

SECTION 113.00 - CONTRACT CIVIL RIGHTS

113.01 General. Receipt of federal aid (FA) funds is contingent on implementing and compliance monitoring several Civil Rights (CR) programs by the Department. Three of the five CR programs: the Civil Rights Compliance Program, the Training Special Provisions (TSP) Program, and the Disadvantaged Business Enterprise (DBE) Program require that FA construction contracts contain special provisions stipulating that Contractors provide equal employment opportunity (EEO). Included in this is:

- Providing equal opportunity for the employment of minorities and women in the crafts utilized on the project (Civil Rights Compliance Program).
- Providing equal opportunity and taking affirmative action steps in the employment of minority and women trainees in the crafts utilized on the project (TSP Program).
- Providing Good Faith Efforts in subcontracting a portion of the work to certified Disadvantaged Business Enterprises (DBE) Program.
- Providing employment rights for Native Americans, including the Tribal Employment Rights Ordinances, if applicable (TERO program).

Use the following information as a supplement and guide for construction personnel who are administering federal aid contract "EEO Special Provisions", "Training Special Provisions", and "Tribal Special Provisions". These programs are further explained in the Civil Rights Compliance Program and the Disadvantaged Business Enterprise Program found on the [Office of Civil Rights](#) home page, along with program authority listings and other Department personnel responsibilities. Refer to the Civil Rights Compliance Program and the DBE Program for detail of actions to be taken when not specifically outlined within this section.

113.02 Preconstruction Conference. At the preconstruction conference, the Resident Engineer (RE) or the district Safety & Compliance Officer (SCO) should provide the Contractor the following:

- List of required job site posters. (A poster list can also be obtained on the ITD website under "[DOING BUSINESS WITH ITD](#)".)
- Office of Civil Rights Federal Aid Highway Construction Contractors Annual EEO Report online submission tool available at <http://apps.itd.idaho.gov/apps/eo1391form>. (Contractors need to report on the last full pay-period in the month of July. Typically, this means the last week of July. However, if the Contractor did not work that week, then they would report any work performed during the month of July. If no work was performed in July, then the Contractor will only submit basic project information, and select "no work performed.")

Review and emphasize the basic elements of the EEO Special Provisions at the preconstruction conference and place the following information in the Preconstruction Conference Outline, an example of which is located in [Subsection 108.04](#) of this manual. The RE or the district SCO is responsible for ensuring that the Contractor understands the commitments made when the contract was executed, and the consequences for failing to carry out those commitments. In order to have a more detailed understanding of the EEO Special Provisions, the RE and the district SCO should reference the Civil Rights Compliance Program and the DBE Program found on the [Office of Civil Rights](#) home page.

113.03 EEO Special Provisions.

General. Part I and II of the EEO Special Provisions contain the Contractor requirements to provide equal employment opportunity, and practice affirmative action in hiring, training, and promoting women and minorities in the crafts and in their subcontracting opportunities. As with any other provision in the contract, the RE is responsible for monitoring, administering, and ensuring compliance with the “EEO Special Provisions”.

Resident Engineer’s On-Site Inspection form ITD 2674. After each project is under way and the Contractor has employed at least two-thirds of the anticipated work force, the RE will conduct a minimum of three on-site inspections per contractor, per job (preferably at the beginning, middle and end of the project), and will record the findings of each inspection on an [ITD 2674](#). Short-term projects of less than 50 working days duration require only one on-site inspection per contractor. Request that the Contractor take immediate corrective action if minor items (e.g. EEO policy not posted) are out of compliance. If the Contractor refuses or neglects to take the requested corrective action, the RE should initiate a Compliance Review ([ITD 0086](#)) by the headquarters Contract Compliance Officer (CCO). Forward electronic copies of all on-site inspections (ITD 0086) to the CCO.

- RE on-site EEO inspections will be conducted on:
 - All Prime Contractors
 - All Subcontractors with subcontracts of \$10, 000 or more.
- The RE will complete the [ITD 2674](#) and distribute as indicated on the form. EEO on-site inspections determine whether the Contractor is meeting the basic intent of the contract EEO Special Provisions. The inspections can serve as a reminder to contractors (who usually focus on completing the project) that ITD is also concerned about who is working on the project, and the environment in which they work.

In addition to routine contract monitoring by the RE, the district Safety & Compliance Officer (SCO) should randomly select current projects to determine:

- Whether the project file contains an [ITD 2674](#) for the Prime and each covered subcontractor.

- Whether the information provided on the [ITD 2674](#) completed by the RE (or the RE's designee) correlates with the SCO's independently conducted inspections.

The SCO should report their findings to the District Engineer (DE). Forward all random on-site inspection findings to the headquarters Contract Compliance Officer (CCO).

The RE and the SCO should refer to the Civil Rights Compliance Program in order to have a more detailed understanding of what to monitor while conducting the on-site inspections.

The CCO will also conduct annual reviews of selected contractors, which will be documented on an [ITD 0086](#).

