 & CR-274 forms, for new DBE, ESBE or SBE firms being added to the DBE or SBE Plan.
  d) Form CR-273, and if applicable, the CR-272 & CR-274 forms, for each DBE or SBE firm with work items or dollar amounts of subcontract below.
  e) Documented evidence of good faith efforts verifying the circumstances for the revision(s).

---

Process for DBE Program Revisions

**STEP 1**
- Prime must provide written notification to the DEP/DEP & NJDOT of the Prime’s intent to terminate, substitute or replace the firm. RE is to immediately forward a copy to Civil Rights.
- Notification must include specific reasons why, that the DBE/BE has 5 days to respond, in writing of whether or not they object, and if they do, the specific reasons for the objection

**STEP 2**
- Prime Contractor must request completed and signed CR-273 forms, and applicable CR-272 and CR-274 forms from each new DBE or SBE, and each DBE or SBE firm being affected by work items changes, or changes in subcontract $ value. The prime is not permitted to complete any part of these forms

**STEP 3**
- Prime must submit & submit to RE the DBE Revision Package to NJDOT for review & approval.
  - Cover memo of detailed explanation of each change listed on the revision & specific reason for each revision
  - Revised CR-266, CR-273 & applicable CR-272, CR-274 forms for each DBE or SBE firm with revisions to their work on the contract

**STEP 4**
- Prime submits revised DBE or SBE Program Package and supporting documentation to RE.
- RE reviews to ensure package is complete, the project can support the proposed revisions, & if concurs, sends to Civil Rights for review & approval/disapproval.

**STEP 5**
- Once Civil Rights approves, the Prime Contractor may implement the change. If not approved, the revision cannot be implemented
Civil Rights Involvement @ Project Closeout

The Prime Contractor is required to submit a CR-268 Final DBE or SBE Report on every federally funded contract that there is a project goal. The report is a list of all firms the Prime Contractor utilized to meet the Contract’s DBE or SBE goal, their work items, and how much the Prime Contractor paid each DBE or SBE firm. The Prime Contractor must submit the form after they have completely paid the DBEs or SBEs.

- Credit toward the goal is only given after the contractor has paid the DBE of SBE firm.
- Credit toward the Contract goal is only given to firms, work items (full and parts thereof) and subcontract amount, that were approved by Civil Rights, and only if it was determined that the DBE or SBE performed a CUF.

If the Prime Contractor fails to meet the Contract goal, they must submit documented evidence of their good faith efforts (GFE) to meet the goal. Civil Rights evaluates the GFE and deems it either adequate or inadequate.

- If deemed adequate, Civil Rights is determining that despite the numerical goal not being met, the Prime Contractor satisfied the DBE or SBE contract requirements.
- If the GFE documentation is deemed inadequate, Civil Rights is determining the Prime Contractor did not satisfy the DBE or SBE contract requirements, and if included in Subpart 105.02.05 of the project special provisions, there is a monetary adjustment made to the final payment to the Prime Contractor.

CR-268
Final
DBE/ESBE/SBE Report

Once all DBE or SBE firms have been completely paid, submit a CR-268 to the RE. The RE reviews and submit a copy to Civil Rights for final review and concurrence.

NOTE: If the contract goal is not met, Contractors are not entitled to payment for the portion of the goal not met on the Contract.
Factors Considered in Determining Goal Attainment

Meeting the contract goal is not just meeting the numerical goal.

Civil Rights makes the determination of whether the contract goal was met or not.

Factors examined in determining whether the goal was met:
- Did the contractor satisfy their commitment, specifically:
  - Did they utilize the DBE firms they committed to use?
  - Did the DBE firms perform the work they were listed and approved to perform?
  - Did each DBE firm perform a Commercially Useful Function (CUF)?
  - Did the prime contractor pay the DBE firm?
    - If so, how much did the prime pay the DBE firm?
    - Was payment for the work the firm was approved to perform?

False or Fraudulent Statements

Any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes may be referred to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law.

[True or False]

STOP
Enforcement Actions

Enforcement action may be taken under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

Suspension or debarment proceedings may be made against a firm under 2 CFR parts 180 and 1200 when:

- A firm not meeting the eligibility criteria attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty.
- A firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria.

