

**REQUIRED CONTRACT PROVISION**  
**SPECIFIC EQUAL EMPLOYMENT**  
**OPPORTUNITY CONTRACTUAL REQUIREMENT**

**1. General:**

Equal employment opportunity requirements to NOT discriminate and to take affirmative action to assure equal employment opportunity shall apply to all Contractors, subcontractors and suppliers who have a contract, subcontract or purchase order that equals or exceeds \$10,000.

**A. Federal Aid Projects**

The specific affirmative action requirements for these contracts are imposed pursuant to 41 CFR Part 60-1, 60-250, 60-741, 23 CFR Parts 633 and 230, FHWA Form 1273 and the Americans With Disabilities Act of 1990.

**B. State Funded Projects**

The specific affirmative action requirement for these contracts are imposed pursuant to the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq. as amended and the rules and regulations promulgated thereunder.

The Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.); the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.)(ADA) and to not discriminate against any person because of race religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are bind upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements set forth herein or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the Kansas Department of Transportation (KDOT) or the Kansas Department of Administration; (f) if it is determined that the Contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the KDOT or the Kansas Department of Administration. The provisions of this paragraph, with the exception of those relating to the ADA, are not applicable to a Contractor who employs fewer than four employees during the term of such contract or whose contracts with KDOT cumulatively total \$5,000 or less during the fiscal year.

**2. Equal Employment Opportunity (EEO) Policy:**

**A. The Contractor will accept as a minimum operating policy the following statement:**

*"It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, age, sex, color, disability, national origin, or veteran status. Such action shall include: employment, upgrade, demotion, transfer, recruitment, recruitment advertising, layoff, termination, wages, benefits, and selection for training including preapprenticeship, apprenticeship and on the job training."*

All other EEO requirements will need to be incorporated by each Contractor into their policy.

**B. Annually the Contractor will send to the KDOT Office of Civil Rights (OCR) one copy of the company's EEO policy signed and dated by the company's Policy Officer. The EEO Policy must be approved by the KDOT before the award of a contract, subcontract or purchase order over \$10,000. Contractors are encouraged to submit their policies for approval before bidding projects so as not to delay contract or subcontract award. Firms with more than 50 employees must also submit an Affirmative Action (AA) plan.**

C. To comply with requirements of TEA 21, all Contractors and subcontractors must annually provide information on the firm's age, gross receipts, and work type. This information will be due on the same date as the EEO policy, and is required before a Contractor can perform work.

### **3. Contents of EEO Policy/AA Plan:**

A. The minimum operating statement listed in 2.A and additions designated by the company to comply with all relevant laws.

B. The designation of the EEO Officer responsible and capable of effectively administering and promoting an active EEO program and the designation of the full authority to do so.

C. The company's recruitment policy with specific actions to be taken for the coming year, relevant to the current work force.

D. Certification that the Contractor does not maintain or permit any segregation of its facilities and that no employee will be denied access to any facility based on sex or disability.

E. The company's training and promotion policy to upgrade the skills of minorities and women.

F. The Company's personnel actions in regard to job site inspection, wages, benefits, transfers, demotions, layoffs, terminations, promotions, new hires and upgrades, and the company's complaint procedure.

### **4. Dissemination of EEO Policy /AA Plan:**

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

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations within thirty days following reporting for duty with the Contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group employees.

B. In order to make the Contractor's EEO policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor will take the following actions:

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

(2) The Contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by meetings, employee handbooks, and other appropriate means. Meetings should be conducted periodically and documented to confirm new employees are included.

## **5. Unions:**

If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use best efforts to obtain the cooperation of such unions to increase opportunities for minorities and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor either directly or through a Contractor's association acting as agent will include the procedures set forth below:

A. The Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

B. The Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, age, sex, disability, national origin, or veteran status.

C. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the KDOT and shall set forth what efforts have been made to obtain such information.

D. In the event the union is unable to provide the Contractor with a reasonable flow of minority and female referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, age, sex, disability, national origin, or veteran status; making full efforts to obtain qualified and/or qualifiable minority group members and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, for federal or federal-aid construction projects, and these special provisions, such Contractor shall immediately notify the KDOT.

