



pennsylvania
DEPARTMENT OF TRANSPORTATION

2019

***EXTERNAL
EQUAL OPPORTUNITY
PLAN***

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Introduction

INTRODUCTION

The Pennsylvania Department of Transportation's External Equal Opportunity (EO) Plan is set forth under the guidelines established in 23 Code of Federal Regulations, Parts 200, 230, Appendix A to Subpart C of Part 230, and 633; and Title VI of the Civil Rights Act of 1964, as amended.

The Bureau of Equal Opportunity, Contract Compliance Section is responsible for administering, monitoring, and reporting compliance related activities to the Federal Highway Administration. All program activities are intended to increase the representation of minorities and women within the respective workforces of contractors doing business with the Department.

This EO Plan includes the Department's Federal Policies with regards to Equal Employment Opportunity as required by the Federal-Aid Highway Act of 1968, Executive Order 11246, and FHWA 1273 (the DSPs 12 & 8).

PennDOT's plan was developed to satisfy the requirements of the U.S. Department of Transportation, Federal Highway Administration (FHWA) with input provided by FHWA, PA Division Office.

Questions regarding the Plan should be addressed to the Department's Bureau of Equal Opportunity, P. O. Box 3251, Harrisburg, PA 17105, or (717) 787-5891 /-1-800-468-4201 or by FAX at (717) 772-4026

Dissemination of Plan

PLAN DISSEMINATION

The Department's External Equal Opportunity Plan is disseminated to the Department Secretary, Deputy Secretaries, Bureau Directors, District Executives, and District Labor Contract Compliance Agents.

- Copies of the plan are made available, upon request, to contractors, subcontractors, consultants, vendors, and any other external partners.
- An electronic copy is available at www.dot.state.pa, the PA Department of Transportation website.
- All applicable documents between the Department of Transportation and its Contractors will include Form FHWA-1273, "Required Contract Provisions, Federal-Aid Construction Contracts," and the "Commonwealth's Nondiscrimination Clause".
- All contractor advertisements must state that they are an Equal Employment Opportunity employer; encouraging minorities, women, and disadvantaged persons to apply for vacancies and training opportunities.
- Contractors will be kept apprised of changes and additions to existing policy. In turn, Contractors will be required to apprise their subcontractors of changes.
- Maintain regular contact with liaisons, recruitment sources and contractors, to update any changes to Department's policies and procedures. Contractors are required to inform its subcontractors of any updates.

Organization and Structure

I. Organization and structure

The Secretary of Transportation is the Chief Executive Officer of the Pennsylvania Department of Transportation. The Secretary's responsibilities include the development, maintenance, and operation of a balanced transportation system that includes highways, mass transit, rail service, aviation, and various forms of assistance to municipalities. The Secretary is assisted by a workforce of just over 11,000 men and women in the Department and eleven (11) engineering districts. As representatives of the Secretary, the Department is the custodian of Pennsylvania's highways, bridges, facilities (including the state's Welcome Centers), and equipment. The Department is responsible for administering motor vehicle registrations and operator licenses and plays a direct role in the administration of financial and management assistance to transit providers, local municipalities, and 67 county governments.

Organizationally, the Department is comprised of five (5) Deputes headed by five (5) Deputy Secretaries. These offices are organized into bureaus, offices, engineering districts, and county maintenance offices.

The Bureau of Equal Opportunity (BEO) is functionally situated within the Administration Deputate and reports directly to the Deputy Secretary for Administration. The Bureau is charged with the administration and oversight of the Department's external equal opportunity programs. BEO has an authorized complement of seventeen (17): Director (EO Manager 2), who is assisted by an Administrative Assistant (AA) and one (1) Deputy Director (EO Manager 1). In addition, there are three (3) Section Chiefs and eleven (11) working positions, one of which is vacant.