Equal Employment Opportunity (EEO)/Affirmative Action

REQUIRED POSTERS
ADDITIONAL REQUIRED POSTINGS
ANNUAL EEO & D/ESBE AFFIRMATIVE ACTION PLAN
INITIAL EEO SUBMITTALS
WORKFORCE EMPLOYMENT GOALS
WORKFORCE REPORTING
WORKFORCE REPORTING - REQUIRED MONTHLY SUBMISSIONS
EMPLOYMENT DISCRIMINATION AND SEXUAL HARASSMENT COMPLAINTS
Annual EEO & D/ESBE Affirmative Action Plan

On an annual basis, submit the following directly to NJDOT's Division of Civil Rights & Affirmative Action for review and approval:

- Equal Employment Opportunity (EEO)/Affirmative Action Program, with a cover page that includes the name and address, and signature of the Chief Executive or EEO Officer.
- EEO Policy Statement, on company letterhead, dated and signed by the Chief Executive and EEO Officer.
- Sexual harassment Policy & Sexual Harassment Policy Statement on company letterhead.
- EEO Legend
- Document designating company's Corporate EEO Officer, including name, address & telephone number of the Officer and signature of the President.
- D/E/ESBE Affirmative Action Plan, the explanation of affirmative action methods used in seeking out DBE or SBEs as subcontractors, material suppliers, equipment lessors or manufacturers.

These packages should be submitted to:

New Jersey Department of Transportation
Division of Civil Rights & Affirmative Action - Contract Compliance Unit
P.O. Box 600
Trenton, New Jersey 08625-0600

---

Annual EEO & D/ESBE Affirmative Action Plan

Once the plan is approved, each firm will receive an approval letter from NJDOT Civil Rights/Affirmative Action, indicating the timeframe for which the plan(s) has/have been approved. This letter must be provided to each NJDOT RE for each specific project on which the prime contractor and subcontractor perform work.

- NJDOT requires the annual EEO/Affirmative Action Plan submission from the following:

<table>
<thead>
<tr>
<th>Prime Contractor</th>
<th>Subcontractors</th>
<th>Professional Service Firms / Consultant Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Firms such as Towing Companies/Sweeping Companies</td>
<td>Truckers/Haulers that are not individual owner/operators</td>
<td></td>
</tr>
</tbody>
</table>

- Businesses/Companies EXEMPT from the annual EEO/Affirmative Action Plan submission are:

<table>
<thead>
<tr>
<th>Manufacturer</th>
<th>Suppliers</th>
<th>Regular Dealer/Installers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equipment Lessors</td>
<td>Truckers/Haulers that are individual owner/operators</td>
<td></td>
</tr>
</tbody>
</table>
### Required Posters

**Contractors/Subcontractors**
- Must display these posters at the site of the work in a prominent (conspicuous) and accessible place where they can easily be seen by the workers.
- They cannot be displayed in binders as that does not meet the requirement for displaying or posting them in a conspicuous and accessible place.

**Local Public Agencies/Consultants**
- Display these posters (in English, Spanish & any other appropriate language) at your respective facilities and locations.
- Ensure that contractors display these posters at the site of the work in a prominent and accessible place where they can easily be seen by the workers.

Laminate versions of the various posters sold by companies are NOT acceptable and cannot be used.

### Required Posters – Federal Aid Contracts

<table>
<thead>
<tr>
<th>Contract</th>
<th>Agency/Title</th>
<th>Required by</th>
</tr>
</thead>
</table>
### Required Posters – State Funded Contracts

<table>
<thead>
<tr>
<th>New Jersey Law</th>
<th>Prohibited Discrimination in Employment</th>
<th>Required by N.J.A.C. 13:4-1.2 Available in English and Spanish</th>
</tr>
</thead>
<tbody>
<tr>
<td>NJRPA (Rev. 09/01/11)</td>
<td>Consensus Employee Protection Act (IV) New Jersey Act</td>
<td></td>
</tr>
<tr>
<td>NJRPA (Rev. 09/06/16)</td>
<td>New Jersey Family Leave Act</td>
<td>Required by N.J.A.C. 13:4-2.1 and NJSA 34:17A-109 in English and Spanish</td>
</tr>
<tr>
<td>MNH# 403-31 (Rev. 09/16)</td>
<td>Employee Rights and Responsibilities Under the Family and Medical Leave Act (FMLA)</td>
<td>Required by 29 CFR Part 825.50 in English and Spanish</td>
</tr>
<tr>
<td>MNH# 417-17 (Rev. 04/14)</td>
<td>New Jersey Wage Law – Right to Payment of Wage</td>
<td>Required by N.J.A.C. 43:46B-2 and NJSA 34:17A-109 in English and Spanish</td>
</tr>
<tr>
<td>MNH# 495 (Rev. 11/11)</td>
<td>New Jersey State Wage and Hour Law Notice</td>
<td>Required by N.J.A.C. 34:17A-1.5 entitled to payment of wage</td>
</tr>
<tr>
<td>MNH# 432 (Rev. 05/17)</td>
<td>New Jersey State Wage and Hour Law Notice</td>
<td></td>
</tr>
</tbody>
</table>

### Additional Required Postings

- **NJDOT Title VI Notice to Sub-recipients**
- **NJDOT Policy & Procedure # 208 – “Sexual Harassment on Construction Projects”**
- **Contractor’s EEO Policy Statement**
- **Identification of Contractor’s EEO Officer**
- **Contractor’s Emergency # for EEO Officer (Corporate & On-Site) & Safety Officer**
- **Contractor’s Sexual Harassment Policy**