## **6. Subcontracting:**

The Contractor, when seeking to subcontract a portion of the work on this project, is required to take affirmative action to consider DBEs as potential subcontractors. In the event assistance is needed to locate or obtain a list of potential DBEs, the KDOT's Plans and Proposals Section and the OCR may be contacted.

"Disadvantaged Business Enterprises" are businesses which have been certified as disadvantaged by the OCR and are listed in the current DBE directory which is also available at [www.ksdot.org](http://www.ksdot.org).

The Contractor will certify on DOT Form 260 that all EEO provisions applicable to this contract are included in all subcontracts.

The Contractor will exert concerted efforts to train and develop DBEs by providing direct assistance in such areas as preparing quotations, understanding highway construction plans and standard specifications applicable to the portion(s) of the work to be subcontracted, and familiarizing DBEs with business practices and other actions which will facilitate their development into viable highway construction Contractors.

By making systematic written and verbal contact with DBEs likely to have an interest in highway construction work, the Contractor will make every effort to solicit DBE subcontractor quotes. Additionally, the Contractor will not restrict DBEs in the furnishing of subcontractor quotes to any other bidder/Contractor who may be preparing bid proposals for submission on this Contract.

In order to afford DBEs an opportunity to participate as subcontractors on portions of the work to be subcontracted, it is required that itemized quantities and particular incidentals to such work be furnished to DBEs in order to solicit quotes for prospective subcontractors. Bid solicitation should be directed only to those Contractors whose specialties and skills encompass those bid quantities for which bids are being solicited.

The Contractor will affirmatively solicit the interest, capabilities, and prices of DBEs and document results of such solicitation in detail. The Contractor fully understands that requests for Approval of Subcontractor (DOT Form 259) submitted to the KDOT for approval may be denied if such affirmative action cannot be demonstrated when requested. When requested to establish evidence of affirmative action being taken, the prime Contractor shall provide:

A. Copies of letters and requests for bids sent to potential DBEs and of certified mail receipts.

B. Copies of letters and bid quotes received from DBEs. Copy of the letter and bid quote received from the subcontractor for whom the Request for Approval is submitted, if the subcontractor is not a DBE.

#### **7. Required Notices and Posters:**

A. Required on State Funded and Federal-Aid Projects:

1. Unemployment Insurance Notice K-CNS 405
2. Workers Compensation Law K-WC 40
3. Kansas Equal Opportunity
4. Child Labor K-ESLR 100

B. Required on Federal-Aid Projects Only:

1. Contractor's EEO Policy and Contact Number for EEO Officer
2. Wage Rate Information FHWA 1495 and 1495A
3. Wage and Hour Posters WH 1321 and WH 1088
4. Fraud Notice FHWA 1022
5. Equal Opportunity Poster
6. Job Safety and Health Poster OSHA 3165 and 3167
7. Contract Wage Rates
8. Family Medical Leave Act WH 1420
9. Polygraph WH 1462
10. Government Contracts WH 1313

#### **8. Noncompliance with EEO/AA Requirements:**

A. KDOT will not award a contract, approve a subcontract or sign a purchase order until the required EEO/AA policy has been submitted to and approved by the KDOT Civil Rights Administrator in the OCR.

B. If discrimination, harassment or a hostile work environment exists on any project, the KDOT will take every action needed to confirm the problem is corrected in a timely manner. KDOT will also monitor the project to determine if retaliation is taken against any employee who files a complaint.

C. Contract Compliance reviews are conducted by OCR on selected federal aid contracts. A Contractor can expect to be reviewed once every three years or more often if any deficiencies had been previously found. During a Compliance Review all areas listed previously in items 2-7 will be verified for compliance. *The compliance review is the Contractor's ONLY opportunity to provide documentation of ALL efforts undertaken to meet or exceed all EEO/AA requirements of the contract. It is IMPORTANT that all relevant documentation be provided at this time. During any subsequent appeal process new documentation not previously submitted to the OCR will NOT be considered in the appeal.* A deficiency occurs when the Contractor fails to comply with a requirement and/or fails to document every good faith effort to comply. A Voluntary Corrective Action Plan (VCAP) is required to correct certain deficiencies that do not directly affect a protected group or result in discrimination. A follow up review is conducted to confirm that the VCAP was enacted and determine if it is effective.

