

## **103 -- PRECONSTRUCTION**

### **103.00 PRECONSTRUCTION**

#### **103.01 PRECONSTRUCTION CONFERENCE**

As soon as practical after a contract is awarded, the Project Manager will arrange a preconstruction conference with the contractor. The number of people attending this meeting will depend upon the complexity of the job. Usually it includes:

- Project Manager and assistants in charge of the project
- District Engineer
- District Construction Engineer/Assistant DCE
- Design Engineer
- Prime contractor
- Subcontractors (have prime invite them)
- Utility and railroad companies
- Local government (city and county) when associated with project

The following agencies may, on certain projects, be invited:

- Federal Highway Administration division office
- Law enforcement - highway patrol, sheriff, or city police
- Construction Office
- Minority Business Office

The conference is usually conducted by the Project Manager. During introductions by the Project Manager, a form for names, addresses, and phone numbers of those present should be circulated. Minutes of the meeting should also be kept by the Project Manager and copies sent to all interested parties.

The purpose of the conference is to discuss:

- Safety of employees and the public (*SSHC Subsection 107.07*).
- The project plans and specifications.
- Unusual conditions and constructability.

- Utility requirements (*SSHC Subsection 105.06*).
- Erosion Control Plans
- Contractor's plan and schedule of operation (*SSHC Subsection 108.07*).
- Type and adequacy of equipment.
- No materials are to be incorporated in the project until approved by the PM. All electrical materials must be approved by the Construction Division before any electrical work begins.
- Material Suppliers
- Sources of labor and labor requirements.
- Maintenance of traffic and business access.
- Other pertinent items that will result in a better job understanding.
- Partnering opportunities.

#### **103.02 ADMINISTRATION DETAILS**

Before discussing any project details, Subsections 103.00 to 103.61 of the *Construction Manual* may be distributed to the contractor and subcontractors at the Project Manager's option.

Administrative issues to be discussed at the preconstruction conference include:

##### **A. Change Orders**

Before commencing any work not covered by the contract, the contractor and the Project Manager must agree on the price or prices to be paid for the work (or the method used to determine them). Extra work performed before this agreement is reached cannot be considered for payment. The basis of payment for the cost of extra work follows four general categories:

- Contract unit prices
- Agreed unit prices
- Agreed total prices
- Force account

On force account work, the contractor is required to prepare payrolls and invoices, in duplicate, for labor, equipment and material furnished, using a "Force Account Agreement" (DR Form 58). This form shall be signed by the inspector and contractor's representative at the end of each day's work. Both the contractor and inspector will retain a copy.

##### **B. Contract Documents**

Contractors must see that copies of plans, specifications, and special provisions are available at all times to their representatives on the project.

Plan revisions will be mailed to the contractor as soon as they are issued. Contractors will be responsible for keeping their field representatives informed and supplied with such revisions. If contractors feel such revisions require extra work, they should immediately advise the Project Manager.

C. Wage Rates (Federal Aid Projects)

All wages paid must conform to wage and hour provisions prescribed in the contract. Crafts must be listed exactly as shown in the wage decision. Crafts not listed but needed shall be requested by the contractor through the Project Manager. Required payrolls must be submitted weekly and within seven days after the last day covered by the payroll.

It is suggested that the prime contractor collect, sign, and submit all payrolls of approved subcontractors, as a group, to the Project Manager.

The Project Manager may withhold progress estimates if payrolls are more than two weeks behind schedule.

D. Postings

The contractor shall be responsible for erecting and maintaining required postings as outlined in *Construction Manual* Subsections 103.21 to 103.24.

E. Stockpiled Material

If contractors want payment for stockpiled material, they should provide receipted bills showing the actual cost of the material stockpiled. For payment of stockpiled material, refer to *Construction Manual* 105.06.

F. All plants shall be labeled.

The information on each plant's label shall described the plant's:

- (1) Botanical genus.
- (2) Species.
- (3) Common name.
- (4) Size or age.

Legible labels shall be attached by the nursery grower to individual plants, boxes, bundles, bales, or other containers to insure that all species and varieties are identified.

G. Subcontracting

1. On all projects, prime contractors must submit their subcontract requests to the Construction Division in a letter or FAX.
2. The prime contractor is responsible for EEO and minimum wage compliance by all subcontractors.
3. All subcontractors must be approved by the Construction Division prior to the subcontractor starting work.
4. In the event a prime contractor elects not to subcontract and instead "carry the people on the payroll", the District Engineer and/or his/her authorized representative may perform the following checks:
  - a. Request to see on a random basis and before distributing the payroll checks of the people in question.
  - b. Request a copy of the lease agreement on equipment to verify that compensation is on a time period basis rather than the amount of work accomplished.
  - c. Check material supplier invoices or billings to insure that the prime contractor is or will make payment for the materials used in the work in question.
  - d. Check the prime contractor's payrolls to determine if the people in question and their supervisor(s) are included on the payrolls.

H. Project Supervision

The prime contractor shall submit in writing, to the Project Manager in charge, the name of an authorized representative on the project. Representative will be empowered to coordinate with all operations of subcontractors and negotiate with the Project Manager any questions concerning extra work, including extra work performed by a subcontractor. If the prime contractor wishes, this representative may be a subcontractor's employee that is present when work on the project is being performed.

I. Weekly Report of Working Days

@ When working time is being charged, the Project Manager will prepare and furnish the contractor the "Weekly Progress/Working Day Report" showing working days charged that week. Objections to days charged must be made in writing by the contractor within ten calendar days after receipt of the report. Objections based on delays due to unavailability of materials should be accompanied by copies of orders placed, acceptance of orders, and promised dates of delivery. All other objections must be accompanied with documentation of the reason for objection. The Project Manager will respond to the objection, indicating acceptance of the claim or reasons for rejection.

J. Right-of-Way

All parties are reminded that highway right-of-way abuts upon private property. Any infringement or trespassing upon such private property could cause damage that would become a liability to the person or organization involved. Maintaining good relations with the public (especially private property owners) is very important.

K. Safety

Contractor must comply with provisions of the Federal and State Occupational Safety and Health Acts.

L. Nebraska One Call Notification System shall be explained by the Project Manager. The Diggers Hotline of Nebraska phone number is 1-800-331-5666.

M. Contractor has 48 hours to file notice with county sheriff when burial sites are discovered.

N. Water Pollution & Wetlands

The contractor's schedule and methods for control of water pollution and protection of wetlands should be reviewed. For more information, refer to Construction Manual Division 1100.

All disposal sites require NDR approval.

O. EEO Requirements (Federal Aid Projects)

1. Forms PR-1391, Manpower reports required. (Distribute sample form)
  - A. The Contractor (prime and subs) shall send two copies to State Contract Compliance Officer.
  - B. Submit by 10<sup>th</sup> of August.
  - C. Needed for the week of July 15<sup>th</sup> only.
  - D. If no minorities or women employed - explain why.
  - E. Required of subcontractors, also, with subcontract of \$10,000 or more.
2. All subcontract and purchase agreements must include E.E.O. provisions.
  - A. All sections of Form PR-1273 must be attached to these agreements.
3. Not allowed to maintain segregated facilities of any kind.
4. Must pay comparable wages.

5. Contractor must adopt an EEO policy statement.
  - A. Post it on job site and in home office.
  - B. Send it to outside referral sources.
6. Designate an E.E.O. Officer.
  - A. Should be in writing and signed by policy officer of the company.
  - B. Send the notice of designation to NDR project manager.
  - C. Post this designation where employees can see it.
  - D. E.E.O. Officer must be someone with authority.
7. Conduct E.E.O. meetings with supervisory personnel before the job starts.
  - A. Review all the requirements of the contract.
  - B. Meetings must be held at least every six months.
  - C. Document and keep records of these meetings. (Can be formal minutes or diary notes).
8. Disseminate E.E.O. policy to employees.
  - A. If done by meetings, document and record. (Diary Notes acceptable)
  - B. May be done by pamphlets or other handouts.