In addition to the above, the following must be available for use:
- **NJ Dept. of Labor Prevailing Wage Rate Determination (Federal & State Projects) - Actual Davis-Bacon wage rates pertinent to project**

http://hwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing_wage_determinations.html
Initial EEO Submittals

The Contractor must submit the following documentation to the project RE prior to beginning work on the project:

1. Copy of Contractor’s EEO/AA Program and D/ESBE Affirmative Action Program approval letter issued by NJDOT Civil Rights (Prime Contractor)

2. Copy of subcontractor’s EEO/Affirmative Action Plan approval letter issued by NJDOT Civil Rights (Subcontractors with subcontracts of >$10,000 - Federally funded projects) / > $2,500-State funded projects)

3. Contractor’s EEO Officer, including contact information (Prime Contractor)

4. Contractor’s project EEO & D/ESBE Officer, including contact information (Prime Contractor)

5. EEO Legend showing firm is an Equal Opportunity Employer i.e.: letterhead, envelope, advertisement, check, etc. (Prime Contractor & Subcontractor)

Initial EEO Submittals

Submit the following documentation to the project RE prior to beginning work on the project:

6. Record of Initial EEO Meeting (Include date of meeting, name(s) of attendees which should including on-site supervisory personnel, subject matter discussed & disposition of the subject matter.) (Prime Contractor & Subcontractor)

7. Letters from Prime & subcontractors contractors to Unions/Referral Agencies for man-power needs, even if not hiring at present time (These must be signed, dated and referencing the specific project.) (Prime Contractor & Subcontractor)

8. Response letters (signed, dated & referencing the specific project) from Unions/Referral Agencies indicating their cooperation (Prime Contractor & Subcontractor)
Workforce Employment Goals

For all NIDOT projects, both Federal funded, & State funded, attempt to attain the project specific minority and female workforce employment goals for each trade or craft working on the project. Firms meet their EEO goal by hiring and retaining a sufficient number of minority and female employees to satisfy the listed goal (%) in terms of aggregate hours for its workforce.

- Workforce Goals: % of total craft hours worked in each month in each craft

- Goal for participation of females - 6.9% Statewide

- Goal for participation of minorities - Established for geographical area where work is actually performed.
  - Varies statewide per county.

- Provide equal employment opportunities whenever there are new hire opportunities/job openings in work force. *You are not expected to lay off permanent employees to provide new hire opportunities.*

- Be prepared to show that those employees are part of your core work force. To do so, you must show documentation that the employees have been employed over the past two years.

---

Workforce Reporting to NJDOT

- Monthly Workforce (manpower) data must be reported to NJDOT electronically on a CC-257R via the web based application "Vendor Workforce Reporting Manager" through the NJ Portal at:
  http://www.state.nj.us.

- To access the application, contractors need:
  1. to be registered with the NJ Portal
  2. receive an authorization code to receive a link to the application

- Reporting must be done using the project specific job code # provided to the prime. Start reporting the month the firm starts work, and each month until firm's work is 100% complete. If no work for a particular month, report 0's. **Reporting period must = each calendar month.**

<table>
<thead>
<tr>
<th>Required to Report</th>
<th>Not Required to Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime contractors</td>
<td>Manufacturers</td>
</tr>
<tr>
<td>Subcontractors</td>
<td>Regular dealer/suppliers</td>
</tr>
<tr>
<td>Truckers/haulers that are NOT individual owner/operators</td>
<td>Regular dealer/installer if NO installation work is being performed at the job site</td>
</tr>
<tr>
<td>Professional service firms</td>
<td>Equipment lessor</td>
</tr>
<tr>
<td>Regular dealer/installer if employees are doing installation work at the job site</td>
<td>Single owner/operator trucker/hauler</td>
</tr>
</tbody>
</table>
New Jersey Department of Transportation
New Jersey Turnpike

Monthly Employment Utilization Report
Controlled Access
Division of Civil Rights and A.
Monthly Report

Contractor Agency: NJDOT
Project Name: [Redacted]
Report Period: [Redacted]
Contractor: [Redacted]
Federal Project: [Redacted]
Report Preparation Date: [Redacted]

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<table>
<thead>
<tr>
<th>Contractor Agency</th>
<th>Contractor</th>
<th>Federal Project</th>
<th>Federal Title</th>
<th>Report Preparation Date</th>
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<tr>
<td>NJDOT</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
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</table>

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**Report Information**

Report of personnel and new employees CE YOUR WWII FOR REAL. Enter the appropriate figures on all lines accordingly, not just those in corresponding split or other line. This page may have the material on the employment. The Federal/Project Code can be found in the top right hand corner of any document. This line has [Redacted] employees. This line is not to be used for the following text 3/06. This line is not to be used for the following text of the Federal/Project Code.

