

CONSTRUCTION PROCEDURES HANDBOOK

SECTION V	SUBSECTION A	DATE
CONSTRUCTION AFFIRMATIVE ACTION	CONTRACTOR'S COMPLIANCE WITH EEO, ON THE JOB TRAINING, AND LABOR REQUIREMENTS	09/06/2022

Contractors, subcontractors, consultants and others working on NJDOT projects must not discriminate in their employment practices. They must make efforts to ensure equal employment opportunity, and take affirmative action (as defined by both Federal and State regulations to ensure a diverse workforce. Affirmative actions are positive, aggressive, continuous, and result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment including: recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation and training. (See 23 CFR § 230.407(c))

A major portion of NJDOT's compliance review process involves a careful analysis of the contractor's workforce and employment practices to ensure that contractors are not discriminating in their employment practices, and are providing equal employment opportunity to females and minorities to work on NJDOT construction projects.

RE's EEO File - The RE will maintain a separate Equal Employment Opportunity File for the Contractor and each subcontractor whose subcontract value is over \$10,000 (for Federal-Aid contracts) or \$2,500 (for State contracts). The file will contain all instructions/letters to the contractor and supporting documentation about the contractor's compliance with the EEO requirements, on the job training and labor/wage rate as outlined in the RE's EEO Checklist Form DC-130 and the Project's Special Provisions. The RE will keep entries up to date on the Checklist to determine each contractor's EEO compliance status.

1. EEO Compliance: EEO compliance is a set of ongoing processes that, if effectively implemented, will help ensure nondiscrimination and equal opportunity on all Federal Aid and State funded NJDOT contracts. A contractor is considered to be in compliance when the equal opportunity requirements have been effectively implemented, or there is documented evidence that good faith effort has been made toward achieving this end. Efforts to achieve this goal will be results-oriented, initiated and maintained in good faith, and emphasized as any other vital management function (see 23 CFR § 230.409(g)(4)) for Federal aid projects, and for State funded projects.

A. EEO/Affirmative Action Letters. Contractors are required to submit the company's: 1) EEO/Affirmative Action (AA) Program and, 2) DBE/ESBE/SBE Affirmative Action Program to DCR/AA annually for review and approval. If approved, DCR/AA will issue the Contractor one EEO/Affirmative Action and DBE/ESBE/SBE Affirmative Action Approval letter. The approval letter is good for 1 year from its issue date. Subcontractors are required to submit the company's EEO/Affirmative Action Plan to the DCR/AA annually for review and approval. If approved, the DCR/AA will issue each subcontractor an approval letter. This approval for subcontractor's EEO/Affirmative Action Plan is good for

one year from its issue date.

- B. EEO/Affirmative Action Plan Approval Submissions by Contractor:** The Contractor must submit their EEO/AA and DBE, ESBE or SBE Affirmative Action Approval Letter to the RE prior to starting work, and thereafter, each year of the project. Subcontractors must submit their EEO/AA Approval Letter to the RE prior to starting work, and thereafter, each year they work on the project. The dates of the annual approval letters are to be entered on the DC-130.
- C. Contractor Employment Goals** - The Contractor must ensure EEO compliance in their workforce by demonstrating a reasonable representation of females and minorities in each job classification (see 23 CFR 230.409(e)(6)). Contractors must attempt to meet the respective employment goals for each construction trade utilized on the project. The employment goals for a Contract are listed in FHWA Attachment No. 3, Subsection A, of the Special Provisions for Federal aid projects, and are listed in Attachment 3, Subsection A, for State funded projects.

Contractors are required to demonstrate a good faith effort to attain the minority and female work force employment goals for the Contract. If they have not attained the employment goals, they must have documented evidence of good faith effort(s) made to attain the applicable goals. The contractor will be considered to be in compliance if the contractor has attained the goals in each trade utilized on the project.