There is no set way of doing this. The contractor may use whatever system works best for the company. However, the company must be able to document that employees are told about E.E.O.
9. Put up E.E.O. posters.
  - A. Two required - Federal and State.
  - B. Must be at job site and home office.
10. When advertising for jobs, he/she must include the notation "An Equal Opportunity Employer". Should keep copies of ads.
  - A. When advertising, place ads in local commuting area of job site.
  - B. Use newspapers and other media likely to yield minority and female applicants.

11. When hiring, the contractor should show some active recruitment in local commuting area of job site.
  - A. Make personal recruitment visits to organizations, agencies, etc. in the commuting area of the job site.
  - B. Write letters of recruitment to organizations and agencies in the local commuting area.
  - C. Keep records of all recruitment activity (diary notes are acceptable for personal visits).
12. Must show that some attempt is made to analyze the labor market where the job is located.
  - A. Determine number of minorities and women in the commuting area of job site.
  - B. Analyze staffing pattern of crew at job site.
  - C. Set up some type of goal or objective for utilizing minorities and women on that particular job. If minorities and women will not be utilized, be prepared to explain why. Keep records of this analysis activity.
13. Will need to show that personnel actions are reviewed by top management for discriminatory effects.
  - A. If a minority or women is discharged at the job site, make sure that the home office knows about it and that the company E.E.O. Officer gives the facts surrounding that discharge.
  - B. If a minority or women is transferred or promoted, the E.E.O. Officer should know about it.

We are not advocating that contractors establish a highly formal procedure for this, because in some cases, it would not be practical or feasible. However, it is the contractor's responsibility to show that this is being done regardless of the method used.
14. Must show some type of training activity. Must advise employees about training opportunities available and encourage minorities and females to participate.

A. Document progress of trainees.

When training is given on an informal basis, the contractor will need to show that it is given. Records of case histories should be kept, subject to being verified by interviewing the trainee involved. Keep records of all training activity.

15. Letters must be sent to known minority contractors regarding any subcontract work. Documentation must be kept on the efforts made to solicit minority businesses.

16. Keep records of the following:

A. Number of minority and women applicants referred and where they come from.

B. Number of minorities and women hired - if not hired, reasons why.

C. Number of minorities and women transferred, terminated, promoted, etc.

17. Identify minority and women employee files after hire.

Note: Each Federal-Aid project will stand by itself when being evaluated for affirmative action. In other words, affirmative action on one project will not satisfy the requirement of affirmative action on another project. The contractor should satisfy himself/herself that the foregoing actions are taken and that records are kept for each and every project under his/her control.

**103.03 PROJECT DETAILS**

A. On many projects it may be necessary for the Project Manager to prepare and present an enlarged plan or map for showing:

- Location.
- Terminal points.
- Type of construction involved.
- Special areas of concern, including installation of public utilities to be fenced or marked if hazardous or sensitive.
- Restrictions due to lack of right-of-way or defined by right-of-way agreements.
- Detours and staging of construction for traffic.

B. Contractor must present his/her detailed construction schedule, or else postpone preconstruction conference.

1. Starting Date \_\_\_\_\_ Completion Date \_\_\_\_\_

Any date before Notice to Proceed must be approved in writing by the **Construction Division.**

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- 2. Staging Schedule and/or Sequence of Operation.
- 3. Items to be sublet and names of subcontractors.
- C. Sampling and material testing requirements shall be discussed.
- D. Contractor Insurance requirements shall be verified.
- E. Railroad Protective Insurance

The contractor must have appropriate insurance in force when working on the railroad right-of-way.

The Controller Division will enter the effective dates of railroad insurance policies in SiteManager. However, the Project Manager must, in the Key Dates area of SiteManager, record the date that construction started and the date when construction in the railroad right-of-way is complete. **Check to make sure that Railroad Protective coverage is in force.** If not, do not allow the contractor on the right-of-way and do give Controller Division (402-479-4631) a call so that they can verify that insurance has, in fact, not been received. When work has been completed on the railroad right-of-way, the same procedure should be used to record the ending date.

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F. Utilities and Law Enforcement Attendance

At major project preconstruction meetings, attendance of utilities and law enforcement personnel is highly beneficial to all concerned. The Project Manager should expend extra effort to assure attendance or open communication with utilities and appropriate law enforcement agencies.

Relocation of utilities is of extreme interest to all concerned in the progress of the project. For safe control of traffic, the ability to discuss traffic control with both contractors and law enforcement could be highly beneficial. The State Patrol, local sheriff, or police should be invited to attend preconstruction meetings when appropriate. The State Patrol can be contacted through the State Patrol District Office charged with responsibility for the area of the project being discussed.

It is beneficial to discuss utilities relocation, project staging, and/or traffic control early in the meeting before more detailed and time consuming construction matters are approached. You may excuse utility companies early.

G. Plan and specification omissions must be discussed.

H. Traffic Control (PM shall present the NDOR Traffic Control Plan.)

In addition, the following must be verified:

1. Brand and model of barricade light proposed to be used are on the Approved Products List.
2. Maintaining spare parts on project.
3. Checking barricades and signs at frequent intervals daily.
4. Phone number of person to call at night if barricades, or signs or devices are down or not working.

Name and Number \_\_\_\_\_ - \_\_\_\_\_

Name and Number \_\_\_\_\_ - \_\_\_\_\_

5. Notify Project Manager before picking up signs and also at first notice of damaged or stolen signs.

I. Prompt Submittal of Certificates of Compliance, Certified Analysis etc. to insure payments.

J. Location of Field Laboratory and Field Offices

K. Subcontractors must be approved before they can begin working on project. We need to be notified when they are going to be working on project.

L. Contractor's Borrow Pits – Approval

M. Payrolls – Prime Contractor needs to check subcontractors

N. Welding on girders not allowed without written permission.

O. Labor, Payrolls, Wage Rates, Training & E.E.O.

E.E.O. Officer \_\_\_\_\_

Safety Officer \_\_\_\_\_

P. Extra Work Orders

Before commencing any work not covered by the contract, the contractor and the engineer must agree on the price or prices to be paid for the work. Extra work performed before this agreement cannot be considered for payment.

**103.04 ADDITIONAL TOPICS FOR DISCUSSION**

- Anticipated work starting dates.
- Clean up of cast-in-place concrete structures.
- Staging schedule.
- Falsework plans and falsework removal.
- Presentations by various utility representatives
- Please remind contractors at the preconstruction conference that they or their suppliers are required to furnish 2 (two) 2.0 m (6 foot) sample lengths of reinforcing bars whenever such samples are called for in the *Standard Specifications* or *Materials Sampling Guide*.
- Signing, barricades, pavement marking, warning lights, and other temporary traffic control devices according to:
  - ◆ Department responsibilities (*SSHC Sections 422 and 423; Subsections 104.05, 105.01, 107.07, and 107.14*).
  - ◆ Contractor responsibilities (*SSHC Sections 422 and 423; Subsection 104.05, 105.05, 107.07, and 107.14*).
  - ◆ Contractor's work plan (*SSHC Subsection 108.07*).
- Project Lighting (if applicable).
- Remind contractor when ordering piling, he/she must tell manufacturer to stamp the heat number on the piling. (*SSHC Subsection 703.02*)
- Presentation by county or city representatives.
- Names and chain of command for state or county forces assigned to project.
- Authority and duties of inspector. (*SSHC Subsection 105.05*)
- Assignment of contractor's personnel for:
  - ◆ Person responsible to maintain traffic control devices (24 hour call number). (*SSHC Subsection 422.01*).
  - ◆ Person authorized to make decisions and sign extra work orders, etc.
  - ◆ Project safety officer.
  - ◆ EEO officer.
  - ◆ Project supervisor (*SSHC Subsection 105.05*).
  - ◆ Disadvantaged business enterprise liaison officers.