See Exhibit A: Bureau Organization Chart

A. State highway EEO Coordinator (External) and staff support.

1. The Bureau Director has the role of EEO Coordinator for purposes of this plan. This position has responsibility for administration of PennDOT's Federal Contract Compliance, Disadvantaged Business Enterprise (DBE), Small Business Enterprise, On-the-Job Training (OJT), Diverse Business (DB), Section 504, Americans with Disabilities Act (ADA) and the Title VI program. The Bureau Director is supported directly by an Deputy Director and an Administrative Assistant.
 - Oversees the development and implementation of Contract Compliance procedures.
 - Provides guidance to Contract Compliance Section Chief in the final determination of compliance/non-compliance for state "Contractor EEO Compliance Reviews" and the imposition of non-economic sanctions, as warranted.
 - Monitors agency activity to ensure compliance with applicable State Laws, Executive Orders, Federal Regulations, and Management Directives.
 - Provides guidance to the Section Chief in the investigation of Title VI complaints, renders a determination, and makes recommendations for corrective action, as warranted to the Federal Highway Administration for concurrence.
 - Assists in directing the investigation of Section 504 (ADA) complaints filed against funding recipients and sub-recipients.

- Oversees the development and implementation of policies, procedures, and objectives to ensure non-discrimination in PennDOT programs, services, and activities subsidized with state and/or federal funding.
- Directs the development and presentation of equal opportunity curriculum to be delivered to internal and external customers, contractors/vendors, planning partners (MPOs/RPOs), transit and aviation grantees, and funding recipients/sub-recipients to ensure the equitable delivery of their respective programs, services, and activities.
- Provides guidance and technical assistance to the above entities to ensure compliance with applicable mandates.
- Provides support to the Chair in the effective administration of the PA Unified Certification Program (one-stop shopping for DBE certification in the state of Pennsylvania).
- Approves/disapproves applications for DBE certifications submitted to the Department (a certifying member of the PA Unified Certification Program). Approves/disapproves applications for SBE Certifications submitted to the Department.
- Provides oversight in the administration of the Department's state and federal OJT programs geared to provide training opportunities for minorities, females, and disadvantaged persons to improve their potential for highway construction employment.
- Directs the development of the Department's DBE and OJT Supportive Services work-plans and provides the necessary support to ensure the objectives of the programs are met.
- Approves/disapproves recommendations made by the Department's Interdisciplinary Review Team in the evaluation of construction contractors' good faith effort submissions.
- Responsible for developing the DBE, Title VI and Contract Compliance Plans.
- Provides guidance to PennDOT executives, managers, and supervisors regarding equal opportunity policies and programs administered by the Department.
- Directs the preparation, allocation, disbursement, and reconciliation of the Bureau's budget and re-budget.
- Participates in local and national Civil Rights seminars, conferences, and trade shows for training and education, benchmarking, and examination of EO best practices.
- Serves as the chair of the BEO PennDOT Advisory Committee, for collaborating with business partners and members of the DBE/SBE community.
- Serves as the Department's representative on the American Association of State Highway Transportation Officials, Civil Rights Subcommittee.

2. The Bureau Director is a full-time position that expends 100% of time as the EEO Coordinator.
3. The Bureau Director has been with the Department for 2 years and six (6) months and previously worked at four (4) other Commonwealth agencies for a total of sixteen (16) years. Thirteen (13) of those years have been working in Equal Opportunity offices with monitoring and oversight responsibilities for equal opportunity and contract compliance programs, with eight (8) years of commonwealth supervision and two (2) years of non-commonwealth supervisory experience. As such, training has been received on equal opportunity, contract compliance, human resources and supervisory/management skills through Commonwealth and Federal entities as well as outside organizations; i.e. American Contract Compliance Association (ACCA).
4. The Department's Contract Compliance program is centralized. District Offices receive instruction from Central Office. The information is disseminated to the Districts and Project Managers, who then forward the information to the contractors and subcontractors. The District Offices also receive reports and other data from Project Managers and after the information is reviewed by designated representatives, the data is transmitted to Central Office.
5. The Contract Compliance/Field Agent division is responsible for monitoring highway construction and non-construction firms to ensure adherence to EO/EEO contractual obligations. The Section's staff is comprised of a Contract Compliance Section Chief (EOS 3), and four (4) EO/EEO Field Agents (EOS 2s), two (2) of which are in Central Office. The Contract Compliance Section Chief reports directly to the Director. All Contract Compliance Section employees are afforded and receive ongoing training as provided by PennDOT, FHWA and other federal entities and outside organizations. The Section Chief ensures the Department's administration of the Equal Opportunity Contract Compliance Program as well as ensuring submittal of the Department's annual plan to FHWA for approval. As well as other required compliance reports, i.e. PR-1392. As part of the review process, the section supervisor reviews contract compliance reports; issues show cause notices; monitors voluntary corrective action plans; and conducts contractor teleconferences. Additionally, the position monitors EO-354's Commercially Useful Functions Reports, and acts accordingly, as well as responding to contractor inquiries and developing community outreach activities. This position serves on the DBE Good Faith Effort Interdisciplinary Review Team (IRT) to make determinations on efforts to meet DBE goals. Additionally, the Regional Field Agent Supervisor provides EO/EEO and contract compliance training to Department and contractor personnel.
6. The Bureau has a Deputy Director and is responsible for the day to day management of the DBE/SBE section and the Planning/Administration section. This position oversees the Bureau's contract services and is also responsible for Department Outreach with internal and external stakeholders.
7. The Bureau has two (2) additional divisions with Section Chiefs that report directly to the Deputy Director, who in turn, reports to the Director. All BEO employees are afforded and receive ongoing training as provided by PennDOT, FHWA and other federal entities and outside organizations.

