

## **CONTRACT COMPLIANCE (FAQs)**

### **What is a Contract Compliance Review?**

Contractor Compliance Reviews are performed on PennDOT projects in order to monitor the utilization of minorities and females on Pennsylvania Department of Transportation (PennDOT) projects. These are comprehensive reviews conducted to determine a contractor's compliance with the Equal Employment Opportunity and Equal Opportunity requirements of the contract. The Department also monitors DBE participation and SBE participation as well as the On the Job Training requirements if applicable. The review process is used to determine whether firms performing work on PennDOT contracts are in compliance with the required Equal Opportunity and Equal Employment Opportunity requirements of the contract. The review process consists of the following components: Planning, Preliminary Analysis, On-site Verification, Compliance Determination and where necessary, Corrective Action.

### **Who is selected for Contract Compliance Review?**

- Contractors performing work on multiple or large volume contracts
- Contracts located in areas with high minority and female labor forces
- Contractors who have had compliance issues
- Projects with the greatest potential for employment and contracting opportunities
- Projects with Training Provisions
- Contractors who fail to cooperate with the request for compliance documents

### **How do I make a good-faith effort to stay in Compliance?**

A contractor is considered to have met its Equal Opportunity and Equal Employment Opportunity Program obligations if there is adequate documented evidence that it made every good-faith effort. If there is evidence of discrimination or a failure to provide Equal Opportunity, the contractor will submit a Corrective Action Plan. If there is no a good-faith effort; evidence of discrimination; or a failure to provide Equal Opportunity, the contractor will submit a Corrective Action Plan. The following criteria will be considered in determining if a firm has made a good-faith effort:

- Contractor's EEO Policy
- Dissemination of the EEO Policy
- Authority and Responsibility of EEO Officer
- Periodic EEO meetings
- Notices/poster on the bulletin board including "EEO Is the Law"
- Advertising as "An Equal Employment Opportunity Employer"
- Recruitment (direct recruitment efforts with sources likely to yield minorities and women)
- Educate all supervisors within 30 days of the firm's affirmative action obligations
- Encourage present employees to refer women and minorities
- Evaluate wages to determine if discrimination exists
- Investigation of all complaints
- Assist in locating, qualifying and increasing the skills of minorities and women
- Uses training programs and advises employees and applicants of opportunities

- Minorities and women exist in contractor's training program
- Ensure non-segregated facilities
- Minorities and women are employed in all occupations, crafts and job classifications on an equal basis
- Procedures establishing the monitoring of subcontractors' compliance with nondiscrimination,
- EO and EEO procedures
- Adequate records and reports
- Minorities and women reach accumulating work hours expected based on their representation
- Written notices have been sent to unions (contractors' signatory to union agreements are
- required to use their best efforts to incorporate an EEO clause into each union agreement
- pursuant to 23 CFR 2320, Subpart A, Appendix A). The contractors shall notify the
- union(s) of their commitment to EEO
- The EEO officer representing the contractor understands their role and responsibilities

### **What is Workforce Analysis ?**

A contractor's workforce is analyzed to determine if there is a reasonable representation (number of people) and utilization (work hours) of minorities and women in each craft, classification or occupation, given their availability in the relevant labor market. The contractor will be required to demonstrate a good faith effort (GFE) if the representation (number of people) or utilization (work hours) of minorities and women is less than their availability in the contractor's workforce. Form letters are not considered as a productive activity. In the absence of reasonable representation in any craft, the contractor will be required to provide proof of having requested referrals of minorities and women (i.e., records of telephone requests, including dates and times, person talked with, specific crafts for which minorities and women were requested. It shall be no excuse by the contractor that a union, that the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority and female employees (23 CFR 230.411). The contractor shall utilize data obtained from Civil Labor Force Data or other similar data that shows the availability of minorities and females to determine the availability of those individuals in the area in which the federal-aid project is located. PennDOT or FHWA **do not** enforce timetables or goals on projects. The OFCCP is responsible for ensuring the timetables and goals are enforced on projects.

### **What is the Davis Bacon Act (DBA) ?**

The Davis-Bacon Act (DBA) was enacted by Congress on March 3, 1931, to assure local workers a fair wage and to provide local contractors a fair opportunity to compete for local federal government contracts. In general, the DBA, as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, and/or repair (including painting or decorating) of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classifications of laborers and mechanics employed under the contract. (The Davis Bacon Act is incorporated under 23 U.S.C. 113 as a Davis-Bacon related act statute

and is applicable to construction of Federal-aid highways funded with Federal-aid funding. See the discussion on Applicability to Federal-aid Highway projects, questions 7 and 8.)