- Discussion of items to be sublet, names of subcontractors, and commercially useful function of DBE subcontractors, suppliers, and manufacturers should be discussed.
- Construction staking requirements.
  - ◆ The contractor must avoid destroying stakes
  - ◆ The contractor must advise Department 48 hours in advance of requirement.
- Equipment to be used - contractor should identify equipment with greater than legal axle loads that is to be moved across bridges or pavements that will remain in place. Equipment with greater than legal axle loads (*SSHC Subsection 105.11*) must be either loaded on an appropriate trailer or specifically exempted. Requests for exemptions will be analyzed on a case-by-case basis by the Construction, Bridge, and Maintenance Divisions.
- Special notes on plans or proposals and special or unusual provisions that apply.
- Safety precautions and compliance with:
  - ◆ Posting of OSHA Form 200.
  - ◆ Public Convenience and Safety (*SSHC Subsection 107.07*).
- Contract quantity settlement.
- Frequency of estimate vouchers (normally once or twice each month).
- Covers on trucks hauling on highways when necessary.
- Specified working period.
- Contractor's submittal of work plans for:
  - ◆ Control of water pollution and erosion (*SSHC Sections 201, 204, and Division 800*).
  - ◆ Control of fugitive dust.
  - ◆ Compliance with storm water discharge requirements (*Construction Manual 1100.30*).
- Equal Employment Opportunity responsibilities for statement of compliance and required postings (*Construction Manual 102.23*).
- Statements by Federal Highway Administration and visiting Commission personnel.
- Pre-concreting conferences.
- Value engineering incentive proposals submitted by the contractor (*SSHC Subsection 104.03* and *Construction Manual 103.09*).

- Partnering Opportunities (*SSHC Section 113*)
  - ◆ Workshops/Training
  - ◆ Dispute resolution procedures
  - ◆ Meeting schedule/location

### **103.10 ONE CALL NOTIFICATION**

**It is the law; anyone who digs a hole, pushes a pipe through the ground, or even moves a stockpile of gravel must contact Diggers Hotline first. The Diggers Hotline phone number is 1-800-331-5666.**

#### **Fiber Optic Cable Buried on Railroad Right-of-Way**

##### **Railroad Points of Contact for Location of Fiber Optic Cable**

Burlington Northern Santa Fe Railway.....	800-533-2891
Nebraska Central Railroad Company.....	800-336-9193
Nebkota Railway.....	308-282-1550
Nebraska Northeastern Railway Company.....	402-748-3535
Nebraska Kansas Colorado Railnet.....	817-571-2356
Union Pacific Railroad.....	800-336-9193

Most railroad lines have fiber optic cables buried in the right-of-way.

The Union Pacific Railroad has an "800" number available 24 hours a day to determine if fiber optic cable is buried on their right-of-way.

The number is 1-800-336-9193. Anyone calling the "800" number will need to give the railroad milepost number to the operator.

When we have a construction project that may involve railroad right-of-way, a railroad special provision will be added to the bid proposal. The contractor will be required to call the appropriate "800" number before working on railroad right-of-way. The railroad milepost number will be included in the special provision.

Project Managers should confirm that the contractor knows how to get clearances.

### **103.11 UTILITIES AND RAILROAD REHABILITATION**

- A. General - Work by utility companies and railroads in making necessary rehabilitation of their facilities for our project construction will often require certain advance preparations by the Project Manager and cooperation with the firm during the progress of their work. In many cases it will be necessary that our right-of-way be defined by setting of stakes prior to beginning rehabilitation work. Grade stakes may be required at railroad crossings or in connection with pipe line or pole line work on the project. The firm involved will generally be responsible for furnishing their own stakes needed for the actual rehabilitation but will need basic information from which to work. Cooperation with these firms will assist in getting their facilities out of the way of our construction.
- B. Preventing Damage to Utility Properties - The Project Manager should document that proper precautions are taken to protect and prevent damage to the property

of railroads, underground or overhead utilities, and pipelines in connection with highway construction work.

No excavation will be permitted in the area of underground utility facilities until all such facilities have been located and identified to the satisfaction of all parties. The excavation must be accomplished with extreme care in order to avoid any possibility of damage to the utility facility.

- C. Beginning Rehabilitation - The utility firm will generally begin work shortly after they have been notified to proceed. The Project Manager should provide them with information regarding the contractor's schedule as soon as possible if the facilities will be a material delay to progress of the construction. This will allow the firm to schedule rehabilitation work in an order of priority over other rehabilitation.

The Utilities Section of the Project Development Division tells the utility companies to advise the Project Manager by letter when they begin work, their tentative progress schedule, the name and address of their person in charge of the work. The Utilities Section of the Project Development Division also tells the utility company to furnish the Project Manager (and copy to utilities officer) with the completion date of the revision work. These letters are to be confirmed with appropriate field book entries.

- D. Inspecting Rehabilitation Work - Whenever an agreement provides that certain items of work are to be performed by a municipality, railroad, or utility, contact with the work should be maintained. If the work is to be done at state expense, the Project Manager shall keep a record of the work in sufficient detail to enable him/her to determine that the charges are justified and in accordance with the agreement. However, on most work of this nature, it would be difficult to keep a detailed record of each and every item without involving considerable expense. The Project Manager should consult with a representative of the organization involved and arrange to obtain information as the work progresses on the labor, equipment, and material used in the work and the material salvaged for future use.

In some cases, such as the placing of pipeline crossings, ditching and backfilling in the roadway area may require inspection to insure that compaction of the backfill is properly performed.

The Utilities Engineer no longer requires that you keep and submit a separate field notebook for all utility agreements. He/she does, however, ask that you notify him/her of the completion date for all utility work on your projects.

Notification should be made using the UTILDONE program available on VMS (as per Mark Ottemann's letter to District Construction Engineers on September 12, 1994).

Your inspection and documentation of utility rehabilitation work should be limited to the amount necessary to complete the information required when using the UTILDONE program.

**103.12**      **HAUL ROADS** (*SSHC Section 107*)

Prior to beginning any work, the contractor is required to meet with all involved local governmental entities and advise them of any intentions to use their local roads. The contractor shall be responsible for resolving claims concerning damage to local roads caused by his/her operation.

The contractor shall protect and indemnify the State and its representatives against any claims or liabilities arising from damage to local roads caused by the contractor's operation.

**103.20 CONTRACT ADMINISTRATION (SEPARATE HANDOUT FOR ALL CONTRACTORS)**

This section provides instructions and guidance to contractors and Project Managers for administration of construction contracts. Instructions include information on required reports or forms, equal employment opportunity, wage reports, training program, minority recruitment, and subcontracting. Copies of all NDR forms mentioned in the *Construction Manual* are included in *Appendix 1* -- NDR forms or *Appendix 2* -- Federal Forms) and can be copied as needed. (However, use stock forms when possible to cut reproduction costs.)