- The Disadvantaged Business Enterprise (DBE)/Small Business Enterprise (SBE) Section is responsible for monitoring and certification in the DBE and SBE programs. They provide outreach and technical assistance for the Department in DBE Methodology and Goal setting. They have oversight for the Department’s DBE and SBE Supportive Services activities and acts as the participating voting member for the Pennsylvania Unified Certification Program (PA UCP). The Section’s staff is comprised of a Section Chief (EOS 3), and three (3) Specialists.
- The Administration and Planning Section is responsible for monitoring and oversight of the Title VI program to include Section 504 requirements, the On-the-Job (OJT) program, the Diverse Business (DB) program, to include; the DB Interdisciplinary Review Team (IRT), to assess Good Faith Efforts and Special Projects, i.e. National Summer Transportation Institution (NSTI) and Future Road Builders (FRB). This section also has oversight of the Department’s OJT and DB supportive services activities. The Section’s staff is comprised of a Section Chief (EOS 3), and two (2) EO Specialists, one (1) High School Intern.

B. District or Section Personnel

1. The Contract Compliance Field Agents; are responsible for the monitoring of EEO contractual obligations and maintaining a workplace free of discrimination. Initially, all issues should be handled at this level. The agents report to BEO Central Office, Contract Compliance Section Chief. Other duties of project personnel include observation of the contractor’s operations, maintaining project EEO reports, checking and transmitting data to the Section office and obtaining reports to document the contractor’s efforts and accomplishments. The Regional Contract Compliance Field Agents work closely with the Districts project field staff including the DLCCA, the IIC, and the ACE, as well as the “prime assigned” project EEO Officer.
 - Assistant Construction Engineer (ACE) has oversight of the individual projects in each county.
 - District Labor Contract Compliance Agent (DLCCA) provides BEO with information regarding the contractor’s EO/EEO Compliance Plan. The DLCCAs have various job titles and functions for which they are responsible. Persons serving in this capacity do not report to the Bureau, but act as partners in the administration of the Contract Compliance Program. These individuals are the section’s point of contact with the field office. They disseminate information to the field and address EO/EEO concerns at the lowest level. DLCCAs report to the Assistant District Executive for Construction, the District Executive, and the Deputy Secretary for Highway Administration. There is a DLCCA for each district that acts as a liaison for the Contract Compliance Section.
 - Inspector-In-Charge (IIC) is assigned to each construction project to ensure compliance with all state and federal guidelines and maintain all compliance records and data from the contractors.

2. Districts project field staff include the DLCCA, the IIC, and the ACE. They report to the Assistant District Executive (ADE) or the District Executive (DE). The EEO Officers are the primes employees, or consultants, and perform EO/EEO job duties on the project.
3. The Department updates its processes annually, to include EO/EEO and Contract Compliance processes. The updates are disseminated to PennDOT employees. BEO provides ongoing training to district personnel with EO responsibilities. Technical assistance is provided before, during and after onsite reviews. Contractors and subcontractors are also provided with the following documents and information:
 1. Prequestionnaire Packets of sample letters and forms to assist in complying with EO/EEO contractual requirements.
 2. Documentation Requirements for Federal Aid Projects (Chart of Forms) - PennDOT BEO - 11-12-2014(Updated 05-01-2015)
 3. OFCCP - Technical Assistance Guide for Federal Construction Contractors (link)
 4. Affirmative Action Plan (Sample)
 5. Employment Application (includes Voluntary Self Identification)

