



US Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

Washington, D.C. 20590

Subject: Utility and Railroad Work - Contract  
Requirements

Date: SEP 18 1985

From: Associate Administrator for  
Engineering and Operations

Reply to  
Attn. of: HNG-12

To: Regional Federal Highway Administrators  
Regions 1-10  
Direct Federal Program Administrator

In light of Chief Counsel's recent decision on the nonapplicability of wage rate and EEO requirements to utility and railroad let contracts, a region has raised the issue of the application of other FHWA contract requirements in this situation. Our position follows:

For reimbursable utility and railroad work on Federal-aid projects, if the work is to be accomplished by a contract (including a continuing contract) let by a utility or railroad, the MBE provisions of 49 CFR 23 and the required contract provisions of 23 CFR 633 do not apply to these contracts.

Additionally, requirements of other Federal laws, such as the Clean Air Act, which cover recipients of Federal financial assistance do not have to be applied to utility or railroad let contracts. However, this should not be construed to relieve a utility or railroad or its contractor from complying with any aspects of these other Federal laws which would apply regardless of whether Federal assistance is involved.

The above positions have been concurred in by the Office of Chief Counsel.

R/ Rex C. Leathers

Federal Highway Administration  
HNG-12:JMOverton:hac:60450:9/17/85  
cc:

Leathers, 3212  
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