**103.21 NEBRASKA & FHWA FORMS & REPORTS - PREPARED BY CONTRACTOR**

Form No.	Title	Reference Section	Office Where Forms are Available
DR 298	Special Training Provision Monthly On-Job-Training Report	102.24	DBE Office
DR 439	EEO Contractor's Self-Analysis	102.23	DBE Office
FHWA-1391	Annual EEO Report (July)	102.23	DBE Office
FHWA-47	Statement of Material & Labor	102.25	Construction
WH 348	Statement of Compliance	102.25	District Const. Office
Standard Form 1444	Request for Authorization, Additional Classification and Rate	102.26	Construction

**Postings**

At the preconstruction conference, the Project Manager will supply copies of the posters listed below:

**a. Federal-Aid Contracts**

Federal Poster - Equal Employment Opportunity is the Law  
State Poster - Equal Opportunity Commission  
WH-1420 - Your Rights under the Family and Medical Leave Act 1993  
WH-1462 - Notice: Employee Polygraph Protection Act  
FHWA-1022 - False Statements Notice  
FHWA-1495 - Wage Rate Information



b. State Funded Contracts

State Poster - Equal Opportunity Commission

WH-1420 - Your Rights under the Family and Medical Leave Act 1993

WH-1462 - Notice: Employee Polygraph Protection Act

USDOL-1088 - Your Rights - Federal Minimum Wage

Examples are included in *Appendix 2*. Additional copies, if needed, can be obtained from the Project Manager or the Construction Division (Mr. Dan Necas, 4453). In addition to postings noted above, a copy of the Policy Statement shall be posted.

All required site postings shall be in a location that is easily accessible to all employees. They may be fastened to a bulletin board, tool shed, or job office trailer and protected from weather by glass or clear plastic. Postings that become soiled, faded, or otherwise illegible should be replaced. More than one posting may be necessary if there are multiple locations where workers report for work. Such cases typically occur on complex or long projects involving several different crews and/or subcontractors.

**103.22 OCCUPATIONAL SAFETY AND HEALTH**

Occupational Safety and Health Act (OSHA) regulations (federal and state) apply to all construction projects. (Federal OSHA regulations are codified in *29 CFR, Sections 1910 and 1926*.) Contractors are responsible for compliance with OSHA regulations and shall maintain a safe work site. Therefore, contractors and their employees must be familiar with the health and safety requirements of the act.

- As an employer, contractors are required to keep employee occupational injury and illness records at the location where their employees usually report for work. The "Log and Summary of Occupational Injuries and Illnesses" (OSHA Form 200) must be completed within six days following a recordable occupational illness or injury. A copy of the completed form must be maintained at the work site. In addition, OSHA Form 200 is to be completed at the end of each calendar year and posted at job sites before February 1. Detailed instructions are printed on the back of each form.
- A poster entitled "Safety and Health Protection on the Job" must be displayed in a prominent place at all times.

Contractors can obtain OSHA forms and posters from:

Regional Director-OSHA  
Federal Office Building  
Lincoln

or      Administrative Safety & Labor Standards  
            Division  
            Department of Labor  
            Lincoln

**103.23**      **EQUAL EMPLOYMENT OPPORTUNITY (EEO)** (*SSHC Subsection 102.09*)

**A**      **Contractor's Responsibility**

Contractors and their staff who are authorized to hire, supervise, promote, and discharge employees or recommend such action must understand the requirements of applicable EEO specifications including "Required Contract Provision", Form FHWA 1273, and Executive Order 11246 in the Special Provisions.

Policy Statement and Compliance Letter

All contractors must formally adopt an Equal Employment Opportunity Policy Statement which:

- Prohibits discrimination of any kind or for any reason.
- Encourages employment of minorities and women.

Examples of minimum acceptable policy statements for both federal and nonfederal aid projects appear in *Appendix 2*. When posted, these policy statements must be on company letterhead.

A sample of an EEO proof of compliance letter, which lists the EEO requirements and postings, is in *Appendix 2*. Written proof of compliance will not be required for material suppliers, manufacturers, truckers, and surveyors.

**B.**      **Project Manager Involvement**

Responsibility for complying with EEO requirements is solely the contractor's. However, the Project Manager has oversight involvement to ensure that contractors comply with these requirements and that proper forms and/or letters have been received. When a contractor is not in compliance with EEO requirements, the Project Manager shall advise the contractor, in writing, and make a diary entry, that continued negligence in EEO requirements will result in the withholding of progress payments. **The Project Manager will also inform the Contract Compliance Officer of the contractor's noncompliance. The Contract Compliance Officer will investigate all reports of noncompliance and make a recommendation as to what the contractor must do to be in compliance.** If the contractor still fails to take corrective action relative to EEO noncompliance, the Project Manager may, with concurrence from the Construction Engineer (Lincoln), suspend work. All suspensions shall be documented in writing and sent to the contractor.

1. Contracts and Subcontracts Over \$10,000
  - a. Site Inspections

As soon as a major part of contract work is underway, an EEO project site inspection must be completed by the EEO Office relative to work in progress. A representative of each affected company shall be present and accompany the inspector during an EEO inspection.

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b. Training Program

Contractor training special provisions requires the contractor to have a formal employee training program. During an EEO inspection, the training program should also be checked.

c. Required Posting

During the inspection, all required postings should be checked. Project Managers shall check to see that correct names and addresses appear in the boxes on posters entitled "Wage Rate Information Federal-Aid Highway Project" (FHWA-1495) and "Notice" (FHWA-1022). Copies of these forms are provided in *Appendix 2*.

d. Reports

- "Federal-Aid Highway Construction Contractors Annual EEO Report"

Contractors and subcontractors (with contracts over \$10,000) shall provide the Contract Compliance Officer in the Construction Division two copies of "Federal-Aid Highway Construction Contractors Annual EEO Report" (FHWA-1391). A blank copy is provided in *Appendix 2*. **1391's can also be obtained off the NDOR website under Contractor's Corner – DBE Information.**

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These forms are to be completed for all federal-aid contracts for which work was performed **during the week of July 15<sup>th</sup>**.

NOTE: If Prime or Sub submit the 1391 to the Project Manager, return them and tell the Prime or Sub that the 1391's must be submitted directly to the Contract Compliance Officer to avoid double counting.

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A copy of Form FHWA-1391 is provided in *Appendix 2*. Copies can be ordered from:

Construction Division  
Nebraska Department of Roads  
1500 Hwy. 2  
P.O. Box 94759  
Lincoln, Nebraska 68509-4759

Instructions for completing this form are provided by the Construction Division on a yearly basis. Contractors are cautioned to be sure they have the CURRENT instructions. If there is any question about revision dates, contact the Construction Division in Lincoln (402) 479-4514.

Distribution: Route one copy to the Construction Division, Lincoln, and retain one copy in project file.

2. Construction Contracts and Subcontracts \$10,000 and Less

An EEO project site inspection is not necessary for these construction contracts.

3. Maintenance Contracts

On maintenance contracts, an EEO project site inspection is not necessary regardless of contracted amount.

4. Complaints of EEO Violations

The Project Manager will report all complaints of EEO violations to the Construction Division's EEO section for investigation.

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**103.24 TRAINING & TRAINEE PROGRAMS**

**Contractor's Responsibility**

1. Training Program

All prime contractors and subcontractors (with contracts over \$10,000) must develop, or have, an approved training program in accordance with the *Specifications*. The Contracts Office (EEO Section) approves these programs and can be contacted [(402) 479-4514] for answers to questions or assistance in developing an approved program.

Shortly after a contract is awarded, the Contracts Office will verify that the successful bidder has an approved training program on file. If not, the contractor will be advised that a formal training program must be approved by the Contracts Office within 30 days. Failure to submit a training program will be considered noncompliance with the *Specifications*. A contractor who does not comply may be refused bidding proposals for future lettings until requirements for a training program are met. (Typically, contractors adopt and use the Associated General Contractors' (AGC) training program. It is acceptable in Nebraska.)

An acceptable training program shall include information covering:

- Method of trainee recruitment.
- Crafts to be trained and upgraded.
- Number of expected trainees per year and what part of total will be female, minority, and disadvantaged.
- Training procedures, including approximate training time.
- Commitment for keeping up-to-date records to summarize total time each trainee is trained in each classification.
- Proposed use of trainee upon successful completion of training program and commitment to issue a certificate or statement of successful completion of training.

- Number of total work force (Nebraska operation).