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**Professionals**

<table>
<thead>
<tr>
<th>Classifications</th>
<th>Total Full-Time Employees</th>
<th>Total Part-Time Employees</th>
<th>Total Overtime Hours</th>
<th>Total Costs</th>
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<tbody>
<tr>
<td>Technical Staff</td>
<td>3</td>
<td>1</td>
<td>5</td>
<td>23</td>
</tr>
<tr>
<td>Management</td>
<td>1</td>
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<tr>
<td>Administrative</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>15</td>
</tr>
<tr>
<td>Clerical</td>
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<td>2</td>
<td>2</td>
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**Administrative Support Services**

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<th>Total Overtime Hours</th>
<th>Total Costs</th>
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</thead>
<tbody>
<tr>
<td>Technical Staff</td>
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<td>2</td>
<td>6</td>
<td>20</td>
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<tr>
<td>Management</td>
<td>2</td>
<td>1</td>
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</tr>
<tr>
<td>Administrative</td>
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<tr>
<td>Clerical</td>
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**Laborers and Helpers**

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<tr>
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<th>Total Overtime Hours</th>
<th>Total Costs</th>
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<tr>
<td>Administrative</td>
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<td>2</td>
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<td>20</td>
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<tr>
<td>Clerical</td>
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<td>1</td>
<td>4</td>
<td>12</td>
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**Costs**

<table>
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<th>Classifications</th>
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<th>Total Overtime Hours</th>
<th>Total Costs</th>
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<td>Clerical</td>
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<td>5</td>
<td>15</td>
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**Operating Expenses**

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<tr>
<th>Classifications</th>
<th>Total Full-Time Employees</th>
<th>Total Part-Time Employees</th>
<th>Total Overtime Hours</th>
<th>Total Costs</th>
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<tr>
<td>Technical Staff</td>
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<td>Management</td>
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<tr>
<td>Clerical</td>
<td>5</td>
<td>3</td>
<td>6</td>
<td>18</td>
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</table>

---

**Submission Information**

Company Contract: [Redacted]
Company Contract Title: [Redacted]
Company Contract Number: [Redacted]
Company Contract Amount: [Redacted]

---

38
Workforce Reporting to NJ L&WD
100% Wholly State Funded Contracts

For all NJDOT 100% Wholly State Funded Construction Contracts:
The New Jersey Department of Transportation does not have delegated authority to monitor and enforce EEO Workforce Compliance on State Funded construction projects. The New Jersey Department of the Treasury, Division of Public Contracts EEO Compliance has jurisdiction for EEO monitoring and enforcement.

Therefore, in addition to reporting workforce data online via the CC 2579, prime contractors must also complete the following NJ Department of Treasury forms:

1. Initial Project Workforce Report Construction (AA-201)
The prime contractor must complete the form pre-construction (prior to signing the contract), retain a copy and submit the first two copies to:

   NJ Department of Labor & Workforce Development
   Construction EEO Compliance Monitoring Unit
   P.O. Box 209
   Trenton, NJ 08625-0209

Submit the 3rd copy to:

   NJDOT – Division of DCR/AA & Affirmative Action,
   Contract Compliance Unit
   P.O. Box 600
   Trenton, NJ 08625-0600

AA 201
Initial Project Workforce
Report
Workforce Reporting to NJ L&WD
100% State Funded Contracts

For all NJDOT State-funded projects:

   The prime contractor must complete this form monthly, by one of two methods:

   A. Manual Method:
   • Complete form manually & mail to:
     1. NJDOT – Division of DCR/AA & Affirmative Action, Contract Compliance Unit
        P.O. Box 600, Trenton, NJ 08625-0600
     2. NJ Department of Labor & Workforce Development Construction EEO Compliance Monitoring Unit
        P.O. Box 209, Trenton, NJ 08625-0209

   B. Electronic Submission - Via NJ Portal & NJ Department of Treasury's Website:
   • Type: www.state.nj.us/treasury/contract_compliance/
   • Select the "Premier Business Services Online Forms Account Instructions" link.
   • Follow all the instructions to set up online access to the New Web Application.

The New Web Application will provide access to current and past reports that can be printed and submitted to the Public Agency awarding the contract as required.

AA 202 - Monthly Project Workforce Report
Construction

State Of New Jersey
Department Of Labor & Workforce Development

MONTHLY PROJECT WORKFORCE REPORT - CONSTRUCTION

For Date Range: [Date Range]

[Form Information]

[Form Table]

[Signature]

DEPT. OF LABOR & WORKFORCE DEVELOPMENT CONSTRUCTION EEO COMPLIANCE MONITORING PROGRAM
Required Monthly EEO Submissions

The following must be submitted every month from the firm’s start of work, until their work is 100% complete on project.

