

SDDOT CONSTRUCTION MANUAL  
PROJECT MANAGEMENT SECTION  
**CHAPTER 6 - CIVIL RIGHTS COMPLIANCE: EEO/OJT/TERO/ADA**

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The Civil Rights Program is responsible for overseeing Civil Rights issues for the DOT. Within that office, the Civil Rights Compliance Officer is responsible for:

- Equal Employment Opportunity,
- On-the-Job Training Program,
- Title VI Compliance, (Non-discrimination)
- Tribal Relations and TERO/TECRO Agreements/Special Provisions
- ADA (Americans with Disabilities Act) Compliance

FYI -- The department no longer prints an EEO/OJT Manual for Contractors. The most up-to-date information is found on the internet site at [South Dakota Department of Transportation - Civil Rights](#).

### **EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

EEO is defined as "the absence of partiality or distinction in employment treatment, so that the rights of all persons to work and advance on the basis of merit and potential is maintained." EEO applies to all Federal-aid contracts and subcontracts over \$10,000.

There are two special provisions regarding EEO in the contract that should be included in the subcontract on Federal-aid projects and copies of these provisions can be found at [South Dakota Department of Transportation - Equal Employment Opportunity \(EEO\)](#).

- FHWA-1273 Required Contract Provision, Federal-aid Construction Contracts (commonly referred to as the "pink sheets")
- EEO Affirmative Action Requirements on Federal and Federal-aid Construction Contracts

Contractors agree to be an EEO employer when they sign the Federal-aid contract. By their signature, these employers have agreed that all personnel matters for projects will be handled without regard to race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. This means the contractor is required to do the following:

- Adopt an EEO policy
- Company policy must be posted on the job site bulletin boards
- Disseminate the policy to the workers through various means including company meetings, written notices, etc.
- Post EEO posters "Know Your Rights: Workplace Discrimination is Illegal" & "EEO-#7" on the job site bulletin board
- Identify an EEO Officer and establish in writing the job duties
- Actively recruit beyond the traditional sources to attract minority/female applicants
- Review all personnel actions to ensure actions taken are following company EEO policy
- Develop a basic complaint procedure
- Retain records of employment and personnel actions for a three-year period from the date of FHWA project closing as defined in Chapter 1 of this manual.

During the project it is the responsible of DOT personnel to periodically check to make sure the EEO posters are on the job site bulletin boards and to note in the project diaries date of inspections and any non-compliance.

Contractor/Subcontractor employee discrimination complaints should be referred immediately to the department's Civil Rights Compliance Officer. All employees are protected against discrimination based on based on race, color, sex, religion, national origin, age or disability.

Any DOT staff who is made aware of any discrimination or anyone who wishes to file a complaint or report discriminatory practices should report that immediately to the Civil Rights Compliance Officer.

Contractor Compliance Reviews are conducted throughout the State during construction season. These reviews are to verify that the Contractor is complying with the EEO Special Provisions. EEO contractor compliance reviews, if scheduled on any Federal-aid project, will focus on the Contractor's compliance with all the EEO requirements and documentation of such compliance, thus the Contractor must have all EEO documentation in the company files. There may be an on-site review portion with the review that will include interviews of contractor's employees and review of bulletin board. Project staff may be needed to assist with the on-site review.

Copies of the posters listed below must be displayed on a weatherproof bulletin board in a conspicuous and accessible location(s). If subcontractors utilize the prime's board, they need not post their own Know Your Rights: Workplace Discrimination is Illegal or OSHA posters, but they must have an EEO # 7. Faded and weathered posters should promptly be replaced. Project staff is responsible for disseminating copies of the following posters:

- 1) Know Your Rights: Workplace Discrimination is Illegal (English and Spanish)
- 2) EEO #7 - Company EEO policy/officer
- 3) OSHA 3165-09R – OSHA Safety Poster (English)
- 4) OSHA 3167 – OSHA Safety Poster (Spanish)

If additional copies of any of these posters are needed, contact the Civil Rights Program. This is not a complete list of all the posters required for a project. A complete list and additional information about the bulletin board requirements can be found in Chapter 9 of this manual.

Contractors are required to document any meetings held on the project to inform employees of the Contractor's EEO policy. The contractor should notify the Project Engineer of the time, date and location of the meeting and if possible, DOT staff should attend. At least one meeting should be held on the Contractor's EEO Policy every six months on the project.