2. Trainee Program

Contractors responsible for fulfillment of reimbursable training hours on federal-aid projects must obtain written approval from the Construction Division's EEO Section for each trainee prior to the trainee's enrollment in the program.

- a. Contractors shall submit their written requests for trainee approval to the Construction Division, attention EEO Section, with a copy to the Project Manager. Requests must include job classification, number of hours to be fulfilled, trainee name, race, sex, address, phone number, and social security number.
- b. If additional trainees or replacements for terminated trainees are needed, crafts and classifications must be approved by the Project Manager with a follow-up letter to the EEO Section. Hiring of non-minority trainees to replace semi-skilled or skilled workers may not be used to establish eligibility for federal reimbursement since the trainee program is designated for members of female, minority, or disadvantaged groups.

Note: Changes to the number or class of trainees initially requested must be submitted and pre-approved by the Construction Division.

c. Trainee Reimbursement

In order to qualify for trainee reimbursement:

- Trainees must be registered in the appropriate program.
- Wage determination decisions of the Davis-Bacon Act are used as the basic rate on any project involving federal aid.
- Minimum starting wage will be 60 percent of the rate established for a craft or classification for the first half of a training period. This percentage will change to 75 percent for the third quarter, and 90 percent for the last quarter. Certified payrolls shall specifically identify each individual in trainee status, their base rate, and applicable reduction percentage.
- After a trainee has completed his/her training program, the trainee's base wage rate shall be increased to Davis-Bacon's wage determination for that job classification.

- 3. Trainee Recruitment

The contractor's trainee program outline must include method of recruitment.

Occasionally, it may be impossible to recruit members of minority groups due to minority unavailability at the project location. When this occurs, contractors must have documented their efforts in attempting to recruit minorities. The Project Manager and the Construction Division EEO Section should be informed of recruitment problems. Recruitment which results in an inadequate number of minority trainees does not eliminate a contractor's responsibility to fulfill the requirements of the "Trainee Reimbursement bid item.

If minority recruitment results in less than the required number of qualified individuals, the contractor shall then recruit non-minorities or use some of their own employees for the training program. Any non-minority substitution requires preapproval of the Project Manager and the Construction Division (EEO Section).

4. Reports

- "Reimbursable Trainee Training Record"

Each month the contractor must submit a DR Form 298 "Special Training Provision Monthly On-Job-Training Report."

- If no trainees are employed during the early phase of work, the contractor shall so advise the Project Manager and the Construction Division (EEO Section).

**Project Manager's Involvement**

1. Training Program

Project Managers shall have a copy of the approved training program. Copies may be obtained from the contractor or the Construction Division (EEO Section). Since training programs have been standardized by AGC, any preapproved program can be used as a model for evaluating a particular contractor's program during inspection.

For convenience, training program inspections will be made concurrently with EEO inspections. An inspection will include interviews with individuals enrolled in the training program. Also, the contractor's training program will be spot-checked. A copy of the contractor's program shall be available for review.

The Construction Division shall be notified if:

- A contractor does not have a training program.
- The contractor's program is deemed inadequate.

- Other training deficiencies are noted during the inspection.

It is the Construction Division's responsibility to work with the Project Manager and contractor to rectify noted discrepancies. If after a reasonable time a contractor fails to meet training requirements or ignores requests for corrective actions, the Construction Division, working through the Project Manager, may request suspension of work until corrective action(s) are implemented. Suspending work will be used as a last resort. However, the offending contractor's bidding ability on future contracts could be restricted until such time that compliance with training is demonstrated.

2. Wage Rates

Wage rate interviews may also be completed during the EEO inspection.

- Interviews should be conducted a minimum of every six months for each contractor and subcontractor.
- Projects whose duration is less than six months should have one interview with each contractor and subcontractor.
- Each District must keep interviews on file for three years.

3. Reports

a. "Reimbursable Trainee Training Record"

Shortly after a letting, the Contracts Office (EEO Section) will prepare and forward a letter listing projects that require a "Special Training Provision Monthly On-Job-Training Report" (Form 298) along with a supply of these forms. Additional forms can be obtained off of the NDOR website under Contractor's Corner – DBE Information.

Monthly, the contractor will be sending one completed Form 298 for each trainee employee until training for that employee is completed or terminated. The Project Manager will review, initial, copy, and forward the original Form 298 to the Construction Division, EEO Section. The copy will be placed and retained in the project file.

- b. Occasionally, contractors train employees on contracts that do not have a line number for trainee reimbursement. In this case, Project Managers are not responsible for monitoring that program and Form 298 is not required.

**103.25 WAGES AND EMPLOYMENT**

- A. In order to comply with the requirements of the Freedom of Information Act regarding protection of personal privacy, all requests for access to certified payroll records shall be forwarded to the Construction Division. Requests must be in writing, and if not made on behalf of an individual, the request must indicate the name of the organization making the request.
- B. Access to or copies of payrolls shall not be permitted until authorization has been received from the Construction Division. (Adherence to these procedures during investigation by the Department of Labor or FHWA is not required.)

- C. All contracts for highway construction work have certain requirements on wages and conditions of employment. These requirements vary between Federal-aid and State-funded contracts.
- D. Some laws or regulations provide specific requirements in the contract documents, while others may be cited by reference. Section 107 of the Standard Specifications requires compliance with all laws and applicable regulations, and accordingly, compliance is required whether or not specific listing or reference is made in the contract.
- E. Labor Laws Cited
  - 1. Section 107 of the Specifications calls attention to certain State laws and provides that additional regulations and restrictions will be set forth in the special provisions in the contract. These additional regulations are normally included in the required provisions or the special provisions. The enforcement of contract provisions such as these cannot be ignored. However, the inspection, reporting, and enforcement requirements vary between contracts. A basic knowledge of the laws and the exercise of good judgement and diplomacy are required when any enforcement action is taken. Project Managers are advised to contact the Construction Division for decisions on labor complaints for which answers are not readily available. Knowledge concerning these problems is to be handled in confidence, and complete records are a necessity. Certain standard requirements are made a part of all contract provisions. These are as follows:
    - a. A minimum employment age of sixteen years and the restricting of employment of persons whose age or physical condition is such as to make his/her employment dangerous to themselves or others.
    - b. A provision prohibiting the employment of anyone currently serving sentence to a penal or correction institution (this shall not be interpreted to prohibit the use of persons on a bona fide work release program).
    - c. A provision prohibiting discrimination on any grounds against workers who are qualified for the work by training or experience, and who are not disqualified by Paragraphs a. and b



2. These regulations are required by State law, but often are duplicated or made more restrictive by Federal laws.
3. *SSHC Section 110* refers to State law restrictions of hours and labor. This would include the State Fair Labor Standards Law which is cited in the Special Provisions in each State-funded project and requires the contractors to comply with such a scale of wages and conditions of employment as are paid and maintained by at least 50 percent of the contractors in the same business or field of endeavor. Contracts for State-funded projects do not contain an established scale of minimum wage rates; however, no wages paid can be below the minimum wage of the Fair Labor Standards Act. Questions which arise concerning the payment of proper rate should be referred to the District Office, or to the Construction Division (Mr. Dan Necas, 4453).

**103.26 DAVIS-BACON AND RELATED ACTS REQUIREMENTS (Payrolls)**

A. General Information

1. On selected contracts containing Federal-aid funds, Federal laws (Davis-Bacon Act) and regulations require the Secretary of Labor to issue a determination for minimum wage schedules to be included in each of these Federal-aid contracts. Special instructions to the contractors are issued by the Construction Engineer prior to the construction operations. A copy of the current instructions are available in *Appendix 2* (FHWA Forms) under Form WH 348, "STATEMENT OF COMPLIANCE."
2. Project Managers or their assistants shall conduct wage rate interviews (Report of Labor Compliance Interviews DR Form 98) on the selected Federal-aid projects in order to determine whether contractors and subcontractors are properly classifying employees and are complying with the minimum wage rate requirements of the Special Provisions.
3. The Project Manager is to make systematic spot interviews with the contractor's or subcontractor's employees when he/she feels it is necessary. As a matter of courtesy, the contractor's superintendent or foreman should be advised that personal interviews with employees will be made. The Project Manager shall select the employees to be interviewed and these should be of different payroll classifications if possible.
4. The number of different employees and classifications to be interviewed shall be at the discretion of the Project Manager to ascertain compliance with these requirements. If violations are discovered, the frequency and number to be interviewed shall be increased and corrective action taken until such violations have been eliminated. Depending on the size of the crews, an attempt should be made to avoid repeating interviews with the same individuals.