- 1. Good Faith Effort for EEO/Affirmative Action** - The Contractor and subcontractors must provide the RE documented evidence of good faith effort(s) made to comply with the EEO workforce requirements. Such documentation includes efforts to comply with the Federal EEO Construction Contract Specifications (Federal Aid Project Attachment 4, Section F, 1-16) on Federal aid projects or in the Requirements for Affirmative Action to Ensure Equal Employment Opportunity on Wholly State Funded Projects (State Funded Project Attachment 3).
- 2. Employment Goal Submissions by Contractor:** The Contractor, each subcontractor and others working on the project must submit monthly employment workforce data of the number and work hours of minority and non-minority group members and women employed in each work classification for the Contract for each project. The RE must ensure that all contractors accurately report all EEO workforce data through the NJ Portal utilizing the electronic Form CC-257R Report. Submission requirements depend on the type of funding for the project.

For **Federal aid projects**, the submission requirements are:

- a. Submit this information to NJDOT via a web-based application through the New Jersey Portal, Vendor Workforce Reporting Manager. Instructions on how to complete Form CC-257R are provided within the web application. Instructions for registering and receiving the authentication code to access the web based application can be found

online at the Monthly Employment Utilization (Form CC-257R) –

Electronic Reporting Instructions at:

<http://www.state.nj.us/transportation/business/civilrights/pdf/cc257.pdf>.

- i. On a monthly basis, submit Form CC-257R through the web based application within 10 days following the end of each reporting month except reports for the month of July which must be submitted within 5 days. **Note:** Since the information provided for the July monthly report is used to provide the information required by the FHWA, the RE must ensure that on Federally funded projects, **all** contractors must submit the July CC-257R Report no later than August 5th.
- ii. In addition to the above, submit a hard copy of the electronic Form CC-257R to the RE within 10 days following the end of each reporting month.
- iii. Submit a copy of the confirmation e-mail of the successful submission of Monthly Employment Utilization Report to the RE within 10 days following the end of each reporting month.

For **Wholly State funded projects**, the submission requirements are:

- a. Submit this information to NJDOT via a web-based application through the New Jersey portal, Vendor Workforce Reporting Manager. Instructions on how to complete Form CC-257R are provided within the web application. Instructions for registering and receiving the authentication code to access the web based application can be found online at the Monthly Employment Utilization (Form CC-257R) – Electronic Reporting Instructions at:
<http://www.state.nj.us/transportation/business/civilrights/pdf/cc257.pdf>.
 - i. On a monthly basis, submit Form CC-257R through the web based application within 10 days following the end of each reporting month.
 - ii. In addition to the above, submit a hard copy of the electronic Form CC-257R to the RE within 10 days following the end of each reporting month
 - iii. Submit a copy of the confirmation e-mail of the successful submission of Monthly Employment Utilization Report to the RE within 10 days following the end of each reporting month.
- b. Also, the prime contractor only, should submit the workforce data directly to the NJ Department of Labor and Workforce Development, Office of Diversity Compliance.
 - i. After notification of award, but prior to signing the Contract, submit form AA-201 – Initial Project Workforce Report - Construction form. The form is available online at:
https://www.nj.gov/treasury/contract_compliance/ . Instructions for completing the form are found online at:
https://www.nj.gov/treasury/contract_compliance/
 - ii. Monthly, complete and submit an AA-202 Monthly Project

Workforce Report – Construction form for the duration of the Contract. The form may be completed manually and mailed to the Department of Labor and Workforce Development, Construction & EEO Monitoring Program, P.O. Box 209, Trenton, NJ 08625-0209, or: input electronically directly into the AA-202 form via the Department of Treasury’s Premier Business Services Online Forms web application, located at:

http://www.nj.gov/treasury/contract_compliance/, or submit a printed copy

- iii. In addition to the above, submit a copy of the AA-202 form to NJDOT along with the hard copy of the CC-257R and confirmation e-mail of the successful submission of the Monthly Employment Utilization Report mentioned in (a.) above.