EEO FHWA #1391: Every Contractor and subcontractor with a Federal-aid (sub) contract of \$10,000 or more will submit an annual report each July for the duration of the project. This form is the FHWA #1391. The employee data should reflect the work force on board during all or any part of the last payroll period preceding the end of July. If the contractor works for even one day in July prior to the last pay period of the month – the contractor/sub is required to complete this form. Forms, instructions, etc., will be sent directly to the prime Contractor and all subcontractors by the Civil Rights Compliance Officer and the forms will be returned to that office. This is a condition of the contract and failure to submit may result in withholding of progress payments until

compliance is achieved. Copy of the EEO #1391 form and instructions is on the internet at [South Dakota Department of Transportation – Equal Employment Opportunity \(EEO\)](#).

Each contractor will complete the DOT-270 prior to the preconstruction attesting to the fact that the contractor is aware of the EEO requirements of the projects, and the requirements have been included in all subcontracts.

### **ON-THE-JOB TRAINING (OJT) PROGRAM**

The On-the-Job Training Program Special Provision is used to direct training opportunities to minority, female and other economically disadvantaged individuals. The purpose of the training is to develop marketable skills for the individuals and allow them to gain journey worker status in highway construction crafts.

Each year there are projects designated to have Trainee slots. If there is a training requirement on a project, the successful low bidder is sent a letter with forms and the Area office receives a copy of the letter. Not all Federal-aid projects have a training requirement.

The appropriate trainee registration form must be filed with the Civil Rights Compliance Officer and approval obtained no later than the two weeks after training begins. The original of the approved registration will be sent to Area Office and copy to the Contractor. Monthly Status reports are filed monthly. The OJT Registration and monthly status report forms can be found on the internet at [South Dakota Department of Transportation – On-the-Job Training \(OJT\)](#).

Trainees must be clearly identified on payroll by classification as "Form Builder Trainee", or "Scraper Trainee", etc.

The approved training programs are listed in the SDDOT OJT Manual which is found on the internet at [South Dakota Department of Transportation - On-the-Job Training \(OJT\)](#) or a paper copy can be requested from the Civil Rights Compliance Officer.

The training hours are bid in 500-hour increments. For each 500 hours a trainee is required to fill that training slot. Contractors have the option to fill a training slot with multiple trainees depending on training needs and availability for meaningful training.

At the completion of the project or when the Trainee has completed the program, the Civil Rights Compliance Officer mails a letter to the Area Engineer stating the amount due the contractor for the training hours based on the hours worked and amount bid for each hour worked by the Trainee. There may hours deducted for trainee hours worked out-of-state; late Trainee Status Reports; over 100 off-site training hours; or late Registrations.

If you are finaling a project and need the OJT hours, contact the Civil Rights Compliance Officer.

If the Contractor fails to make a good faith effort and/or register a Trainee, liquidated damages may be assessed and/or progress payments suspended. Letters will be sent to the Area Engineer and Contractor notifying them of either action. Liquidated damages for failure to comply with the On-the-Job training requirements are withheld as a price adjustment to the Training Program contract item. For more information and to view an example of this process, please refer to Chapter 7.

In some circumstances, a waiver of the OJT requirements may be issued. This waiver may be for all the training slots required or part of the slots depending on whether the contractor was able to fill any of the required training slots. A letter will be sent to the contractor with a copy to the Area office notifying both parties of the waiver.

If there are any questions or concerns about waivers or liquidated damages, contact the Civil Rights Compliance Officer as soon as possible.

Each contractor will complete the DOT-270 prior to the preconstruction attesting to the fact that the contractor is aware of the EEO requirements of the projects, and the requirements have been included in all subcontracts.

### **TRIBAL EMPLOYMENT RIGHTS ORDINANCES (TERO)/TRIBAL EMPLOYMENT & CONTRACTING RIGHTS ORDINANCES (TECRO) SPECIAL PROVISIONS**

This provision applies to projects within the legal or historic boundaries of Indian Reservations. TERO/TECRO Special Provisions are incorporated in projects that are either wholly or partially within reservation boundaries.

Please note that only the Rosebud Sioux Tribe uses the term “TECRO”. All other Tribal special provisions use the term “TERO”.

The Special Provisions can vary slightly depending on the location of the project and scope of work. They can include some or all the following: an Indian Preference Hiring Goal, TERO Employment Fee, Other Special Fees and/or a need for Compliance Plan to be negotiated between the Contractor and the Tribe.

Each contractor is sent notification of any TERO/TECRO requirements on the project. Included with the letter is a copy of the Special Provision and Compliance Plan applicable for this project (if required). It is important to note that the TERO/TECRO Office may have other versions of the Compliance Plan that are not applicable on SDDOT projects. The language in the Compliance Plan has been mutually agreed to by the Tribe and the SDDOT. Any other version than the one agreed to as part of the agreement with the department should not be used on SDDOT projects.