DSPs

- DSP1.Offset Provision for State Contracts.
- DSP2.Contractor Responsibility Provisions.
- DSP7.Disadvantaged Business Enterprise Requirements.
- DSP8.F. A. R.—Required Contract Provisions Federal-Aid Construction Contracts – May 2012.
- DSP9.Special Supplement—Anti-Pollution Measures – August 26, 1999.
- DSP10.Nondiscrimination/Sexual Harassment Clause – June 30, 1999.
- DSP11.Contractor Integrity Provisions – June 30, 1999.
- DSP12. Executive Order 11246, with Appendices A and B.
- DSP 13 – Buy America
- DSP 14 – Enhance Minimum Wage Provisions

C. Project Personnel

EEO Officer (Contractor/Subcontractor) has the responsibility and authority to administer the contractor's EEO Policy/Program. Periodically reviews project sites, wages, personnel actions, etc., for evidence of discriminatory treatment. Promptly investigates all alleged discrimination complaints. Also, provides BEO with information regarding contractor EO/EEO compliance.

D. PennDOT Policies: PennDOT has federal oversight and the following policies support federal regulations.

1. **Publication 408/2016** contains current Construction Specifications for PennDOT projects. Pub 408/2016 is located on the PennDOT website. On the Web, each new

Change will contain all previous Edition/Change(s) in their entirety, with changed pages integrated. The change pages for each new Change is also located on the PennDOT website and may be printed from this location. Pub 408/2016 contains Designated Special Provisions (DSP), which are standard documents previously included in PennDOT Bid Proposals. Effective with the publication of Publication 408 they will be maintained within this Appendix in all versions (Hardcopy and Internet) and be referenced in bid proposals. Governing Specifications, the applicable Designated Special Provisions, and other details will be specified in a single Standard Special Provision to each bid proposal. This Standard Special Provision is entitled: “GOVERNING SPECIFICATIONS AND APPLICABLE DESIGNATED SPECIAL PROVISIONS.” The applicable DSPs for the purposes of this plan are DSP8. F. A. R.—Required Contract Provisions Federal-Aid Construction Contracts – FHWA-1273 (Revised) May1, 2012). DSP12. Executive Order 11246, with Appendices A and B.

DSP8:

http://www.dot.state.pa.us/public/PubsForms/Publications/Pub_408/408_2016/408_2016_3/408_2016_3.pdf

DSP12:

http://www.dot.state.pa.us/public/PubsForms/Publications/Pub_408/408_2016/408_2016_3/408_2016_3.pdf

2. **The Project Office Manual (POM)** is a compilation of Department policies and procedures relating to field administration and inspection of construction contracts. The purpose of the POM is to act as a reference for the appropriate District staffs so they may perform their duties in accordance with Department policies and procedures. Each project field office shall have a copy of the POM, and each District Office shall have copies of the POM for the District Construction staff's use. The POM is divided into five parts: Part A - Pre-Construction, Part B - Project Office Administration, Part C - Construction Inspections, Part D - Project Finalization and Appendices (Appendix B: USE GUIDELINES FOR STANDARD SPECIAL PROVISIONS & PROVISIONAL SPECIFICATIONS).

POM:

<http://www.dot.state.pa.us/public/PubsForms/Publications/PUB%202/PUB%202.pdf>

Compliance Procedures

II. Compliance Procedures

See Exhibit B: Contract Compliance Program Documents

See Exhibit C: BEO Contract Compliance Field Agent Manual

A. Applicable directives

1. FHWA Contract Compliance Procedures. PennDOT complies with the contract compliance and organizational responsibilities as provided by 230.301 Part I
2. EEO Special Provisions (FHWA Federal Aid Highway Program Manual volume 6, Chapter 4, section 1, Sub-section.2)
3. Training Special Provisions (FHWA Federal Aid Highway Program Manual volume 6, Chapter 4, Section 1, Sub-section 2)
4. FHWA Federal-Aid Highway Program Manual, vol. 6, chap 4, sec. 1, subsection. 6 (Contract Procedures), and subsection. FHWA has issued a Contractor Compliance Desk Reference. The Desk Reference is intended to provide guidance and direction in the development and implementation of an Equal Opportunity Contractor Compliance Program (EOCCP) by State Transportation Agencies (STAs) such as PennDOT, that meets the current executive and legislative requirements as well as Federal Highway Administration's (FHWA) regulations under 23 CFR 230. The Desk Reference consolidates into a single resource document with directions, interpretations, regulatory references as well as examples of various formats, which may be used in the Contractor Compliance process.