- 3. Letters to Unions/Referral Agencies, and the response letters from said Unions/Referral Agencies.** Contractors and subcontractors are required to **provide** written notification to **minority** and female recruitment sources and community organizations that when the Contractor or subcontractors have employment opportunities available, they seek minority and female candidates. They must also maintain a record of the organizations' responses. If a contractor is not hiring at the present time, they must still submit letters to unions or referral agencies stating something to the effect that although they are not hiring at the present time, if employment opportunities arise, they are seeking minority and female candidates for positions on the project. Letters to the unions must be on company letterhead, signed, dated and reference the particular project. Response letters from the unions and recruitment sources must be signed, dated and reference the particular project. All letters must be submitted to the RE at the start of the project. If the project is for a long duration, follow up letters to the unions and referral agencies should be submitted, with copies submitted to the RE.
- 4. EEO Meetings.** The Contractor is required to provide EEO orientation to all project supervisory and office personnel. The RE and all subcontractors should be invited to attend the meetings. If subcontractors do not attend, they are to hold their own meetings and document them. Documented evidence of the meetings such as a record of the minutes, including date, time and location of the meeting, and list of attendees should be included. There should be a record that the Foreman or on-site supervisory personnel attended these meetings. Copies of the EEO meetings, including the date of meeting, names of attendees and specific items discussed should be submitted to the RE at the start of the project, and every 6 months thereafter.
- 5. EEO On-Site Inspections.** The Contractor’s EEO Officer should perform periodic EEO inspections and employee interviews to inspect on-site general working conditions, and to uncover complaints of discrimination, wage disparity or other unfair treatment of site personnel. The on-site

inspection should be performed during the 1st month of construction, and every month thereafter. On short duration projects of less than 6 months, such inspections should be held at least once during the 1st month of construction, and at the 50% stage. A memo of record of the EEO inspection, including the date of the inspection, who was interviewed and any findings should be submitted to the RE monthly.

- 6. Female & Minority Logs.** Contractors and subcontractors must establish and maintain a current file of the name, address, job classification, gender, ethnic group, date started and date and cause for termination of each **minority** and female who performs work during the course of the project. The log must be submitted to the RE on a monthly basis.
- 7. Log of Walk-In Applicants.** Contractors and subcontractors must establish and maintain a current file of the names, addresses, telephone number, ethnic group, gender, type of work sought, date of application and disposition of each off-the-street applicant, and the action taken with respect to each **individual**. If an **individual** was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken. This log must be submitted to the RE on a monthly basis.

RE's Monitoring and Enforcement: It is the responsibility of the RE to ensure that each CC-257R report is submitted by the Contractor. The RE must review the CC-257Rs and if the Contractor has not attained the minority or female employment goal for any individual construction craft, the RE will notify the Contractor in writing regarding the deficiency, and request the Contractor to respond as to why it has not attained the employment goal(s), and to demonstrate what efforts the company is making to meet the obligation.

It is also the responsibility of the RE to ensure that the Contractor and subcontractors submit copies of the letters to union/referral agencies and the union/referral agency response letters, EEO meeting minutes, EEO on-site inspection reports, female and minority logs, and logs of walk in applicants at the start of construction, monthly, or every 6 months, as required and indicated above.

If the Contractor fails to comply with the EEO requirements after two months, the RE will immediately notify the Contractor in writing of any violations of the EEO requirements. Failure of the Contractor to comply after a reasonable time period will result in the RE notifying the DCR/AA by memorandum and presenting pertinent documents for review and determination as to the appropriate actions to enforce compliance, which may include not processing all or a portion of an estimate until the Contractor is in compliance. The DCR/AA is to be copied on all documentation relative to the Contractor's compliance with the contract EEO requirements.

2. On-the-Job Training (Trainee) Program

The On-the-Job (OJT) Program was created by FHWA and NJDOT to fulfill the

Training Special Provisions requirements of Federal-aid construction contracts (see 23 CFR § 230, Appendix B to Subpart A). The purpose of the provisions is to address the under-representation of minority and female workers in the construction trades through the assignment of OJT training goals; therefore, the training and upgrading of minorities and females toward journey level status on NJDOT Federal-aid contracts is the primary objective of NJDOT's Training Special Provisions.

Contractors are to make every effort to meet their OJT Program goals by enrolling minority and women trainees (i.e. by conducting systematic and direct recruitment through public and private sources likely to yield minority and female trainees) to the extent that such persons are available within a reasonable area of recruitment.

The On the Job Training and Apprentice/Trainee Requirements of Federal aid projects is located in Subsections H & I of Federal Aid Attachment 2, of the Special Provisions. The Item "TRAINEES" provides the estimated training hours. It is intended that the number of trainees stated will be the number of trainees to complete an approved training program or receive maximum training on the project.