No project work is to commence until the compliance plans have been approved by the TERO/TECRO office. Area Office needs to verify that compliance plans are approved before giving the okay to proceed with work.

It is the prime Contractor’s responsibility to send all the necessary information and copies of the Compliance Plan to all subcontractors and suppliers. All Compliance Plans need to be submitted to the TERO/TECRO Office and approved before the Contractor or any subcontractor may begin work.

Copies of the approved compliance plans for the prime and all subcontractors/suppliers should be sent to the Area Office. All the various compliance plans can be found on the internet at [South Dakota Department of Transportation - Tribal Relations \(TERO\)](#).

The TERO/TECRO fee is the sole responsibility of the prime contractor only. It is important to pay the fee in a timely manner as established in the Compliance Plan.

If there are any disputes or issues with the TERO/TECRO Office, the Area Office and Civil Rights Compliance Officer should be informed immediately.

Failure to comply with the requirements of the TERO/TECRO Special Provision may result in project sanctions which may include suspension of progress payments.

**IMPORTANT REMINDER:** No contractor or subcontractor is to commence work until the compliance plan has been approved by the TERO/TECRO office.

If at any time a Tribal representative from any Tribal office indicates that due to non-compliance with Tribal requirements that the Tribe intends to shut down a project, the Area Engineer and Civil Rights Compliance Officer should be notified immediately. If any entity is going to shut down a project, it will be the DOT. In most cases, the problem can be resolved without shutting down a project. This is never to be dismissed as an idle threat and any time a claim is made by a Tribal representative, it is to be taken seriously.

At the Preconstruction Meeting items to discuss:

- TERO/TECRO officials should be invited to the Preconstruction Meeting
- Review Special Provisions with Contractor and TERO/TECRO officers
- Remind Contractor they are responsible for working with the Tribal TERO/TECRO office on the specific requirements
- TERO/TECRO applies to most suppliers on most reservations.
- Remind the contractors/subcontractors to submit copies of approved compliance plans or work with the TERO/TECRO office to get copies from that Office.
- No work can commence until the contractor's or subcontractor's compliance plan has been approved by the TERO/TECRO Office. Some require at least two weeks notice, be sure to review the TERO Special Provisions and compliance plans.

## **AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE**

The department is continually updating the department's ADA Transition Plan including guidance on maintaining pedestrian accessibility in urban projects and ensuring ADA compliance. There will be ADA specific training in the future for construction staff.

There is guidance available on how to accommodate pedestrians and other ADA facilities during construction. Contact the Operations Support Traffic Engineer for assistance.

For all urban projects where sidewalk, curb ramps or any other ADA components are either updated, installed or reconstruction, the DOT – 250 ADA Compliance – Construction Project Report – Pedestrian Facilities Form needs to be completed. The original form should be kept in the project file and a copy sent to the Civil Rights Program.

A link to the forms and copy of the forms are listed on the following pages.

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ADA Compliance - Construction Project Report - Pedestrian Facilities

[M:\DOT\Common\All DOT Forms\DOT Forms 200-300\DOT250 \(ADA Checklist\).xls](M:\DOT\Common\All DOT Forms\DOT Forms 200-300\DOT250 (ADA Checklist).xls)

ADA COMPLIANCE -- CONSTRUCTION PROJECT REPORT -- PEDESTRIAN FACILITIES																				
Project		PCN										County								
Station	L/R	Width Curb Ramp Type: Y/N 1, 2, 3	Width Curb Ramp Type: Y/N (A)	Ramp Cross Slope ≤ 2.0% (B)	Ramp Slope ≤ 3.33% (C)	Flare Slope ≤ 10.0% (D)	Landing Slope ≤ 2.0% (greater E)	Is the Landing 60" x 60"? Y/N (F)	Detect Warning Panels Y/N (G)	Ped. Push Button 1 per pole Y/N (H)	Ped. Push Button Height 42" Y/N (I)	Ped. Push Button Arm Reach ≤ 10" Y/N (J)	Ped. Push Button ground clear. ≥ 60" x 48" Y/N (K)	Warning Grade ≤ 6% (unless follows grade of road) Y/N (L)	Width Sidewalk 48-80" Y/N (M)	Sidewalk Cross Slope ≤ 2.0% Y/N (N)	Vertical Sidewalk Clear. 80" Y/N	Barriers In Ped. Access Route Y/N	Bldg. Access Y/N	Comments on areas of non-compliance (including explanation of non-compliance if technically infeasible)

**Notes:** Surfaces and discontinuities; Gutter, no lip, transition slope; Detectable warning color contrast, spans curb opening, edge is 0" to 2" from back of curb, dome dimensions and orientation are correct, min. depth; Technical infeasibility; Crosswalk, min. clear space 48", proper crosswalk marking