Contractors and subcontractors are required to pay their laborers and mechanics employed directly upon the “site of the work” no less than the locally prevailing wage and fringe benefit rates for corresponding work on similar projects in the area “regardless of any contractual relationship which may be alleged to exist.” The Department of Labor determines and sets the prevailing wage rates.

## **What is Fair Market Prevailing Wage ?**

Fair Market Prevailing wage is used in On-the-Job Training to help contractors to conduct Fair Market prevailing wage rates for “Project Office-Related” or “Specialty” Training Program classifications that are not included in the Davis Bacon and/or L&I Prevailing Wage Rate documentation. Contractors should be using a federally supported prevailing wage rate determination source, similar to using the Davis Bacon as the source for determining a prevailing wage rate on federally funded projects; and using the L&I prevailing wage rates for 100% State funded projects.

Job Titles not included in Davis Bacon include but are not limited to the following:

1. Field Engineer (#80.02)
2. Traffic Control Assistant (#120.05)
3. Site Safety Intern (#120.06)
4. Field Office Timekeeper (#120.09)
5. Construction Office Administrator (#120.10)
6. Construction Office Manager (#120.08)
7. Grade Foreman (#100.01)

Steps to conduct a Fair Market Prevailing Wage Rate determination search:

1. Click on the following link to access O\*NET online to determine the O\*NET /SOC Code for the job classification in question; which is required to complete the Fair Market Prevailing Wage Rate search.
  - a. O\*NET online provides detailed job descriptions; educational requirements; the skills needed to be able to perform the duties of the job; comparison salaries; etc.
    - i. <http://www.onetonline.org/>
    - ii. Then go to Keyword or O\*Net-SOC Code:
      1. Enter the job title; (I.E. Field Engineer)
        - a. This will take you to a sample listing of reported job titles;
          - i. Select the Civil Engineering Technicians – 17-3022 – which will equate to a: Transportation Engineering Technician
2. Now you will have to access the following link to get to the Foreign Labor Certification Online Wage Library which is a U.S. Department of Labor Wage Rate Determination Source that can be used to determine the Fair Market Prevailing Wage Rates for “Project Office-Related” or “Specialty” Training Program classifications on Federally funded projects:

- a. <http://www.flcdatacenter.com/OesWizardStep2.aspx?stateName=Pennsylvania>
  - 1) Select a Data Source? :
    - a. [7/2015 – 6/2016 All Industries Database](#)
  - 2) Then go to “Select an area based on County/Township”
    - b. Drop down and select the County where the project is located. (I.E. [Dauphin County](#))
  - 3) Then go to: Select an occupation from the list:
    - c. Use the drop down to locate the O\*Net Code you found (I.E.: [17-3022](#))

Below is an example of the Fair Market progressive prevailing wage rates that a Civil Engineer, or a Field Engineer Trainee would be eligible to receive based on their skill and/or educational level, for performing [Transportation Engineering Technician](#) duties on a project that is located in the Harrisburg-Carlisle, PA Metropolitan Statistical Area (MSA):

**Example: Online Wage Library - FLC Wage Search Results**

Monday, August 10, 2015 [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2015 - 6/2016. Your search returned the following:

<b>Area Code:</b>	<a href="#">25420</a>
<b>Area Title:</b>	Harrisburg-Carlisle, PA MSA
<b>GeoLevel:</b>	1
<b>OES/SOC Code:</b>	17-3022
<b>OES/SOC Title:</b>	Civil Engineering Technicians
<b>Level 1 Wage:</b>	\$17.54 hour - \$36,483 year
<b>Level 2 Wage:</b>	\$21.15 hour - \$43,992 year
<b>Level 3 Wage:</b>	\$24.75 hour - \$51,480 year
<b>Level 4 Wage:</b>	\$28.36 hour - \$58,989 year
<b>Mean Wage (H-2B):</b>	\$24.76 hour - \$51,501 year

This wage applies to the following O\*Net occupations:

**17-3022.00 Civil Engineering Technicians**

**The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr. effective July 24, 2009.**