5. Employees should be privately interviewed; that is, without the presence of other employees or their supervisor. The employee being interviewed must not be informed of wage rates reported by fellow employees, but is entitled to know the minimum rates specified for his/her classification.
6. Any apparent violations of labor classification or wage rates are to be called to the attention of and discussed with the contractor's or subcontractor's superintendent. In such cases, the Project Manager and the superintendent, considering all the facts and conditions involved, must reach agreement on the proper labor classification. The wage rate paid must be at least the minimum specified for that classification. If a violation in either proper classification or minimum specified wage rate is involved, the contractor or subcontractor shall be directed to correct the classification and/or wage rate being paid and to make any retroactive payment necessary to provide strict compliance with the requirements.
7. In all cases of apparent violations of proper classification or minimum wage rates paid, and the Project Manager and superintendent having reached agreement on the proper classification or minimum wage rate specified, the employee shall then be contacted and notified as to his/her proper classification and the minimum wage rate specified for that classification.
8. In unusual cases involving apparent violations, the Project Manager and the superintendent may not be able to agree on the proper classification of work performed by the employee. In such cases, the matter may be submitted to higher authority, through proper channels, for decision. The current Standard Labor Classifications and Descriptions for Highway Construction shall be used in determining the proper classifications. (See *Appendix 2, Form WH 348, "STATEMENT OF COMPLIANCE"*).
9. The interviews shall be recorded on DR Form 98, "Report of Labor Compliance Interviews" and transmitted to the District Engineer for review and distribution. The report should be submitted regularly, showing the interview information as found, indicating any apparent existing discrepancies. Information concerning the handling of such discrepancies shall be shown, by means of an appropriate note, on that report or in the subsequent report.
10. Any classification not covered by the wage determination included in the contract will require the Project Manager to initiate Standard Form 1444, "Request for Authorization of Additional Classification and Rate."
11. The Construction Division (ext: 3830) will supply each District Office with current applicable wage rates to be posted for each individual Federal-aid contract and labor and E.E.O. posters.
12. Regardless of the source of funds, highway construction is associated with interstate commerce and, therefore, is covered by the Federal Fair Labor Standards Act. It has specific requirements for payment of a

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minimum wage rate and time and one-half for overtime over 40 hours in a week, with certain supervisory or administrative employees exempted.

13. Contractors on selected Federal-aid contracts are permitted to employ trainees and apprentices that are paid below the wage decision included in the contract provided the following information is supplied:
  - a. Proof of certification by the Department of Transportation for programs other than Nebraska and Iowa A.G.C. training programs.
  - b. Proof of registration of trainee in said program.
  - c. Proof of the number of previous hours of training the employee has received.
  - d. The employees are listed as "trainees" on the payrolls.
14. The Nebraska and Iowa Associated General Contractors Manpower Development and Training Programs have been approved by the Department of Transportation.

B. Payrolls

1. On selected Federal-aid contracts, the contractor and each subcontractor are required to submit to the Project Manager a certified copy of each weekly payroll and Statement of Compliance - Form WH 348 or a contractor's form with identical wording. The payrolls and Statement of Compliance are to be submitted within seven days after the date the employees are paid. The Project Manager may withhold progress estimates until all delinquent payrolls, with attached Statement of Compliance, have been received.
2. Required Contract Provisions Federal-Aid Construction Contracts - Form FHWA 1273 requires us, as a contracting agency, to perform a certain amount of checking of the submitted payrolls to comply with our oversight responsibilities. The FIRST payroll received from any contractor or subcontractor should be THOROUGHLY checked. (The Project Manager may use some discretion in deferring this thorough check for several weeks, such as in the case when only a few employees appear during the first week or two of a project.) Random checking of all other payrolls is approved.

3. The Project Manager should check the payrolls for:
  - a. The employee's full name, mailing address, and Social Security number. (The employee's Social Security number need only appear on the first payroll on which his/her name appears. The employee's mailing address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of mailing address necessitates a submittal to reflect the new address.)
  - b. Each classification, title, and equipment capacity rating must be verified to assure that they are the same (or recognizable abbreviation) as listed in the Contract Wage Rate Decision Schedule, with no deviations permitted.
  - c. Each employee's hourly rate must be verified and checked with a red pencil mark indicating that at least the minimum hourly rate and correct overtime rate has been paid for the listed classification.
  - d. All deductions other than the allowable ones are explained.
  - e. Payroll computation (with the exception of the electronic machine computations) shall be spot checked to verify accuracy.
  - f. Payrolls once transmitted to the Project Manager cannot be returned to the contractor for correction of errors. Photocopies of the payrolls may be made and appropriate notes placed on the copies to explain the error(s) to the contractor. The contractor must submit revised certified payrolls or other forms of applicable evidence which provides documentation of the correction(s).
  - g. The Project Manager is to retain all payrolls until notified by the Controller Division that they may be destroyed. When the payrolls are complete, the Project Manager is to send a letter to the Construction Division Final Review Section in Lincoln, indicating the date the last payroll was received.
4. Most subsequent payrolls will require only a very cursory review. The Project Manager is encouraged to consider such things as the length of the project and the number of errors encountered on the first thorough examination when determining how many additional thorough payroll checks are performed.
5. On DR Form 84, "Record of Contractor Payrolls Received," the Project Manager should pay particular attention to the column head "Date Received" and to the "Payrolls Completed (Date)". A delay in submittal of payrolls will negate payment of interest on retained monies until receipt by the Project Manager.

6. The contractor and subcontractor payrolls are to be retained until three years after the District Engineer is notified by Controller Division that the final vouchers have been submitted to the Federal Highway Administration.

(Each District should establish a central location for storing payrolls.)

C. Interpretation

1. The interpretation is taken from the U.S. Department of Labor Field Operations Handbook dated June 1, 1987. (A copy of this manual is available at each permanent field headquarters.)
2. Application of labor laws often becomes a matter of interpretation, such as may be involved in instances when furnishing materials must be classified as subcontracting and subject to highway contract labor regulations. This usually applies to labor involved in producing materials from local pits but is not necessarily limited to that operation. The following are examples of elementary rules that may be used in this determination. It is requested that these rules be followed in enforcing the minimum wage requirements of the Special Provisions.
  - a. The contract labor standards provisions are not normally applicable to employees of "established material suppliers" engaged in the production and delivery of aggregates or materials to the contractor, either to stockpiles or on the road. An "established material supplier" is normally considered to be an aggregate production plant, quarry, concrete plant, or asphalt plant which has been established for commercial production not making more than token amounts of sales to other Federal-aid projects.
  - b. When a contractor produces and hauls aggregates for his/her own use from a previously established pit or quarry from which he/she had been producing and selling aggregates immediately prior to the award of the contract, his/her production and hauling operations will be considered to be as an "established material supplier" and the minimum wage rates will not apply.
  - c. When a new pit or quarry is opened or production equipment is moved into a previously opened pit or quarry for the purpose of producing material for a specific contract, none of the operations will be considered to be commercial and the minimum wage rates and conditions of employment shall apply to all labor employed in producing and hauling the aggregate to the work.
  - d. The work of producing or loading material from a local pit shown in the plans, or from a source substituted by the contractor for a local pit shown in the plans, and the work of hauling materials from such sources is considered to be part of the work

contemplated in the contract. As such, the minimum wage rates shall apply to all operations performed by the contractor or his/her subcontractor in processing, loading, and hauling the materials.