A. Contractor's Training Program: At the Preconstruction Conference or prior to the start of work, the RE will require the Contractor to submit a proposed Training Program for the specific number of trainees specified in the Contract. The Initial Training Program must delineate specific information under the following headings:

1. Training Positions
2. Standard Program Hours per Position
3. Minimum Available Hours per Position
4. Estimated Starting Date per Position
5. Training to be provided by subcontractor(s)
6. Training Guidelines for all Positions.

Prior to the start of work in the training positions identified by the Contractor, the RE will review the Contractor's proposed training program to ascertain if it is realistic and consistent with the scope of the project work. Immediately after reviewing the Contractor's Training Program, the RE will forward the program, with appropriate comments, to the DCR/AA for review and approval. The DCR/AA will advise the RE, in writing, of the training program approval. The RE is to notify the Contractor of DCR/AA's approval of the Training Program.

Once the Training Program is approved, it cannot be changed without written advance notification to, and written approval, by the DCR/AA. This includes termination of a trainee by the Contractor.

B. Required Documentation of Trainees on Project:

- 1. Trainee/Apprentice Approval Memorandum (CR-1 Form):** Prior to any specific trainee starting work on the project, the Contractor must submit an accurate and complete Apprentice/Trainee Approval Memorandum, Form CR-1, to the RE for review, and final approval by DCR/AA. Upon receipt of the CR-1, the RE will immediately forward the CR-1 to the DCR/AA for review and

final approval. The RE will submit the above information to the DCR/AA by fax/email and receive approval or disapproval of the proposed trainee. Written confirmation of each decision will be forwarded to the RE by the DCR/AA. Once the RE and the Contractor receive notice that the specific Trainee has been approved for work on the project, the trainee may start work. No credit will be given for Trainees working on the project prior to the application approval date. To receive credit for any trainee, such trainee must be approved by the DCR/AA.

- 2. Biweekly Training Report (CR-2 Form):** The Contractor is also required to submit to the RE an "NJDOT DCR/AA Biweekly Training Report Form CR-2" documenting the training provided, including the hours, to each trainee in accordance with the approved training guideline.
 - 3.** The RE should cross-check the Contractor's Biweekly Training Report Form CR-2 against the Daily Work Reports for accuracy, and make a notation on the Biweekly Reports that this cross-check was made, and by whom. The RE will review each report for accuracy and completion and forward one (1) copy of each report to the DCR/AA within five (5) days of receipt.
 - 4. Contractor's 1409 Quarterly Training Report:** On a quarterly basis, the Contractor's EEO Officer is required to complete one (1) copy of Form CR-1409 for each trainee who has received training during the quarters ending: March 31, June 30, September 30, and December 31. In accordance with the specifications, each original CR-1409 report is to be furnished to the trainee and one (1) copy is to be submitted to the RE by April 10, July 10, October 10, and January 10. The RE will review each report for accuracy and completion and forward one (1) copy of each report to the Regional Construction Coordinator within five (5) days of receipt. After review, the Regional Coordinator will transmit each CR-1409 report to the DCR/AA within five (5) days of receipt.
 - 5. Training Certificate For Reporting Hours To NJDOT (Form CR-3):** At the conclusion of each Apprentice or Trainee's approved training program, or receipt of maximum available training on the project, the Contractor will provide each said Trainee or Apprentice a completed Training Certificate (Form CR-3), signed by the Contractor, Trainee, and RE, showing the hours of training successfully completed. The RE will review each report for accuracy and completion and forward one (1) copy of each report to the DCR/AA within five (5) days of receipt.
- C. Good Faith Effort for Apprentice/Trainee Program:** Where a Contractor does not or cannot achieve its Contract training goal with female or minority trainees, it is responsible for demonstrating adequate Good Faith Efforts documentation. Good Faith Efforts are those designed to achieve equal opportunity through positive, aggressive, and continuous result oriented measures (see 23 CFR § 230.409.(g)(4)).