An effective Contract Compliance Review Process (CCRP) is the means for determining whether a firm performing on a Federal or Federal-Aid highway contract is complying with EO /EEO program requirements. A contract compliance program involves objectively analyzing all pertinent documentation in order to make a compliance determination. If PennDOT determines that the contractor is not in compliance, PennDOT will follow a systematic process to ensure compliance. The CCRP process consists of the following major components: Planning, Preliminary Analysis, On-site Verification, Compliance Determination and, where necessary, Corrective Action. If the contractor has not fulfilled its commitments, PennDOT will initiate enforcement actions to address the contractor's non-compliance. This will assist the Contract Compliance Specialist with ensuring that the contractor produces positive and meaningful "good faith" results.

Contractor selection by PennDOT, for a compliance review follows the FHWA Guidelines selection criteria. The following items, along with those listed in 23 CFR 230, Subpart D, is total size (\$) of the Department's highway construction season, District work projections – Notice To Proceed (NTP), assignments outside of field work, OFCCP plan for the season, underutilization report compared to civilian labor force statistics, current letting schedule, follow up reviews, union makeup and availability of minorities and women, OJT projections and projects identified prior to peak employment.

PennDOT conducts project specific reviews. Project specific is defined as generally involving the review of a single major project to determine whether contractors are meeting the employment, training and subcontracting and other requirements in their contracts. To accomplish the selection of the construction projects in an objective manner, given staffing and other limitations, the PennDOT Bureau of Equal Opportunity (BEO) has a mechanism to determine contractors and projects targeted for a compliance review. The guidelines to determine said reviews are outlined in the BEO Contract Compliance Field Agent Manual utilizing data captured by PennDOT. The entire compliance review process will not exceed 65 days as outlined in 23 CFR 230.409 and Appendix D to Subpart D of Part 230.

5. Training on EEO requirements has been delivered via teleconferences, workshop-type meetings and trainings. During the Contract Compliance process, contractors and subcontractors provide technical assistance throughout the entire process. In addition, this plan is available on the PennDOT website and upon request. The BEO Contract Compliance Section Chief organizes and develops agendas for monthly teleconferences with the DLCCAs and other PennDOT staff to discuss and resolve Contract Compliance issues that may arise, and to provide clear direction to the field staff.
6. The procedure for advising contractors on EEO requirements is communicated at the Pre-Construction meeting. BEO compliance staff or a liaison participates in the pre-construction meeting. The "Pre-Construction Meeting" is held after the contract is awarded, and prior to the start of work. The Engineer arranges a conference with the contractor, subcontractors, and all other interested parties to review contract requirements, construction details, work schedules, and any items pertinent to the project. Prior to the pre-construction meeting, the Engineer, all key Inspectors, and the Survey Chief study the project plans and become familiar with the project site to gain a thorough understanding of project requirements and existing project conditions. At the conference, department personnel and the contractor's staff become acquainted, establish lines of authority and determine responsibilities and duties. A detailed written record of the meeting is maintained in the contract file along with any required documentation provided to resource agencies.

Accomplishments

III. Accomplishments

A. The following information is a summary of the Construction Contract Compliance Program from January 1, 2018 – December 31, 2018:

1. Number of contractor compliance reviews conducted - 15
2. Number of contractors under “conditional compliance” status – 1
3. Number of contractors found in compliance – 14
4. Number of contractors found in non-compliance – 0
5. Number of “show cause” notices issued – 6
6. Number of “show cause” notices rescinded – 5
7. Number of follow-up reviews conducted – 3

There were three (3) Voluntary Corrective Action Plans (VCAP) in the 2018 calendar year. Each one contained issues that were corrected before the reviewer left the premises. There was one (1) “Conditional review plan which removed the firm’s status from “non-compliance” to “conditional compliance”. The reviewer will follow-up in 6 months to determine if the firm can be placed in compliance. Additionally, all contract compliance reviews conducted contained the OJT Training Special Provisions (TSP), which offers the opportunity for a complete analysis of the project.