- e. The minimum wage rate requirements do not apply to bona fide owner-operators of trucks who are independent contractors. The certified payrolls including the names of such owner-operators need not show hours worked nor rates allegedly paid, but only the notation "owner-operator".
- f. The contractor is required to pay the minimum wage rates to drivers which he/she employs to operate trucks which he/she owns or leases from another party.

D. Apprentices

- 1. The contractor is not required to submit the Standard Form 1444 "Request for Authorization of Classification and Rate" for apprentices if verification is received that the employee is registered in a bona fide apprenticeship program.

- E. Various outside agencies may request copies of payrolls under The Freedom of Information Act. The FHWA processes these requests. If you receive a request for copies of payrolls, have the person who is requesting a payroll contact the FHWA. The FHWA will request the payrolls from the Construction Division. The Construction Division will tell the PM to forward requested payrolls to the FHWA. The FHWA will remove any personal information such as name and Social Security Number before forwarding the information to the requesting agency.

**103.27 DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUBCONTRACTOR**

A. Contract Award

On Federal-aid projects with predetermined **DBE participation** goals, all bidders will be required to submit a required DBE Participation Form (see bid proposal package) with their bid. This form identifies DBE subcontractors, suppliers, transporters, and/or manufacturers that will be used to satisfy the DBE goal. The DBE Participation Form shall also include work or items to be subcontracted, and dollar amount committed to each DBE.

Upon execution of a contract, the prime contractor becomes committed to those DBEs goals listed on the form. This commitment is therefore a contractual arrangement between the State and the prime contractor with the same enforcement as any other provision specified in the contract documents. A prime contractor is required to enter into a contractual arrangement with each DBE listed by formally executing a written subcontract agreement specifying the work to be performed and appropriate compensation for that work. This two-tier process, which contractually obligates the prime contractor to both the State and each participating DBE, formalizes implementation of all DBE contract provisions.

**The DBE** Office will review the low bidder's "Required DBE Participation Form" to assure that certified DBEs are being used.

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The successful bidder must **then** submit a letter **and copy of the DBE Subcontract** to the Construction Division to get subcontractors approved.

**B. Commercially Useful Function**

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(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

To meet commercially useful function requirements of the regulations and contract, the following statements are applicable:

- DBE firm must manage the work contracted. Management shall include scheduling work operations, ordering equipment and materials (if materials are part of the contract), preparing and submitting payrolls and all other required reports and forms, as well as hiring and firing employees, including supervisory employees.
- DBE shall perform work with employees normally employed by and under the DBE's control. In all instances, the DBE shall be responsible for payroll and labor compliance requirements concerning all workers under their control. DBEs may use other means to perform work on a limited basis when the contract requires specialized knowledge, skills, or equipment. A DBE may be allowed to augment their work force with personnel which normally work for another firm. If the request can be approved prior to commencing work.

NOTE: All arrangements must be presented in writing and pre-approved by the DBE Office.

- DBE must supervise daily operations of their portion of contracted work. The only two acceptable ways for a DBE to supervise daily operations are:
  - 1) The DBE owner may act as the superintendent and directly supervise work, or
  - 2) A skilled and knowledgeable superintendent employed and paid wages by the DBE must directly supervise that work.

If the latter is used, the DBE owner must be actively involved in making operational and managerial decisions of the firm. Basically, this means that all administrative functions shall be performed by personnel responsible to, or employed by, the DBE at facilities or locations under the DBE's control.

- DBEs shall supervise and perform contracted work with workers on their payroll and under their direct supervision. The DBE and the superintendent must, on a full-time basis, supervise and control contracted work. Supervision of contract work by personnel normally employed by another contractor or by personnel not under the DBE's control constitutes failure to perform a commercially useful function.

(Responsibilities include minimum requirements for DBE manufacturers, dealers, transportation services, and subcontractors.) DBE subcontractors that indicate work which will be performed by employees



@ of another firm or with leased equipment should be questioned. The DBE Office shall be notified in all cases where there is a question regarding "commercially useful function".

3. Partial Subcontract of an Item

It is not unusual for DBE subcontractors to be involved in only part of a contract item.

For conditions where a subcontract does not exist but a DBE firm is manufacturing, supplying, or trucking materials to the job site, this dollar value will not be used to determine the percent subcontracted as specified in the *Specifications*.

Inspection staff must monitor work performed and periodically inform the Project Manager as to which individuals and equipment actually worked so payrolls can be spot-checked.

C. Construction Period

@ The Project Manager and inspectors must review work subcontracted to DBE subcontractors to assure work is being performed and that DBEs are performing a commercially useful function. Where work is performed by any other contractor or with equipment not owned by the DBE, the inspector shall issue a noncompliance notice citing violation of *Supplemental Specifications for Specific Affirmative Action Responsibilities*. This noncompliance shall be immediately reported to the Project Manager, who will in turn immediately notify the DBE Office.

Prime contractors will be given credit toward the DBE contract goal only when a DBE performs a commercially useful function. The requirements for a commercially useful function are outlined in the previous section "Subcontract Approval."

@ A DBE may lease equipment consistent with standard industry practice provided a rental agreement specifying the terms of the lease arrangement is approved prior to a DBE starting work. If equipment is of a specialized nature, the lease may include an equipment operator. No credit will be given for the cost of equipment leased or rented from the prime contractor.

DBEs shall negotiate cost, arrange for delivery, and pay for materials and supplies required for their portion of the contract work. Invoices for materials shall be invoiced to the DBE firm and not to a prime contractor.

@ A prime contractor may occasionally find it necessary to ensure that payments are made to suppliers for materials used by subcontractors. When such a **joint check** payment arrangement is pre-approved by the **Highway Civil Rights Coordinator**, counting the cost of materials actually incorporated into the project by a DBE subcontractor toward DBE participation will be allowable provided the DBE:

- orders and schedules the delivery of materials, and
- is fully responsible for ensuring that materials meet Specifications.

@ **When the DBE office approves** such payments **to be** made by the prime contractor, payments must be made by preparing jointly endorsed checks signed by the DBE and supplier.

No credit shall be allowed toward the DBE goal for cost of materials placed by a DBE subcontractor when payment is made by deducting this payment from the prime contractor's payment to the DBE.

@ Project Managers must evaluate and document performance of the DBE's activity on all projects as part of the normal project contract compliance monitoring. On-site project monitoring by field personnel shall include employee assignments, equipment used, and supervision of the work. All irregularities must be documented in the field books and immediately reported to the prime contractor, and the **Contract Compliance Officer in the DBE Office**.

@ **Project Managers shall not allow a prime contractor or another contractor to perform work that has been committed to a DBE subcontractor without prior written approval from the DBE Office.**

@ In situations where a DBE subcontractor cannot (or is not) performing, the prime contractor must follow all steps described in *Supplemental Specification for Specific Affirmative Action Responsibilities*. Upon receipt of a signed statement from the DBE and documentation where the prime contractor will satisfy the goal with other items or DBEs, the Project Manager may recommend to the **DBE Office** that the commitment be waived and the required goal adjusted. The **DBE Office** must provide written approval of all substitutions before any changes in subcontracted work are performed.