Good Faith Efforts may include, but are not limited to:

- Communicate with unions to increase the number of minority and female trainees and apprentices;
- Contact minority and female employees to gain referrals on other minority and female applicants;
- Contact minority and female recruitment sources when hiring opportunities arise or thirty (30) days prior to the start of a union's open enrollment application periods;
- Refer specific minorities and females to the unions or other applicable outlets for trainee recruits and specifically request these trainees by name in the future;
- Upgrade minority and female unskilled workers into the skilled classifications when possible;
- Accept applications at the project site or at the contractor's home office;
- Review and follow up on previously received applications from minorities and females when hiring opportunities arise;
- Maintain monthly evaluations that monitor efforts made to achieve diversity on Federal projects and the contractor's workforce in general (i.e. significant numbers of minorities and females employed on a company wide basis);
- Report incidents in which unions are providing a barrier to employment for individuals, especially minorities or females that you have referred to the union and any observed pattern of underutilization of females and minorities in a particular classification;
- Allow applicants to work in the shop or as an OJT trainee for ninety (90) days prior to referring them to a union, and assist them in the enrollment process for skilled trades;
- Purchase the journeyman's card for the trainee and allow that worker to prepay with payroll deductions.

RE's Monitoring and Enforcement: The RE will monitor the Trainee Program on federal aid projects, including submission of required forms, the Contractor's Training Program, estimated start dates for trainees, type of training provided to each trainee, hours each trainee completes, and completion date of each trainee.

The RE will use a Daily Work Report to provide on-site monitoring of the type of training being provided to each trainee. Documentation should be detailed, complete and accurate. If the Contractor has not started a trainee by the indicated date, the RE will require the Contractor to submit a revised Training Program.

The RE will notify the Contractor in writing of any violations of the On-the-Job Training requirements and will direct the Contractor to comply with these requirements. Failure of the Contractor to comply after five (5) days will result in the RE notifying the DCR/AA by memorandum and presenting pertinent documents for their review and determination as to the appropriate actions to enforce compliance, which may include not processing all or a portion of an estimate until the Contractor is in compliance. The DCR/AA is to be copied on all documentation relative to the Contractor's compliance with the contract Training program requirements.

If the Contractor fails to fulfill the Training Program requirements of the Contract, and does not have documented evidence of good faith effort(s) to achieve the Contract training goal that have been reviewed and approved by DCR/AA, the RE is to not pay for the item, TRAINEES.

Records and Reports. Contractors are required to keep and provide the Department with such records as are necessary to determine compliance with the contractor's EEO, Affirmative Action and labor obligations, including on-the-job training, workforce reporting and wage rates. Such records must be retained by the Contractor, subcontractors, and the NJDOT for a period of three years following completion of the Contract, and will be available at reasonable times and places for inspection by NJDOT and FHWA (see 23 CFR § 230, Subpart. A, Appendix. A).

3. Labor/Wage Rate Requirements

Contractors are required to comply with various Federal and State labor requirements on NJDOT construction projects. They must pay employees working on the projects prevailing wages, and notify employees of the labor, EEO, safety and other pertinent requirements.

A. Required Postings for EEO and Labor Notices: EEO and Labor notices must be posted in a prominent and accessible location by the RE in the DOT field office, and by the Contractor in conspicuous and accessible location(s) on the project where they can be easily seen by the workers (see FHWA 1273 § II.3(d)). All posted information must be legible and presented in a clear manner. The RE must, at a minimum of four (4) times per year, visually verify that the Contractor has the required information posted, as required on the certification on the Quarterly Summary of Contractor's Payroll Form DC-128. Though Contractors are familiar with most EEO jobsite posting requirements, such requirements do change over time. These requirements can be found on the Department of Labor (DOL) website at:

<http://www.dol.gov/compliance/topics/posters.htm>

and, the FHWA contractor compliance website at:

<http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>

The notices/posters that must be displayed are listed below. Immediately after each posting name is notation of whether it is required on Federal and/or State projects, and in the other languages that the poster should be posted.