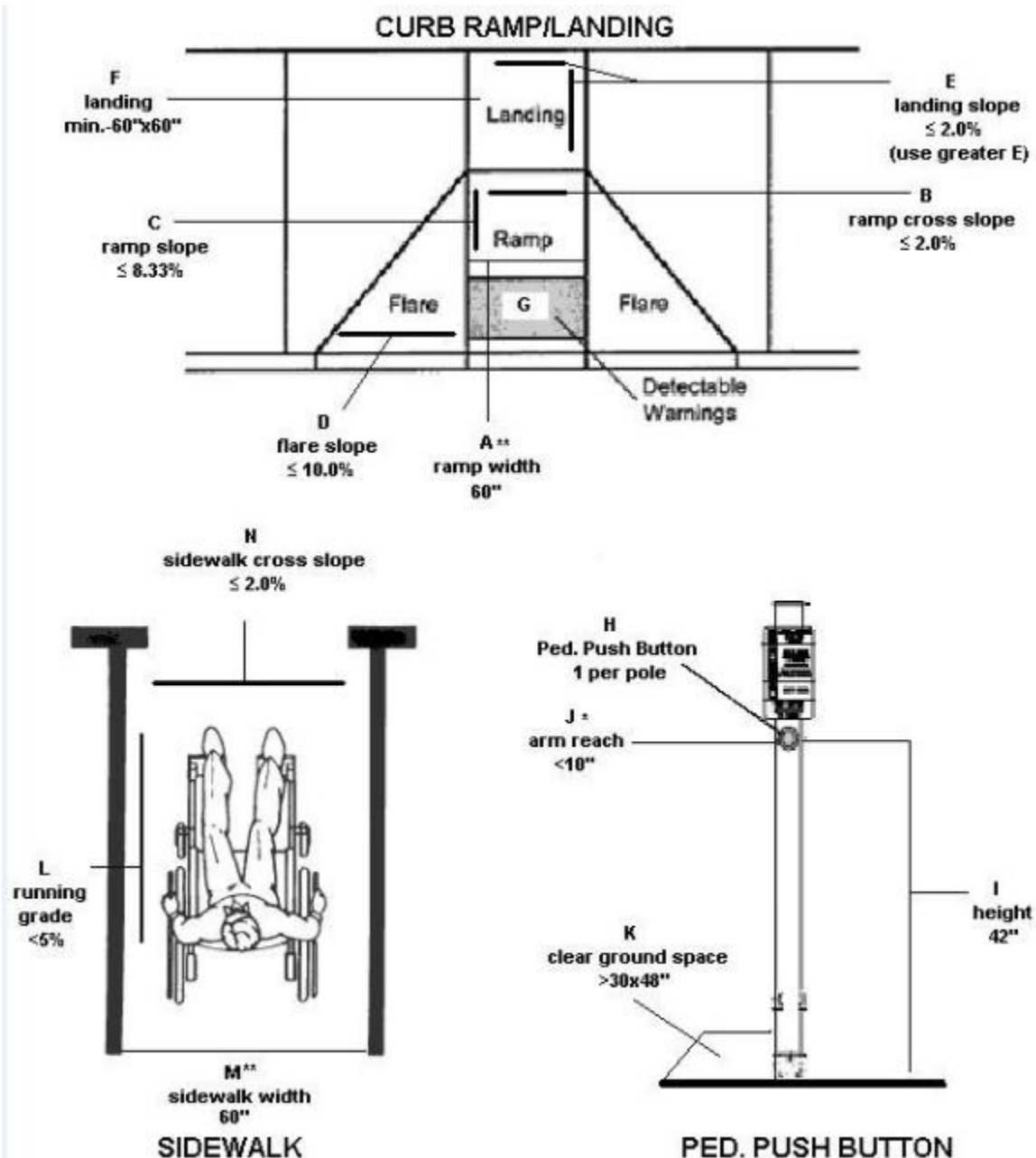
INSPECTED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Retain original in project file and mail one copy to Legal Office

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Revised September 7, 2010

## ADA DOT-250 Checklist Diagram

[M:\DOT\Common\All DOT Forms\DOT Forms 200-300\DOT250 \(ADA Checklist Diagram\).JPG](M:\DOT\Common\All DOT Forms\DOT Forms 200-300\DOT250 (ADA Checklist Diagram).JPG)



\*Must allow individual in a wheelchair to be able to access the push button within horizontal arm reach of 10" without any barriers.

\*\* DOT policy requires 60" width of sidewalk and curb ramps. ADA policy allows 48" at certain points with a 5'x5' landing every 200 feet.