

CONTRACTOR COMPLIANCE PROGRAM OVERVIEW

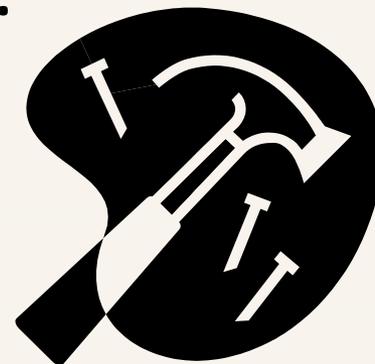


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Session Outcomes

At the end of this session, participants will be able to:

- **Understand the requirements of FHWA Contractor Compliance (CC) Program;**
- **Recognize required Contract Provisions on a federal-aid project; and**
- **Identify the roles and responsibilities of FHWA, State Transportation Agency (STA), and Contractors.**



Contractor Compliance It is the Law!

**Subcommittee on Roads
Committee on Public Works
United States Senate
Relating to the Implementation of Section 22,
Federal-Aid Highway Act of 1968**

Conference Committee Report (Public Law 90-495)

- **National FHWA contract compliance responsibility.**
- **EEO training for FHWA and State Transportation Agencies (STAs).**
- **FHWA and States conduct Contract Compliance Reviews.**

Contractor Compliance Program Objective:

To ensure that contractors and subcontractors performing work on Federal-aid highway contracts comply with the Equal Employment Opportunity (EEO) and affirmative action (AA) requirements set forth in their construction contracts.

Nondiscrimination

The Federal contractor's EEO and AA applies to employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training (OJT).

Contractor Compliance Program Authorities

- **Federal Aid Highway Act of 1968
*(Section 22(a))***
- **23 U.S.C. §140 - Nondiscrimination**
- **23 CFR Part 230 *(Subparts A, C, and D)***
- **Required Contract Provisions**



Federal-Aid Highway Act of 1968

Section 22(a) {23 U.S.C. 140(a)}

Requirement of the STAs

- As a condition for receipt of federal funds
- Assures that employment in connection with construction projects are provided absent discrimination
- Include EEO requirements in bid specifications
- Enforce EEO contract requirements

FHWA Regulations

23 CFR 230 - Subparts

- **Subpart A – EEO on Federal and Federal-Aid Construction Contracts (*including Supportive Services*)**
- **Subpart C – State DOT EEO Programs**
- **Subpart D – Construction Contract EEO Compliance Procedures**



FHWA Regulations

23 CFR 230, Subpart A

Applies to:

- **EEO on Federal and Federal-Aid construction contracts and supportive services.**
- **All contracts and subcontracts of \$10,000 or more except material supplying contracts.**

FHWA Regulations

23 CFR 230, Subpart A

Contractor Compliance Reports: 230.121

- ✓ Federal-Aid Highway Construction Contractors Annual EEO Report (*Form 1391*)
- ✓ Summary of Employment Data (Including Minority Breakdown For All Federal-Aid Highway Projects for Month Ending July 31st (*Form 1392*))



Required Contract Provisions

FHWA Regulations

23 CFR 230, Subpart A

Requires:

- Incorporation of special contract provisions (*Appendix A and B*)
- Implementation of OJT program (*goals and approval of training programs by the FHWA Division Administrator*)

23 CFR 230 – Subpart A



FHWA Contract Provisions

Specific EEO Responsibilities - (*Appendix A*)
Training Special Provisions - (*Appendix B*)

FHWA-1273

- ❖ **Contractor/Subcontractor's nondiscrimination and affirmative action responsibilities**
- ❖ **Employment Preference-Appalachian Contracts Only**
- ❖ **Department of Labor - Davis Bacon Requirements**
- ❖ **Non-segregated Facilities**



Form FHWA-1273

- **Section II (*Nondiscrimination*) related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.**
- **The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.**
- **The provision (*EEO/EO*) is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (*US DOL*) and FHWA requirements.**

FHWA - 1273

Section II – Non-discrimination Provisions



- EEO Policy Statement
- EEO Officer
- Dissemination of Policy
- Recruitment
- Personnel Actions
- Training and Promotion
- Unions
- Selection of Subcontractors, Procurement of Materials and Leasing of Equipment
- Records and Reports



23 CFR 230

Form FHWA-1273

- **Must be physically incorporated in each construction contract funded under Title 23 (*excluding emergency contracts solely intended for debris removal*).**
- **The contractor (*or subcontractor*) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (*excluding purchase orders, rental agreements and other agreements for supplies or services*).**

EEO On Federal-Aid Construction Contracts Policy 23 CFR 230.107 (b)

- ❖ FHWA requires full utilization of all available training and skill improvement opportunities to assure the increased participation of minorities, women and disadvantaged groups in all phases of highway construction.

23 CFR 230, Subpart A

Training Special Provisions

(Appendix B)

- As part of the contractor's equal employment opportunity affirmative action program training shall be provided.**
- The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.**
- The number of trainees to be trained under the special provisions.**

23 CFR 230, Subpart A

Training Special Provisions

(Appendix B)

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision.



Form FHWA 1273

Appalachian Provisions

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

Davis-Bacon and Related Acts Provisions



- Requires that all contractors and subcontractors performing on federal contracts (*and contractors or subcontractors performing on federally assisted contracts under the related Acts*) in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area.
- Davis-Bacon labor standards clauses must be included in covered contracts.

23 CFR 230, Subpart D

- Provides procedures for conducting compliance reviews
- **Requires State DOT to assure compliance by contractors and cooperate with FHWA**



23 CFR 230, Subpart D

Compliance Determination

In compliance when contractor:

- ❖ Implements contract provisions and/or demonstrates Good-Faith Efforts (GFEs)

In noncompliance when contractor:

- ❖ Discriminated
- ❖ Fails to demonstrate GFEs



The authority of FHWA and the STAs are found in 23 USC 140, 23 CFR 230, and the required contract nondiscrimination EO, and EEO provisions.

Compliance Determination

- **Good faith efforts**
- **Subcontracting**
- **Employment practices**
- **Training**



Demonstrate Good Faith Efforts (GFEs) to achieve EEO

- ❖ Actions to ensure nondiscrimination in employment opportunities;
- ❖ Actions taken to recruit minorities and women; and
- ❖ Actions Taken to retain minorities and women.





Roles and Responsibilities



Headquarters Office of Civil Rights

- **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 women 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.**

Resource Center- Civil Rights Team

- **Provide training and technical assistance to the FHWA Division Offices and STAs.**
- **Provide program guidance to the FHWA Division Offices, in coordination, with Headquarters Office of Civil Rights, on review of the Contractor Compliance Program documents.**
- **Participate with FHWA Division Offices in joint process/program reviews.**

FHWA Division Office *(Civil Rights Specialist and Management)*

- **Review and approve program plans and documents.**
- **Have the lead role (*program authority*) regarding program monitoring and oversight.**
- **Approve and concur on STA's Compliance Review Reports.**
- **Provide technical assistance and guidance to the STAs.**

State Transportation Agencies

- **Develop and implement an EO Contractor Compliance Program.**
- **Conduct Contract Compliance Reviews and report on accomplishments/shortfalls.**
- **Use Administrative remedies to enforce contractual and program compliance.**

Contractor/Subcontractor

- **Where barriers exist, take corrective action to address underutilization of minorities and women.**
- **Meet requirements of 23 CFR 230, Required Contract Provisions (Form 1273) and Training Special Provisions.**
- **Demonstrate Good Faith Efforts (GFEs) to achieve EEO in aggregate workforce.**

Thank You!

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<http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/index.cfm>



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