- a) New Jersey Department of Labor's "Prevailing Wage Rate Determinations" (Federal and State Projects)
- b) New Jersey Department of Law & Public Safety's "Discrimination in Employment" posters in English and Spanish (Federal and State Projects)
- c) Contractors Emergency Numbers for EEO and Safety
- d) United States Department of Labor "Employee Rights under Family and

- Medical Leave Act” posters in English (Federal and State Projects)
- e) New Jersey Department of Transportation’s “Sexual Harassment Policy” (Federal and State Projects)
 - f) Letter appointing Project/Contractor EEO Officer (Federal Projects Only)
 - g) Contractor’s EEO Policy Statement (Federal Projects Only)
 - h) United States Department of Labor’s “Employee Rights under the Davis-Bacon Act” posters in English and Spanish (Federal Projects Only)
 - i) United States Department of Labor’s “Employee Rights on Government Contracts” posters in English and Spanish (Federal Projects Only)
 - j) United States Equal Employment Opportunity Commission “Equal Employment Opportunity” posters in English and Spanish (Federal Projects Only)
 - k) United States Department of Labor’s “Job Safety and Health” poster in English (Federal Projects Only)
 - l) United States Department of Transportation’s “Wage Rate Information” poster (Federal Projects Only)
 - m) United States Department of Transportation’s “Notice of False Statement” poster (Federal Projects Only)
 - n) United States Department of Labor’s “Employee Polygraph Protection Act” poster in English and Spanish (Federal Projects Only)

B. Prevailing Wage Provisions: The Davis Bacon Act and related Acts set forth the minimum wages to be paid to various classes of laborers and mechanics employed under the federally financed or assisted construction contracts. Workers are guaranteed the right to receive no less than the State prevailing wage rate and fringe benefits for the type of work performed (see 29 CFR § 1, 29 CFR § 5, The Davis-Bacon Act WH-1246 (see, <http://www.dol.gov/whd/regs/statutes/dbra.htm>) and 23 USC § 113).

Information on Davis-Bacon and Related Acts (DBA/DBRA) Compliance Principles can be found in the US Department of Labor (USDOL) Prevailing Wage Resource Book at: <https://www.dol.gov/agencies/whd/government-contracts/prevailing-wage-resource-book>

For Federal wage rates, a “general wage determination” (GWD) reflects those rates determined to be prevailing in a specific geographic area for the type of construction described. A GWD contains no expiration dates and are effective from their date of publication. (see <http://www.dol.gov/whd/programs/dbra/faqs/wd-gen.htm>). Wage determinations, modifications and superseded decisions are available online at the Wage Determination On-Line (WDOL) website at <http://www.wdol.gov/dba.aspx#0>. Published GWDs can be obtained on the WDOL website. Select the appropriate county, selecting construction type: HIGHWAY.

State wage rates may be obtained from the New Jersey Department of Labor (NJDOL) & Workforce Development by accessing the Department of Labor & Workforce Development's web site at:

http://wd.dol.state.nj.us/labor/wagehour/wagerate/prevaling_wage_determinations.html

If the prevailing wage rate prescribed for any craft by the United States Secretary of Labor is not the same as the prevailing wage rate prescribed for that craft by the NJDOL, pay the higher rate. (Typically the New Jersey wage rate is higher than the Federal rate.)

Prevailing wage requirements do not apply to truck drivers for the following situations:

- a) Dropping off material from a material source not considered adjacent to the project (however prevailing wages do apply when deliveries are between two work sites covered by prevailing wage requirements)
- b) Making deliveries from a commercial supplier off "the site of the work".
- c) Removing material from the project and taking it to a commercial facility

However, if a truck driver delivering material performs work on the project other than normal methods of unloading the material, that work is subject to prevailing wage rate requirements. Similarly, if a truck driver picking up or removing material from the project site, performs work on the project other than normal methods of loading the material, that work is subject to prevailing wage requirements.

Truck Owner-Operators are independent contractors and not employees of a contractor or any other company. Truck owner-operators are not subject to prevailing wage requirements. However, if the truck owner-operator is performing work on the project site, the individual must submit payrolls and must be identified as an owner-operator, but need not list hours or wage rates. It is important to note that the exemption only applies to the actual truck owner. Employees of truck owner-operators are subject to prevailing wage requirements.

Conversely, equipment owner-operators are not exempt from prevailing wage requirements, and the operators must be shown on contractor's payrolls.

- C. Certified Payrolls and Statements of Compliance:** The Contractor is required to submit weekly Certified Payrolls and Statements of Compliance for itself and each subcontractor on the project. The Contractor must furnish the RE with the payrolls and weekly statements of compliance within **ten (10) days** of the date of the payment covered therein.