See Exhibit D: 2018 PR-1392 Detailed Report

The PR-1392 is a workforce analysis report. The report is used by FHWA annually, to compare employment data, and to measure if PennDOT is accomplishing its goals of hiring the under-represented. In 2018, the following data was revealed:

Workforce Data:

- Number of Projects **394**
 - A decrease in project lettings of **49** over 2017
- Total dollar value **\$6,367,966,359**
 - An increase in the dollar expenditure of **\$831,514.30** over 2017
- Total Workforce **10,831**
 - An increase in total employment of **2,041**, over 2017

The following actions will be taken by PennDOT (Central Office and District Personnel) to address underrepresentation of women, especially minority women in the workforce of Department contractors:

- The Contract Compliance unit will improve upon its last year’s number of compliance reviews completed. With significant staff changes in the last year and changes in the year to come, the team has completed fourteen (14) compliance reviews and plans to increase that number by three (3).
- Continue to request EEO be an agenda item at District Construction Unit staff meetings and construction progress meetings. 18

- Attend and present at APC/PennDOT Fall Conference.
- PennDOT will work with the contractors in understanding the job classifications on the required workforce report, so that all classifications are counted including Supervisors and Clerical personnel.
- Work with the Districts/Bureau of Project Delivery to find additional training slots in construction contracts.
- Provide; assistance to the industry in ways to recruit minorities; and women.
- Continue to coordinate with FHWA/USDOL/OFCCP; State Department of Labor and Industry/CareerLink, State Department of Education.
- Continue to hold outreach meetings with Community Based Organizations and other women organizations.
- Continue to conduct quality compliance reviews and project site inspections.
- Initiate show cause notices and conduct show cause meetings with delinquent contractors. Steps will be taken to block delinquent contractor's prequalification status for firms who are non-compliant for 2 consecutive years.
- Continued participation and partnership with Contractors of Western Pennsylvania (CAWP) in the Future Road Builders pilot project to find new ways of recruitment of minority and women into the transportation industry.

B. Consolidated compliance reviews

1. Consolidated compliance reviews are conducted regularly.
2. There is no negative impact or effect on the Contract Compliance Division.

C. Home office reviews

PennDOT conducts project reviews. PennDOT conducts compliance reviews solely of project workforces engaged in on-site construction (employees at the physical location of the construction activity). Area-wide work force reviews are permissible under the FHWA regulations, as well as, home office reviews.

D. Major problems encountered

1. The perception of BEO as an enforcement organization.
2. Contractors are not well versed with the concept of good faith efforts in the employment/hiring process.
3. BEO is not receiving "pre-analysis package" from the contractor in a timely manner.
4. Contractor/Subcontractor EEO Officers are not familiar with EEO regulations.

E. Major breakthroughs

1. BEO development of Standard Operating Procedures manual for Contract Compliance staff.
2. BEO/FHWA provided training to the DLCCA's and other District field staff on Contract Compliance/Title VI regulatory enforcement in August 2018.
3. BEO implemented cross program trainings for BEO staff and internal partners.
4. BEO holds monthly meetings with the DLCCAs and other BEO administrators to build the relationships with the field staff and provide technical assistance on compliance duties to include OJT requirements. These meeting were held via conference call.
5. BEO in cooperation with the Associated Pennsylvania Constructors (APC) and American Council of Engineering Companies of Pennsylvania (ACEC/PA), offered free regional events for construction contractors and consultants working in the transportation industry.
6. BEO held regular meetings and teleconferences with representatives from USDOT, USDOL and FHWA to gain knowledge in the pursuit of increasing minority and women representation within the highway construction industry through education, effective monitoring practices and relationships with industry partners.
- 7 BEO staff sits on the P3 project committee to assist and educate PennDOT partners on Federal EO requirements.

Area Wide Plans/Hometown and Imposed

IV. Area wide plans/Hometown and Imposed

Area wide plans mean Affirmative Action Plans and take the form of either a “Hometown” or an “Imposed” plan pursuant to Executive Order 11246. The U.S. Department of Labor is the only authority to determine compliance with EO 11246 (*FHWA Order 4710.8 issued February 1, 1999*). The FHWA Form 1273 and the Special Provisions (23 CFR Part 230 Appendix A) are specific affirmative action requirements for project activities under contract established by section 22 of the Federal–Aid Highway Act of 1968.