D. When a Contractor's action or inaction adversely affects a protected group member (discrimination) or when a Contractor has failed to provide written documentation of every good faith effort to provide equal opportunity and to take affirmative action, these procedures will follow:

- (1) For the first documented occurrence of such a deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days a written notice of a show cause hearing is sent to the Contractor. The show cause hearing is an informal hearing providing the Contractor's opportunity to submit a Corrective Action Plan (CAP) for the immediate correction of the noted deficiency and to eliminate any future reoccurrence. The hearing is chaired by the Chief of the Bureau of Construction and Materials

and attended by a staff of OCR and an FHWA representative. KDOT (the Chief of the Bureau of Construction and Materials and the Civil Rights Administrator) must approve and the FHWA representative must concur that the CAP will achieve compliance before it is accepted.

(2) For the second documented occurrence of the same deficiency within 3 years the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Materials, the Director of Project Delivery and the District Engineer will review the Contractor's documentations and the findings of the OCR and either concur or disagree with those findings. Upon concurrence by the Compliance Review Committee a notification of monetary assessment will be sent to the Contractor with a copy to KDOT's Prequalification Committee and the field office, and the assessment will begin on the date of the letter. As noted above, *the Contractor's opportunity to document every good faith effort is during the compliance review*. The applicable monetary assessments are listed in Table 1. The assessment will be collected for a minimum of five days or so long as the Contractor remains in non compliance.

(3) For the third documented occurrence of the same deficiency within 3 years of the second deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Materials, the Director of Project Delivery and the District Engineer will review the Contractor's documentations and the findings of the staff of OCR and either concur or disagree with those findings. Upon concurrence the Compliance Review Committee sets a debarment period of up to six months and notification is sent to the Contractor, KDOT's Prequalification Committee and other interested agencies. During the debarment period the Contractor will not be eligible to request KDOT plans, submit a bid as prime or subcontractor or otherwise acquire new work on KDOT projects. Any work currently in progress can be completed.

(4) For the fourth documented occurrence of the same deficiency within 3 years of the third deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Materials, the Director of Project Delivery and the District Engineer will review the Contractor's documentations and the findings of the OCR and either concur or disagree with those findings. Upon concurrence the Compliance Review Committee sets a debarment period of one year and notification is sent to the Contractor, KDOT's Prequalification Committee and other interested agencies. During the debarment period the Contractor will not be eligible to request KDOT plans, submit a bid as prime or subcontractor or otherwise acquire new work on KDOT projects. Any work currently in progress can be completed.

(5) The Contractor may request an appeal to the KDOT Compliance Appeal Board (CAB) within five days of the receipt of the notice of assessment or debarment (2, 3 or 4 above). The request is made to the Deputy Secretary for Engineering & State Transportation Engineer (Deputy Secretary) who chairs the CAB. The two other members include one member named by the Deputy Secretary and one member named by the Contractor within 5 days of the appeal request. A date and time will be set by the Deputy Secretary for hearing the appeal and will notify the Contractor, FHWA, KDOT's Civil Rights Administrator and the CAB members. The CAB reviews the documents previously submitted by the Contractor and the previous decision of the Compliance Review Committee. The Contractor presents verbal or written statements to the CAB as to why they disagree with the finding of noncompliance. *The CAB cannot consider any new documentation at this time because its purpose is to concur or disagree with the findings previously made*. The Deputy Secretary will advise the Secretary of Transportation of the decision of the CAB and the final administrative decision will be issued by the Secretary and made known to all concerned parties. During the appeal process the Contractor is not relieved from taking corrective action to eliminate noted deficiencies and the sanction imposed remains in place pending the decision.

<b>TABLE 1</b>		
<b>SCHEDULE OF DAILY MONETARY ASSESSMENTS</b>		
<b>Original Contract Amount Range</b>		<b>Amount of Assessment to be Deducted for Each Day of Non-Compliance</b>
\$0.00	\$100,000.00	\$200.00
\$100,000.01	\$500,000.00	\$400.00
\$500,000.01	\$1,000,000.00	\$800.00
\$1,000,000.01	\$2,500,000.00	\$1,000.00
\$2,500,000.01	\$5,000,000.00	\$1,500.00
\$5,000,000.01	\$10,000,000.00	\$2,000.00
\$10,000,000.01	\$25,000,000.00	\$2,500.00
Over \$25,000,000.01		\$3,000.00

Sept-22 Letting