On **Federal aid projects** certified payrolls must be submitted on the Form CR-347 Payroll, or a form with the exact information. The Statement of Compliance (located on the back of the form) must be completed, signed and submitted with each certified payroll.

On **Wholly State funded projects**, certified payrolls must be submitted on Payroll

Certification for Public Works Projects, found on the NJ Department of Labor website at: http://lwd.dol.state.nj.us/labor/forms_pdfs/lse/payrollcert.pdf The Statement of Compliance located on the back of that form must be completed, signed and submitted with each certified payroll submitted on Wholly State funded projects. (Note: The Statement of Compliance for Wholly State funded projects should make reference to the NJ Prevailing Wage Law, not the Copeland Act.)

1. Payroll and Statement of Compliance Review: The RE or designated staff member will review each payroll and its supplemental sheets to verify that (see 29 CFR § 5.5(a)(3)(ii)):

- a) The project name or other description, federal project and/or DP numbers are correct;
- b) The number of employees on the payroll appears to be correct;
- c) The number of employees being paid overtime appears to be correct;
- d) The basic hourly rate and overtime rate for each classification are not less than the NJDOL's prevailing wage rate and, where applicable, the USDOL's minimum wage rate for the project. (Note: If codes are used for work classifications or deductions, a code key must be attached to each payroll);
- e) The name, ethnicity, gender and last four digits of employee's social security number are shown on the payroll;
- f) The daily and weekly hours are shown for each employee;
- g) The deductions are itemized and properly identified (by name, not amount);
- h) Specific work classifications are used.

The RE or staff will review the Weekly Statement of Compliance to determine if the required information has been entered on the form by the contractor, and particularly that:

- a) Payroll deductions are identified (by name, not amount);
- b) The method for paying fringe benefits (either fringe benefits are paid to approved plans, funds or programs or paid in cash) is indicated and;
- c) The form is signed by the individual whose name appears in the first paragraph.

The NJDOL has the authority to sanction contractors for the late submission of certified payrolls.

The RE is required to maintain a RE Late Payroll Log, Form DC-129, for payrolls that are not submitted on a timely basis. If the Contractor and/or subcontractor is habitually late in submitting payrolls, the RE is to notify the DCR/AA's Wage Rate Unit by memorandum and include a copy of all pertinent documentation (including the RE Payroll Log Form DC-129).

2. Payroll Discrepancies/Violations of Labor regulations: - If the review of a payroll indicates that there may be payroll discrepancies and/or violations of

the labor regulations, the RE will attempt to resolve the matter with or through the Contractor. If the matter remains unresolved after ten working days, the RE is to notify the DCR/AA's Wage Rate Unit by memorandum and present any pertinent documents for review and determination as to the appropriate actions to enforce compliance with the labor requirements, which may include not processing all or a portion of an estimate until the Contractor is in compliance (See 40 USC § 3142(c)(3) and 29 CFR § 5.5(a)(2)). In addition to withholdings and liquidated damages, as provided in FHWA 1273 IV.9, termination of the Contract may be considered for continued violations. For more serious violations, debarment from future contracts for up to three years may be pursued by the USDOL.

The following are some of the typical violations of the DBRA requirements:

- Misclassification of laborers and mechanics;
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours);
- Inadequate recordkeeping, such as not counting all hours worked or not recording hours worked by an individual in two or more classifications during a day;
- Failure to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices;
- Failure to submit certified payrolls weekly; and
- Failure to post the Davis-Bacon poster and applicable wage determination.

3. **Corrected Payrolls and Corrected Weekly Statement of Compliance:** If the review of a payroll or Statement of Compliance indicates that there are errors or discrepancies, the RE will notify the Contractor in writing of the errors or discrepancies and request a corrected or supplemental payroll and/or a corrected Weekly Statement of Compliance, which the RE will then attach to the original documents. The RE is to not return the original payroll to the Contractor. Failure of the Contractor to comply in a reasonable time period will result in the RE notifying the DCR/AA Wage Rate Unit by memorandum and presenting pertinent documents for their review and determination as to the appropriate actions to enforce compliance, which may include not processing all or a portion of an estimate until the Contractor is in compliance. The DCR/AA Wage Rate Unit is to be copied on all documentation relative to the Contractor's compliance with the contract labor/wage rate requirements.