#### D. Post Construction

@ Prime contractors shall submit a completed "Identification of DBE Goal Achievement" (DR Form 441) with the final project documents **to the DBE office**. The subcontractor submits DR Form 442 "Identification of Work Performed." Blank forms are provided in *Appendix 1 and at the website*. These forms certify the dollar amount paid to each DBE. **DBE Office** must compare the dollar amounts on Forms 441 and 442 to dollar amounts committed to a DBE on "Required DBE Participation Form." The prime contractor will be assessed a penalty by change order for failure to satisfy the DBE commitments. This penalty may be reduced when conditions described in

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*Supplemental Specification for Affirmative Action Responsibilities are satisfied. Project Managers must include a written explanation describing situations, background, and findings which resulted in reductions or adjustments.*

Unique problems have been noted with the goals and variables of the DBE program. Documentation of any activity related to the program is important and must not be overlooked. Record all telephone or personal contacts noting time, place, and details.

The DR Form 440 Contractor EEO Compliance Record has been eliminated. These records are no longer to be maintained.

### **103.28 LEASE OF PROPERTY BEYOND THE HIGHWAY RIGHT-OF-WAY**

The NDR has found that it is more cost effective and quicker to have the contractor make most land use agreements for areas outside the highway right-of-way. This means borrow sites, plant sites, storage areas, parking lots, and so forth are the contractor's responsibility to lease.

### **103.29 CONTRACTOR'S USE OF HIGHWAY RIGHT-OF-WAY**

Occasionally a contractor requests permission to establish a plant site or a material stockpile on highway right-of-way. In reviewing these requests, the District Engineer must consider the impact of vehicles (trucks or equipment) entering and leaving these sites on public traffic. In situations where these vehicles must enter an open ramp or lane at a point where access is not allowed to the general public, the request shall normally be denied. On two-lane roads if an access permit can be obtained and public convenience and safety is not adversely affected, the request may be approved. On closed sections of the highway, right-of-way may be used as long as trucks can enter and leave the closed road safely.

Many times a contractor will have to exit a controlled-access facility to deliver materials such as mulch, subdrain, guardrail, etc. These stockpiles may be allowed as long as the material is to be used in the general vicinity where stockpiled and is stored beyond the "clear zone".

NOTE: In these situations, the contractor will be responsible to initiate and provide a storm water permit for their operations in that area.

### **103.30 "CONTRACT QUANTITIES" "**

The Project Manager and the contractor may agree to a final payment for an item based on contract quantities, i.e., plan quantity. The Project Manager shall verify that the plan quantities are reasonably accurate. If the contractor concurs with the final quantities as shown on the PM Final Estimate, the Project Manager will forward this concurrence to the Construction Division with a copy to the contractor for information.

Final review corrections should be limited to errors of \$150.00 or more per pay item. Do not waste time and money making small corrections.

### **103.31            CONTRACTOR'S SALES TAX EXEMPTION**

When a NDR contract is awarded, the Contracts Section of the Construction Division will issue the prime contractor a "Purchasing Agent Appointment" (DR Form 2-A) and an "Exempt Sale Certificate for Contracts" (DR Form 2-B). These forms allow the contractor to purchase materials that are to be incorporated into a highway project without paying any sales tax. The prime contractor is allowed to make copies of both forms and provide them to the project subcontractors for their use. The prime contractor must contact the Contracts Section [(402) 479-4851] to obtain an extension. The Contracts Section completes the extension by issuing a new "Purchasing Agent Appointment" (DR Form 2-A).

### **103.32            LOTUS NOTES – NOTIFICATION**

Field personnel are strongly encouraged to open their electronic mail daily. The Construction Division (and others) use it regularly and expect messages sent to be messages read.

Any time a plan error/omission is discovered or if for any reason the contract must be changed, the PM should send a Lotus note with appropriate details to the designer (Bridge or Roadway), Construction Division, and if necessary, to Materials & Research.

### **103.33            PRIME CONTRACTORS/SUBCONTRACTORS**

Project Managers should be reminded that correspondence pertaining to a subcontractor should be directed to the prime contractor.

**103.40        FREIGHT RATES**

Nebraska does not regulate freight rates on bulk containerized materials like cement, fly ash, and asphalt cement; and, therefore, the Construction Division will not make freight rate adjustments.

**103.50            BARRICADES, DANGER, WARNING, AND DETOUR SIGNS**

*SSHC Subsection 107.07* provides for furnishing, erection, and maintenance of necessary barricades, lights, signs, and watchpersons, in accordance with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (each Project Manager should have a copy) and taking necessary precautions for the protection of the work and safety of the public by the contractor. The contractor must erect advance warning signs for traffic hazards created by his/her operations, and at points where the work crosses or coincides with an existing road, in accordance with the plan requirements.

Signs which have been furnished to the contractor at no cost for placement on projects under construction must be returned to the appropriate NDR location in reusable condition when they are no longer needed. A charge will be made to the contractor for the value of signs damaged or not returned. The office issuing the sign will determine the charge for damage or loss.

## **103.60 SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION**

Nebraska provides job safety and health protection for all workers throughout the State of Nebraska.

The Labor Department is responsible for administering safety policy. The Nebraska Labor Department adopts federal occupational safety and health standards as State of Nebraska standards. Employers and employees are required to comply with these standards. The OSHA requirements are enforced by the Federal Government. The Nebraska Department of Labor will, upon request, conduct consultation visits of the job site.

### **103.61 Responsibility of Contractor**

Contractors shall be responsible for initiating, maintaining, and supervising all safety precautions and programs for their employees in connection with the work. Furthermore, contractors are responsible to provide a safe work site for NDR employees.

#### **Safety Inspections**

The contractor may conduct safety inspections at the start of all major phases of the project. The contractor is to document inspections and provide a written report to the Project Manager.

#### **Postings**

The contractor is required to have four documents regarding safety posted on the project bulletin board:

- Job Safety & Health Protection (OSHA 2203)
- "Log and Summary of Occupational Injury and Illnesses" Poster (OSHA Form 200) (11 or more employees)
- Emergency Action Fire Prevention Plan (See *Appendix 3*)
- Emergency Phone Numbers (i.e., 911, Poison Control, etc.) (See *Appendix 3*).

#### **Checklist Safety Program**

- Does the contractor have a definite safety program?
- Does the program have the active and continued support of company management?
- Has responsibility for safety been assigned to a specific top company official? Is there a staff for full time safety work?

- Does the contractor know the governmental safety regulations and consider carefully the cost of safety in bidding and executing the work under contracts?
- In dealing with labor, subcontractors, and material and equipment suppliers, does the contractor make clear the safety responsibilities and requirements to be met?
- Does the contractor make frequent safety inspections of operations on the project? Does this include subcontractor operations?
- Does the contractor train his/her employees to recognize and to avoid unsafe conditions and practices related to their individual work assignments?
- Are all accidents investigated, recorded, and reported?
- Does the contractor keep in touch with responsible officials and organizations concerned with standards and with enforcement of occupational safety and health requirements?

This checklist may be used when discussing Safety at the pre-construction conference.

### **Crystalline Silica Exposure & OSHA Notification**

The Occupational Safety and Health Administration (OSHA) has expressed some concerns to the Department regarding the health hazards of exposure to crystalline silica dust.

The Project Manager must notify OSHA of any project where any of the following types of work are anticipated at some time during the life of the project.

- 1) Lead paint removal when the removal is identified in the Special Provisions as being a hazard.
- 2) Sandblasting
- 3) Concrete removals done with a jackhammer
- 4) Concrete sawing
- 5) Concrete drilling

Notification will consist of furnishing OSHA:

- 1) The project number and general location
- 2) The project manager's name and phone number.
- 3) A copy of the contractor's schedule (one of the four required by Subsection 108.07 of the *1997 Standard Specifications*). Delete all references to any contractor on the project.



Notification should be made to:

Bernard Hauber, Industrial Hygienist  
Occupational Safety and Health Administration  
Overland-Wolfe Building, Suite 100  
6910 Pacific Street  
Omaha, NE 68106

***After the original notification has been made, it will be OSHA's responsibility to determine if and when they choose or desire to make an on-site inspection.***