- **E-mail confirmation receipt** "NIDOT – Monthly Employment Utilization Report – Submission Receipt – Construction" indicating work hour info was entered in the system, showing the project identifier as the job code # (CE#)
- A copy of the report/screen shot (CC-257R) of the work hour information entered into the system, showing the project specific job code (CE#)
- **Running Log of Minorities & Females.**
  - Name, address & telephone number of applicants/referrals & action taken with each individual.
- **EEO Inspection Report** — showing date of inspection, who performed the inspection, findings, and individuals interviewed. (If there are minorities and females working on the project, they should be interviewed.)
- **Log of Walk-In Applicants**
  - Name, address & telephone number of applicants/referrals & action taken with each individual

Employment Discrimination & Sexual Harassment Complaints

N.J.S.A. 10:5-1 et seq., 10:2-1 et seq., 42 U.S.C. 2000(d) et seq., 42 U.S.C. 2000 (e) et seq. and Executive Order 11246 prohibit contractors, subcontractors, professional service firms and others working on the contract from discrimination in their performance on the Contract. This applies to:

- Employment, upgrading, demotion, or transfer
- recruitment or recruitment advertising
- layoff or termination
- rates of pay or other forms of compensation
- selection for training, including apprenticeships.

In instances where a person working on a project complains either verbally, or in writing, of employment discrimination or sexual harassment, the RE must immediately notify Civil Rights, preferably in writing.

NJDOT’s Special Provisions outline the process for investigation, reporting and resolving employment discrimination and sexual harassment complaints on NJDOT’s projects, including:

- Investigation of the complaint
- Documenting investigation
- Reporting of investigation to NJDOT
- Corrective/disciplinary action
On-the-Job Training

TRAINING PROGRAM COMPLIANCE
TRAINING PROGRAM REQUIREMENTS
TRAINING PROGRAM APPROVAL PROCESS
APPRENTICE/TRAINEE APPROVAL
TRAINING REPORTS – BIWEEKLY & QUARTERLY
TRAINING CERTIFICATE

Training Program Compliance

The On-the-Job (OJT) Training Program, used on NJDOT federally funded projects, establishes on-site apprenticeship and training programs primarily for minority & female applicants to assist women and minorities into journey-level positions in order to increase their participation in skilled and semi-skilled crafts.

If the project has a training requirement, the prime contractor is responsible for submittal of the following items to the RE during the life of the contract:

- Initial Training Program/Revised Training Program, if applicable
- Apprentice/Trainee Approval Memo (CR-1) for each trainee candidate
- Training Program Progress Reports for each trainee
  1) Bi-Weekly Training Report (CR-2)
  2) Contractor’s 1409 Quarter Training Report (CR-1409)
  3) Training Certificate (CR-3)
Training Program Compliance

Contractor submits Training Program to RE

CE reviews program & if concurs, forwards to DCR/AA for final review & approval.

If approved, DCR/AA issues Training Program Approval memo & sends to RE, RE sends to Contractor.

Contractor submits CR-1 to RE, RE reviews & transmits to DCR/AA for final review & approval.

Note:
The On-the-Job Training Program is primarily for minority & female applicants. If a candidate is not a minority or female, submit documented evidence of good faith efforts to find a minority or female for the position, when submitting the CR-1.

When each trainee/apprentice completed the training program, the Contractor issues a CR-3 to them, with a copy to the RE & DCR/AA.

Contractor submits required reports, CR-2, CR-1409 & CR-3 for each approved trainee/apprentice working on the project.

Once approved, Trainee can start work.

Training Program Requirements

Submit the Initial Training Program/Plan to the NJDOT RE prior to beginning work on the project.

Each program (plan) should include:

- Proposed training positions (work classifications to be used on the project (Ironworker, Form Setter, Truck Driver, Landscaper, etc.)
- # of each type of training position in each classification
- Standard Program hours for each position
- Minimum available hours for each position
- Estimated start dates of each position
- Identification of which positions will be trained by the Contractor, and which by subcontractors

Refer to Revised Standard Training Guidelines 2007 for information about each training position.

Contractors should NOT begin working until the Initial Training Program is submitted to the RE.

Contractors are NOT permitted to make changes in their approved training programs without first requesting in writing and receiving written approval from NJDOT Civil Rights via the RE, who will concur or disagree with the Contractor's revision plan in writing.
Training Program Approval Process

Prior to starting work on the contract, submit the Initial Training Program to the RE for review and concurrence/non-concurrence. If the RE concurs, he or she will submit the Training Program to Civil Rights for review and approval/disapproval. If the RE does not concur with the Training Program submitted, he or she will inform the contractor, and the contractor should reexamine their proposed program and revise and resubmit to the RE.

