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SECTION B

NON-CERTIFIED AGENCY

Chapter 8

Equal Employment Opportunity and Training

This chapter provides guidance for local agencies to comply with Equal Employment Opportunity (EEO) requirements for federal-aid transportation programs. Currently, local agencies have not found it beneficial to become certified in the area of civil rights. As a result, this chapter outlines civil rights information for non-certified agencies as well as agencies that are certified in areas other than civil rights.

A. OVERVIEW AND GENERAL REQUIREMENTS

In order to ensure effective implementation of EEO, it is the policy of FHWA to require that all federal-aid highway construction contracts include specific requirements related to civil rights laws and regulations. These specific requirements apply to contractors and all related subcontracts of \$10,000 or more. To be eligible for federal-aid funds, the local agency must comply with the civil rights requirements.

The following statement shall be accepted by local agencies and contractors as their operating policy.

It is the policy of this Company to assure that applicants are employed and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age, or disability. Such action shall include: 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.

For further information related to this FHWA operating policy (1273 Section II 1(b)) refer to [*FHWA Form 1273*](#).

Local agencies and their contractors must each designate an EEO officer to ensure compliance with the EEO, affirmative action and On-the-Job Training (OJT) special provisions.

ODOT will monitor both the local agency and its contractors for compliance as part of the normal project management reviews and through contract compliance reviews of selected contracts.

As depicted in the local agency's Intergovernmental Agreement (IGA) the local agency shall perform the following activities:

1. Assist and actively cooperate with the State in obtaining contractor and subcontractor compliance with the equal opportunity clause and rules, regulations and relevant orders of the FHWA and U.S. Department of Labor.
2. Furnish the State with information as required to monitor and enforce compliance.
3. Refrain from entering into any contract or contract modification subject to [Federal Executive Order 11246 of September 24, 1965](#), as amended, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally-assisted construction contracts pursuant to the Executive Order and other pertinent rules, laws and regulations.
4. Carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, FHWA, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

A template of the IGA or Supplemental Agreement is available at ODOT's Local Government Section website.

In addition, if the local agency fails or refuses to comply with the four items listed above, ODOT may take any or all of the following actions:

- Withhold payments from the local agency and pursue repayment of any funds already dispersed;
- Cancel, terminate, or suspend ODOT's agreement with the local agency in whole or in part;
- Refrain from extending future financial assistance to the local agency regarding the failure or refusal to comply until satisfactory assurance of compliance has been received from the local agency;
- Refer the case to the Oregon State Department of Justice or the U.S. Department of Justice for legal proceedings as appropriate.

For additional information contact the [Regional Local Agency Liaison](#). The [Regional Local Agency Liaison](#) will coordinate with the appropriate ODOT staff in the Office of Civil Rights. Also, the local agency must consult with ODOT's [Contract Administration Guide for Local Agencies](#) to administer the EEO and training programs.

B. EEO REQUIREMENTS

The special provisions of Appendix A of subpart A of [23 CFR 230](#) and [FHWA Form 1273](#), Required Contract Provisions, must be included in the advertised bidding proposal and made a part of the contract for each contract and each covered FHWA funded highway construction subcontract. See Chapter 15, Bid and Award within the Certified Section of this *LAG Manual* for further details.

In order to maintain affirmative action in the employment of minorities and women, the [Office of Federal Contract Compliance Program](#) (OFCCP) has established specific minority and female utilization criteria. The [On-Site Workforce Affirmative Action Requirements for Minorities and Women](#) outlines the EEO requirements for minorities in each “covered area” in Oregon. “Covered area” refers to the groupings of counties and the utilization goal for minorities. For example, the nationwide utilization goal for women is 6.9 percent. The utilization goals are enforced solely by the OFCCP.

The utilization goals apply separately to each trade in a contractor’s workforce. Under OFCCP regulations, these goals are applicable to all of a contractor’s construction work whether or not it is federal or federally assisted.

