

Training, Education, and Workforce Development

Contractor Compliance Equal Employment Opportunity Program

Background:

The Federal-aid Highway Act of 1968, Section 22(a) required State Highway Agencies, (hereinafter referred to as State transportation agencies (STA), i.e., to sign Equal Employment Opportunity (EEO) Assurances as a condition for receiving Federal Highway Administration (FHWA) funds. These signed EEO Assurances became the basis for STAs to develop and administer an EEO Contract Compliance Program. The EEO assurances included, among other things: STAs establishing an EEO program to ascertain whether contractors and subcontractors are complying with their EEO obligation and the degree to which such compliance is producing substantial progress on the project sites; effective procedures to assure that discrimination in employment on the grounds of race, color, creed or national origin will not be permitted on any project; on the STAs own initiative, take affirmative action (up to, and including the imposition of contract sanctions) to achieve EEO on Federal-aid highway projects; inclusion of the EEO responsibilities of the successful bidder in the advertised specification.

Under **23 USC 140 (a)**, the FHWA is authorized to ensure nondiscrimination on all Federal-aid projects. As a condition for continued receipt of FHWA funds, the head of the STA must sign and submit an updated EEO program to FHWA for approval on an annual basis. This approval becomes the documentation that the STA's assurances are in compliance with **23 USC 140(a)**:

“Prior to approving any programs for projects as provided for in subsection (a) of section 105 of this title, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex.”

The provisions of 23 CFR 230 – Subpart C and D are applicable to all STAs that receive Federal financial assistance in connection with the Federal-aid Highway Program. Appendix A to Subpart C requires the EEO program to include: Part I – **Contractor Compliance**, and Part II – State Highway Agency Employment. The policies and procedures to standardize the implementation of the equal opportunity contract compliance programs, including compliance reviews, are prescribed under 23 CFR 230 Subpart D – Construction Contract Equal Opportunity Compliance Procedures.

Authorities: **23 USC 140(a)**
23 CFR 230 Subpart C & D

Purpose:

The primary purpose of the Contractor Compliance Program is to ensure that Federal contractors and subcontractors performing work on Federal and federally assisted highway contracts comply with non-discrimination and affirmative action requirements. Through development and management of an effective Contract Compliance Program, the FHWA and STAs are responsible for assuring that Federal contractors and subcontractors do not discriminate in their employment and contracting practices based on race, color, religion, sex, national origin, age or disability. A contractor's minimum EEO requirements are set forth in the contract provisions referenced in Form FHWA-1273 as "Section II, Nondiscrimination." These include acceptance of a general operating policy which prohibits discrimination based on race, color, religion, sex, national origin, age or disability.

The contract provisions also require nondiscrimination in selection and retention of subcontractors, material suppliers and vendors; maintenance of non-segregated facilities; on-the-job training (OJT) and training special provisions (TSP); and adherence to employment preference in Appalachian contracts, where applicable. Indian preference provisions can also be included in Federal-aid highway contracts, where applicable. The term, "Federal contractor," means any person, corporation, partnership or unincorporated association that holds an FHWA direct, or Federally-assisted construction contract or subcontract regardless of tier.

FHWA Responsibilities:

- Ensure that STAs have an approved EEO Contractor Compliance Program (including formal procedures for imposing contract sanctions where violations occur) that is being implemented in accordance with regulations
- Ensure that FHWA funded projects are providing EEO to minorities and females in each of the highway construction trades, commensurate with their availability in the workforce
- Conduct periodic program reviews of STAs' EEO program implementation to determine the extent of EEO on FHWA projects, and identify areas where process improvements/changes are needed

STA Responsibilities:

- Develop and implement a program to assure contractors comply with equal opportunity requirements
- Ensure that required contract provisions are in all federal-aid contracts of \$10,000 or more (FHWA 1273)
- Conduct contract compliance reviews of prime and subcontractors
- Enforce nondiscrimination clauses in required contract provisions as needed
- Prepare an annual update on goals and accomplishments of the contract compliance program
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Phone: (202) 366-0693