Once the RE concurs with the Training Program, it is submitted to Civil Rights for final review and approval/disapproval. If disapproved by Civil Rights, the Training Program must be re-worked until a plan is submitted and approved by Civil Rights.

Individuals candidates for the trainee positions should not begin work on the project prior to approval by Civil Rights. If they do, the prime contractor will not receive credit for those hours.

---

Apprentice/Trainee Approval

Prior to a trainee starting on the project, submit the CR-1 form to the RE for review. Information on the form must be legible and complete, including the gender, ethnic category, hourly rate of pay, start date, standard program hours, minimum available hours & Local Union #. The form must be signed by the apprentice/trainee.

**Note:** If the candidate submitted is not a minority or a female, detailed and specific good faith documentation must be submitted with the CR-1 form in order for the candidate to be approved.

If the RE concurs, he or she will submit the CR-1 to Civil Rights for review and final approval/disapproval. If Civil Rights does not approve the candidate, they are not eligible to participate as a trainee on the contract.

**NOTE:** Candidates should not begin work on the project prior to approval by Civil Rights. If they do, the prime contractor will not receive credit for the hours toward the contract training requirement.
CR-1
Apprentice/Trainee Approval Memo

This must be submitted to the RE; and the contractor must receive the CR-1 returned with Civil Rights written approval prior to the candidate's anticipated start date.

No credit is given for candidates working without prior approval from Civil Rights.

CR-2 Biweekly Training Report

CR-1 (6/28/2013)

NEW JERSEY DEPARTMENT OF TRANSPORTATION
DIVISION OF CIVIL RIGHTS
APPRENTICE / TRAINEE APPROVAL MEMO

SECTION A (FILL IN COMPLETED BY CONTRACTOR)

1. Project
2. Contractor
3. Apprentice / Trainee Name
4. Social Security No. (Last 4 digits only)
5. Sex
6. Training Position
7. Hourly Rate
8. Start Date
9. Program Start Date
10. Min. Available Date
11. The candidate is 18?
12. Apprentice / Trainee ST003, Registration Date
13. Program
14. Check all work categories for the category / course has experience in:
   - Carpenters
   - Bricklayers
   - Operating Engineers
   - Operating Engineers
   - Concrete Workers
   - Landscapers
   - Pipefitters
   - Pipefitters
   - Forklifters
   - Other

15. If any items above are checked, complete data below:
   - Name of Category
   - Length of Time
   - Experience

16. Is the apprentice / trainee a union member?
17. Trade Group
18. Trade Group
19. Trade Group
20. Trade Group
21. Trade Group
22. Trade Group
23. Trade Group

Apprentice / Trainee Address

City
State
ZIP Code
Telephone

Signature
Name
Title

SECTION II: TO BE COMPLETED BY DIVISION OF CIVIL RIGHTS STAFF ONLY
1. Approved
2. Disapproved

Sponsor Signature
Date

CR-2 Biweekly Training Report

NEW JERSEY DEPARTMENT OF TRANSPORTATION
DIVISION OF CIVIL RIGHTS
AFFIRMATIVE ACTION
 BIWEEKLY TRAINING REPORT

1. Project
2. Contractor
3. Apprentice / Trainee Name
4. Training Program
5. Training Start Date
6. Training Period Approved Time:
7. Biweekly Hours Shown Below:

<table>
<thead>
<tr>
<th>Skill Category</th>
<th>M</th>
<th>T</th>
<th>W</th>
<th>T</th>
<th>F</th>
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</tbody>
</table>

DORAL

8. Trainer Signature
9. Contractor Signature

10. This biweekly:

   1. is done
   2. does not agree with the above report

   1. is not correct
   2. agrees with the above report

11. RE Signature

Date

Date

Date

Date
CR-3
Training Certificate

New Jersey Department of Transportation
Division of CE/HDOT 13
Training Certificate for Reporting Hours to HDOT

Presented To: 

Presented By: [Company Name]

Certified: [HDOT Project]

Date: 

The Contractor hereby certifies that the above named apprentice or trainee completed hours of the

Certified by Contractor: Signature Date

Trainee/Trainer: Signature Date

Certified by HDOT RE: Signature Date

Distribution: Contractor ➔ RE ➔ copy to DCR/AA

Labor/Wage Rate

Payroll Requirements – Federal Contracts
Payroll Requirements – State Contracts
Wage Rate Interviews
Required to Submit Certified Payrolls

- Contractor
- Subcontractor
  - Subcontractor
  - Professional Service Firm working on-site the contract
  - Trucking firms
  - Truckers (individual owner-operators & sole proprietors)
  - Suppliers whose contract calls for installation

Note: The standard specifications for Road & Bridge Construction define subcontractor as, "An individual, firm, partnership, corporation, joint venture, or any acceptable combination thereof, to which the Contractor subcontracts part of the Work pursuant to 108.01."