C. OJT /APPRENTICESHIP

To meet federal requirements, each contract must comply with [On the Job Training \(OJT\)/Apprenticeship Special Provisions](#) and [Form FHWA-1273](#).

Visit: [ODOT Office of Civil Rights - OJT](#) for additional OJT information.

Refer to the [FHWA-1273](#) website for additional federal requirement information.

OJT/Apprenticeship requirements/goals are established by ODOT’s Office of Civil Rights on selected federal-aid construction contracts. The requirement/goal setting process takes into account the following factors:

- The dollar amount of the project;
- Type of work, project must lend itself to training;
- Availability of minorities and women for training;
- Geographic location of the project;
- Duration of the work.

D. CONSTRUCTION CONTRACT ADMINISTRATION

1. General Discussion

The local agency has the responsibility to perform the following.

- a. Conduct pre-construction conferences during which EEO and OJT/Apprenticeship Special Provisions for federal-aid contracts are discussed with the contractor.

- b. Ensure that the contractor posts and maintains notices and posters setting forth the contractor's EEO policy. The OFCCP Poster No. 1420, *Equal Opportunity is the Law*, shall be made available to the contractor.
- c. Monitor on-site compliance with the EEO and OJT special provisions of federal-aid contracts.
- d. Ensure that their contractors locate, qualify and increase the skills of minority, women and applicants for employment as specified in the [OJT/Apprenticeship Special Provisions](#).
- e. Ensure the preparation and timely submittal of all required EEO and OJT/Apprenticeship reports from the contractor for the project.

2. EEO Reports

- a. PR 1391

The Contractor submits this report directly to ODOT's Office of Civil Rights. The report is a summation of employees on their last payroll period preceding the end of July.

- b. ODOT [Form 731-0394 \(6-99\)](#) - Monthly Employment Utilization Report.

This report includes the total work hours for each employee classification in each trade in the covered area for the monthly report period. All contractors and subcontractors having contracts of \$10,000 or more that are federally funded shall submit ODOT [Form 731-0394](#) to the local agency by the **fifth of the month** during the term of the contract. The contractors and subcontractors shall maintain this information in their files for all federally funded projects over \$10,000.

- c. To monitor the forms submitted during the term of the contract, the local agency will summarize a contractor's progress. The results of the summary will show whether the contractor is below, at, or exceeds parity with the local availability of minorities and women for each craft.

3. OJT/Apprenticeship Reports

- a. ODOT Training Program [Form 731-0335](#).

This Training Program form describes the type of training a contractor or subcontractor proposes for the project. The form is required from all contractors and subcontractors providing OJT/Apprenticeship for credit/payment under the OJT bid item or towards OJT/Apprenticeship goal. This form should be submitted at the pre-construction conference accounting for all of the OJT/Apprenticeship crafts, positions and/or hours required in the contract. ODOT's Office of Civil Rights is responsible for approving the Training Program forms.

b. Apprentice/Trainee Approval Request, ODOT Form 731-0294.

This form identifies the individual(s) or in-house training program participants who will receive training on the project and should be submitted to the local agency prior to the trainee or apprentice beginning work. The local agency is responsible for reviewing the form and approval.

c. Monthly Progress Record, ODOT Form 731-0332.

The Monthly Progress Record captures the hours spent in training and the types of training received. The individual in the training position shall complete, sign and date this form. The contractor shall review the form and complete the trainee evaluation, then sign and date the form before submitting it to the local agency by the 10th of each month. The local agency shall submit a copy to ODOT's Office of Civil Rights, after the local agency has verified that all the hours are correct.

E. COMPLIANCE REVIEW

1. Local Agency

The local agency shall monitor the EEO and OJT/Apprenticeship Special Provisions for compliance.

2. ODOT'S Office of Civil Rights

The Office of Civil Rights will perform external workforce compliance reviews of selected local agency construction contracts. The evaluation of the contractor's compliance is based on the provisions included in the contract.

F. FORMS

In addition to resources noted throughout this chapter, additional forms are available at ODOT's Office of Civil Rights website. See [ODOT Office of Civil Rights - Forms.](#)