Recordkeeping: Contractors and subcontractors are required to retain employee records, including payroll records, during the course of the Contract and preserve them for three years after final payments and all other pending matters are closed; i.e. FHWA's final acceptance of the project (see 29 CFR § 5.5(a)(3)(i), 23 CFR 635.118, and 49 CFR § 18.36(i)(11)).

- D. RE's Wage Rate Inspections:** To ensure contractors' compliance with prevailing wage rates on all projects, only the RE and/or designated staff must conduct wage

rate inspections. Contractors should not be conducting the inspections. The inspections should be based on a representative sampling of the Contractor's and each subcontractor's workforce. A representative sampling is defined as a wage rate inspection and interview for each craft employed by each contractor on the project. The inspections are to include an examination of payroll data and confidential interviews with employees (see 29 CFR § 5.6(a)(3)). Payroll inspections and interviews are to be conducted on at least one employee per craft for the Contractor's and each subcontractor's employees, at least once for the duration of the project. Employee interviews are intended to be private from their employer. Identify yourself, and that you are the NJDOT RE or the RE's representative for the project. Inform each employee that the information given is confidential, and that his/her identity will not be disclosed to the employer without the employee's written permission (see 29 CFR § 5.6(a)(5)).

In the event of a complaint the RE should advise the complainant employee(s) to submit a formal complaint to the NJ Department of Labor, Wage and Hour Division. The RE should also notify the DCR/AA Wage Rate Unit in writing, of alleged violations.

If a wage rate inspection interview is conducted with an individual that does not speak English, or has difficulty communicating in English, the RE should attempt to have another employee act as an interpreter. If an interpreter is used, the interviewer will note it on the wage rate inspection. If an interpreter is unavailable at the time of the interview, the interview should be suspended and rescheduled for a later date. The RE will consult with Civil Rights concerning interpreter services when necessary.

Submissions by RE: The RE is to submit the following forms in order to track labor compliance, and submissions on projects:

- 1. Wage Rate Inspection Form DC-126.** Wage Rate Inspection Form DC-126 must be completed as indicated on the form instructions. The RE will ensure copies of the completed Wage Rate Inspections, Form DC-126 are submitted to DCR/AA's Wage Rate Unit. This submission may accompany the submission of the Form DC-127 Monthly Certification of Contractors' Payrolls discussed below. The original completed Wage Rate Inspection forms are to remain in the project's files.
- 2. Monthly Certification of Contractor's Payroll (Form DC-127)**
Each month, a Monthly Certification of Contractor's Payrolls Form DC-127 is to be completed and signed by the RE to verify that all Contractor and subcontractor payrolls have been received and reviewed as required.

Within **15 days** after the end of the month (certification period), a copy of the completed Form DC-127 will be forwarded to the DCR/AA's Wage Rate Unit, along with a copy of all Wage Rate Inspections, Form DC-126, conducted during the month (certification period).

3. Quarterly Summary of Contractor's Payroll (Form DC-128)

Within **30 days** after the calendar quarter ends, a Quarterly Summary of Contractors Payrolls Form DC-128 is to be completed by the RE and forwarded to the DCR/AA's Wage Rate Unit along with one copy of all payrolls, supplemental sheets and Weekly Statements of Compliance that were reviewed and accepted for the quarter.

The RE will provide an attachment/memorandum to the DC-128 detailing any payroll discrepancies.

- 3. RE's Monitoring and Enforcement:** The RE is to monitor contractor and subcontractor compliance with EEO, on-the-job training and labor compliance, with additional guidance from DCR/AA. DCR/AA is to be copied on all documentation relative to the Contractor's compliance with its EEO, on the job training and labor obligations on the project.

4. Project Completion Notification to DCR/AA

The RE will send a memorandum of notification to the supervisor of the DCR/AA's Wage Rate Unit immediately following Completion of the project. This notification is to include the following:

- 1) The date of Completion as specified in 101.03 of the 2007 Specifications.
- 2) If applicable, a statement to the effect that there are unresolved labor violations at the field level.
- 3) If applicable, a list of approved subcontractors that were not utilized on the project.