Payroll Requirements – Federal Contracts

- Weekly Certified Payrolls on form CR-347 for the prime and others working on the project, are to be completed for each employee, including:
  - Employee's full name and last four digits of the employee’s SSN
  - Ethnicity & gender
  - Specific work classification(s) the employee is performing, making sure it is identical to NIDOL’s Wage Decision list of various classifications applicable for the project. For truckers, specify whether driver or material delivery
  - Hourly wage rate(s), and where applicable, overtime hourly wage rate(s)
  - Any fringe benefits paid to approved plans, funds or programs on behalf of the employee
  - Fringe benefit paid to the employee in cash
  - Daily & weekly hours worked in each classification, including actual overtime hours worked (not adjusted)
  - Gross wage
  - Stabilized deductions made
  - Net wages paid

- Report only the worker's hours for the appropriate project. Do not include any worker's hours from other company projects.
- Submit with each weekly certified payroll, a Statement of Compliance on form CR-347-2, with the appropriate Fringe Benefit method selected, 4(a) or 4(b). If employees are being paid with different fringe benefits, separate payrolls must be filled out for each payment type.
- Deadline for submittal of payrolls & Statement of Compliance forms to the RE is ten (10) days after payment.
- Prime contractor is responsible for the timely submittal of its subcontractors’ certified payrolls.
**CR 347 Weekly Certified Payroll**

**PAYROLL**

<table>
<thead>
<tr>
<th>CR 347</th>
<th>Weekly Certified Payroll</th>
</tr>
</thead>
</table>

List the Work Classification of the work the employee is performing, identical to NJDOL's "Wage Decision Listing".

---

**Payroll Requirements – State Contracts**

- Weekly Certified Payrolls on the NJ Dept. of Labor & Workforce Development's "Payroll Certification for Public Works Projects" form for the prime and all subcontractors working on the project are to be completed for each employee, including:
  - Employee's full name & address
  - Ethnicity & gender
  - Specific work classification(s) the employee is performing, making sure it is identical to NJDOL's Wage Decision listing of various classifications applicable for the project. For truckers, specify whether driver or material deliver.
  - Base hourly wage rate(s), and where applicable, overtime hourly wage rate(s)
  - Fringe benefits paid to approved plans, funds or programs on behalf of the employee.
  - Fringe benefits paid to the employee in cash.
  - Daily & weekly hours worked in each classification, including actual overtime hours worked (not adjusted).
  - Gross wage
  - Itemized deductions made
  - Net wages paid

- Submit with each Weekly Certified Payroll, a Statement of Compliance on form R-01-25-17 (on the back of the Payroll Certification for Public Works Projects), with the appropriate Fringe Benefit method selected, 4(a) or 4(b). If employees are being paid with different fringe benefits, separate payrolls must be filled out for each payment type.

**Note:** The Statement of Compliance form to be used on NJDOT's state funded projects must make reference to "New Jersey Prevailing Wage Act, N.J.S.A. 34:11-26.25 et seq. and Regulation N.J.A.C. 12:60 et seq., and the Payment of Wages Law, N.J.S.A. 34:11-4.1 et seq."

Deadline for submittal of above documents to the RE is ten (10) days after payment.

The Prime Contractor is responsible for the timely submittal of their subcontractors' certified payrolls.
Diane B. Allen Equal Pay Act

- P.L. 2018, c.9 is an amendment to the NJ Law Against Discrimination (LAD)
- Requires pay equality, including benefits across all protected categories noted under the LAD. The Act prohibits pay differentials (including benefits) between members of any "protected class" performing "substantially similar work" when viewed as a composite of skill, effort, and responsibility.
- Effective July 1, 2018, any employer entering into a contract with the State of New Jersey or an instrumentality of the State for "qualifying services" or "public works" must provide to the Department of Labor and Workforce Development - upon commencement of the contract - wage and demographic data for all employees who are employed in connection with the contract (for public works) and for all employees (for qualifying services). This requirement does NOT apply to employers who are contracting with local governments (for example: municipalities and counties). The report must contain the gender, race, ethnicity, job category, compensation, and number of hours worked by each employee.
- Employers that contract with the State or other public bodies will be required to provide a report to the Department of Labor and Workforce Development (the "DOLWD") showing compensation hours and hours worked by employee categorized by gender, race, ethnicity, job category, and total compensation. Contractors and subcontractors. Completed reports should be emailed to: equalpayact@dol.nj.gov
- Forms for public works projects can be found at: https://njlabor/forms_pdf/equalpayact/MW-562without.pdf

Form for Reporting info under Diane B. Allen Equal Pay Act
Form for Reporting info under NJ's Diane B. Allen Equal Pay Act

Date

Name of employer (first and last)

City

State

ZIP

Four (4) weeks starting on

and ending on

[Contractor or Subcontractor]

Project Name and location

That during the period

and ending on

of persons employed on and paid by the full weekly wages earned, that no rates

have been paid or will be paid which vary directly or indirectly from the

full weekly wages earned by any

[Contractor or Subcontractor]

gender and that no deductions have been made either directly or indirectly from the full wages

earned by any person, either by reasonable deductions or as defined in the New Jersey Prevailing

Wage Act, N.J.S.A. 34:11-56.56 et seq., and Regulations N.J.A.C. 12-60 et seq., and the Purpose of

these laws, N.J.S.A. 34:11-4.1 and 4.2 et seq.