For procedures related to Contract Compliance Reviews, refer to ITD's Civil Rights Compliance Program found on the [Office of Civil Rights](#) home page.

Complaints. The Idaho Transportation Department is committed to thoroughly and promptly investigating each complaint in a confidential manner, and employing a process that treats all involved parties with respect. Refer to the [Office of Civil Rights](#) home page or a copy of these procedures, as detailed in the ITD Civil Rights Compliance Program, which will be provided upon request.

113.04 Disadvantaged Business Enterprise (DBE).

General. The DBE Special Provisions contain the Contractor requirement to ensure that Disadvantaged Business Enterprises (minority-, woman-, or otherwise disadvantaged-owned firms) have equal opportunity to participate in performance of the contract. If a DBE goal is included in the contract, the Contractor is required to make a good faith effort to seek out and consider DBE firms for work on the project. The Contractor's good faith effort is required to be documented on an [ITD 2396](#) (DBE Commitments), which must be submitted at bid opening.

For procedures related to the topics below refer to ITD's DBE Program Plan located on the [Office of Civil Rights](#) home page:

- Establishing Contract Goals
- Award of Contract
- Good Faith Efforts when Replacing DBE's
- Counting DBE Participation toward contract Goals
- Commercially Useful Function (Disadvantaged Business Enterprise (DBE) Job-Site Review Commercially Useful Function (CUF) Determination [ITD 1701](#))
 - Form ITD 1701 must be completed for all DBE firms working on all Federal-aid projects regardless of whether or not there are specified DBE project goals

- Monitoring Compliance
- Record Keeping
- Sanctions
- Payments to DBE Subcontractors

113.05 Training Special Provisions (TSP).

General. The primary purpose of the Training Special Provisions Program is to train and upgrade minorities and women toward journey-level status in crafts where they are underrepresented. The contract will specify the number of training hours to be filled. The Contractor should assign training hours to crafts where minorities or women are underutilized. Minorities and women in training positions can be counted toward the EEO goals. RE's should encourage Contractors to bring trainees into the work force early in the contract to provide adequate opportunity for trainees and apprentices to complete their programs, and to reduce the risk of being found in non-compliance with the Training Special Provisions. The Contractor shall submit to the RE a plan showing how the Contractor will meet the TSP requirements before construction begins. This plan will include the number of trainees to be trained, the crafts that the training will cover and the approved training programs to be used. **All training programs must be approved before commencing work.** This plan must also show the starting time for the training in each craft, and the minimum length and training type for each classification.

Use the following ITD forms to document Training Special Provisions compliance: Training Action Request ([ITD 2775](#)), Trainee Monthly Progress Record ([ITD 2776](#)), and On the Job Training Agreement ([ITD 2777](#)).

113.06 Tribal Employment Rights Ordinances (TERO).

General. Projects located, in whole or in part, on Indian lands may be subject to tribal ordinances governing employment practices and fees. Such projects are identified in the contract proposal under the heading "Tribal Special Provisions".

Before the Contractor can begin work on a project covered by TERO, the RE must receive a copy of the executed agreement between the Contractor and the Tribal Representative establishing preferential employment rights for Native Americans and the TERO fee amount, if applicable. The District Engineer, or designated representative must periodically (at least monthly) contact the appropriate TERO Representative to assure that the agreement is being honored. A memo documenting the contact must be transmitted to the ITD headquarters Contract Compliance Officer (CCO).

For state funded projects that are on reservations, the Department is not involved in the review or approval of any documents between the tribe and the Contractor, and is not involved in TERO compliance.

113.07 Forms. All ITD forms identified within this section can also be found on Online Manuals or the ITD Form Finder system. For a more detailed explanation of the use of the identified forms, refer to the approved Civil Rights Compliance Program and/or the approved DBE Program found on the [Office of Civil Rights](#) home page.

113.08 Warranty Chipseal EEO Oversight. The following is the Contractor EEO self-evaluation process using the online submission tools located on the [Office of Civil Rights](#) home page. The overall approach is below:

- Office of Civil Rights (OCR) will identify warranty projects for the year
- OCR will contact the district Safety Compliance Officers (SCO's) to provide information and guidance on the process of self-evaluation with the due date for compliance.
- Contractors and their employees submit self-assessment form
- OCR forwards email submission to district SCO's for processing
 - If contractor is non-responsive, SCO will follow-up to ensure submission is received
- SCO's review and validate that the employee list(s) is a representative sample of the workforce
- OCR reviews the data and chooses 1/3 of the contractors for in-depth audit
- OCR conducts in-depth audits/reviews on the contractor

Forms can be obtained by using the links below:

Contractor On-Site Self-Inspection: <http://www.itd.idaho.gov/ocr/selfinspect.aspx>

Employee Questionnaire State-aid: <http://www.itd.idaho.gov/ocr/empqueststate.aspx>

Employee Questionnaire Federal-aid: <http://www.itd.idaho.gov/ocr/empquestfed.aspx>