The applicable wage rates and the percentage of overtime premium thereon do not

less than the applicable wage rates contained in any wage determination incorporated into

the contract and the calculations are based on the best information or such data as the

contractor or subcontractor has as of the date of the determination.

That any approximation employed in the above period are duly registered with the United States

Department of Labor, Bureau of Apprenticeship and Training and are utilized in a certified

apprenticeship program.

(2)

That

(3)

the fringe benefits are paid and paid on a regular basis within the

period.

(4)

that

the fringe benefits are paid and paid on a regular basis within the

period.

(5)

the fringe benefits are paid and paid on a regular basis within the

period.

(6)

the fringe benefits are paid and paid on a regular basis within the

period.

(7)

the fringe benefits are paid and paid on a regular basis within the

period.

(8)

the fringe benefits are paid and paid on a regular basis within the

period.

(9)

the fringe benefits are paid and paid on a regular basis within the

period.

(10)

the fringe benefits are paid and paid on a regular basis within the

period.

Statement of Compliance

Federally Funded

State Funded

Statement of Compliance forms are due to the RE: ten (10) days after payment.

Make sure reference is to the Copevant Act,

and only one of the fringe boxes is checked.
Prevailing Wage Information – Truckers

- Truckers hired by a contractor to pick up materials from an off-site location (asphalt plant, quarry, contractor's yard, etc.) and deliver them to a public works project are subject to Prevailing Wage.

- Truckers hired by a material supplier (asphalt plant, quarry, etc.) to deliver materials to and pick up materials from a public works project are subject to Prevailing Wage when picking up and hauling materials from the jobsite, but not while delivering to the jobsite.

- Truckers hired by a material supplier only to deliver materials to the project are exempt from Prevailing Wage, unless they are also acting as a contractor.

- In instances when a contractor has excess fill dirt on a public works site, and offers to give it away for free, truckers picking up the free dirt are considered a subcontractor, and therefore are subject to Prevailing Wage.

- The hauling of materials from a public works site to an off-site stockpile (located on private property) is subject to Prevailing Wage.

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Prevailing Wage Information – Truckers

- Delivery of tools or equipment (items that will not become a permanent part of the site) to a public works jobsite is NOT subject to Prevailing Wage.

- The delivery of items that require set-up or installation is subject to Prevailing Wage, if the items are required by the contract.

- When a trucker is picking up materials from a public works site in one county, and hauling to a county in which the rates are different, the rates applicable to the county in which the public works site is located are used.

- In instances when a truck arrives at an asphalt plant to pick up materials to be transported to a public works site, and spends an hour waiting in line to be loaded, Prevailing Wage begins as soon as the driver arrives at the plant.
Wage Rate Interviews

NJDOT is required to conduct Wage Rate interviews of prime and subcontractor’s employees working on the project. Interviews are conducted on-site, in order to ensure that the work actually being performed by construction workers and mechanics (employees) is consistent with the corresponding job titles and wages being reported on certified payrolls.

Inform employees that they may be approached in order to conduct these interviews.
- Make employees available for such interviews;
- Employee’s participation is voluntary.
- Interviews are confidential, and should be conducted individually, and in private.
- Employees are asked about the kind of work they perform, and their rate of pay for the project the interview is being conducted on.
- Interviews are not to be conducted by the Contractor.

Contract Compliance & Wage Rate Contact Information

DBE/SBE Utilization, EEO & OJT

<table>
<thead>
<tr>
<th>Region North</th>
<th>Cheryl Taliaferro</th>
<th><a href="mailto:Cheryl.Taliaferro@dot.nj.gov">Cheryl.Taliaferro@dot.nj.gov</a></th>
<th>(609) 963-2055</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Thomas Jones</td>
<td><a href="mailto:Thomas.Jones@dot.nj.gov">Thomas.Jones@dot.nj.gov</a></td>
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</tr>
<tr>
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<td>(609) 9693-2059</td>
</tr>
</tbody>
</table>

Payrolls & Wage Rate Issues

| Daniel Stern | Daniel.Stern@dot.nj.gov | (609) 963-2057 |

New Jersey Department of Transportation Division of Civil Rights & Affirmative Action
P.O. Box 600
Trenton, NJ 08625-0600