- A. Not Applicable
- B. Not Applicable
- C. Not Applicable
- D. Not Applicable
- E. Not Applicable

Contract Sanctions

V. Contract sanctions

See Exhibit E: Contract Compliance Sanctions Program Documents

A. Describe the procedures used by the State to impose contract sanctions or institute legal proceedings.

1. Sanctions for non-compliance include, but are not limited to: withholding payments, suspending the contract until compliance is obtained, terminating the contract, and/or damages.
 - Voluntary Corrective Action Plan (VCAP) is a negotiated plan completed by the reviewer at the exit conference. Minor deficiencies that can be corrected within 15 days are listed and concerns and enforcement language are agreed upon and signed by the responsible official. Contained within the VCAP, are detailed time frames and the person responsible for implementing the corrective action. VCAP does not preclude a determination of noncompliance and project personnel conduct follow-up reviews to ensure compliance.
 - Letter of Findings and Conciliation Agreement/Corrective Action Plan (CAP) lists deficiencies with recommended corrective action and is issued to the contractor. The contractor must commit within fifteen (15) days to the CAP. A conference is scheduled with the contractor within five (5) days after receipt of the CAP.
 - Show Cause Meeting Notice is a letter to the contractor for a mandatory meeting to discuss corrective action measures. This meeting is a detailed discussion of changes, to be made, with mandated time frames, to achieve compliance.
 - Sanctions Notice may be imposed due to lack of cooperation from the contractor, which requires mandatory submission of monthly and quarterly reports, and/or prequalification restrictions, suspensions, and/or debarment and use of the Commonwealth Contractor Responsibility Program (CCRP).
 - The Pennsylvania Department of Transportation has included the following provision in Publication, 408/2008, Commonwealth of Pennsylvania Department of Transportation, Section 100 General Provisions, 107.25: All Federal-Aid projects are subject to the implementing rules and regulations of the various Federal departments. Accordingly, the contract provisions and the penalties prescribed for their violations, both of which are required to be incorporated verbatim in all contracts for such Federal-Aid projects, will be set forth in the proposal and the contract applicable to each project.

- Sanctions will include placing firms in the “Commonwealth Contractor Responsibility Program (CCRP).” Authority for this is granted under Commonwealth Management Directive 215.9. In addition, the Department may also recommend suspension of the contractor’s prequalification status under Provision 457.13 of the Pennsylvania Code, Title 67. The purpose of the CCRP is twofold: to ensure that the Commonwealth only contracts with responsible contractors, and to collect any outstanding obligations owed to it. The CCRP requires the contractor to certify, in writing, for itself and all its subcontractors that as of the date of its execution of any State contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the State or any governmental entity, instrumentality, or authority. The contractor must also certify that as of the date of execution of any State contract, that it has no tax liabilities or other outstanding state obligations. Furthermore, the contractor must notify the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other State obligations, or if it or any of its subcontractors are suspended or debarred by the State, the federal government, or any other state or governmental entity. Failure to notify the contracting agency could result in suspension, debarment, or termination of a contract. Failure to carry out or perform all contract requirements, including compliance with all plans and specifications referenced therein, can place a contractor in this program.
- In accordance with FHWA Form 1273(1)(3) “a breach of any of the stipulations contained in the Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the contracting good faith efforts to supply records needed to determine compliance with EEO requirements in the contract, PennDOT may temporarily withhold monthly payments as a means of impressing upon the Contractor the necessity complying with record requests.”

B. Indicate the State or Federal laws which are applicable.

1. Pennsylvania Code 4 - §68.61, §68.1, §1.511, §1.512, and §1.513 outlines sanctions and administrative recourse for dealing with contractors and grantees who are not complying with equal opportunity requirements.
2. FHWA Form 1273- Required Contract Provisions Federal-Aid Construction Contracts generally apply to all Federal-aid highway construction projects, and must be incorporated into the construction contract, subcontracts and lower-tier subcontracts. A STA is not permitted to modify the provisions of Form FHWA-1273. However, a STA may develop a separate supplemental specification or special provision as long as the content does not conflict with Federal requirements or change the intent of the provisions.
3. Title 23 C.F.R. 633.102 provides the FHWA's regulatory policy of required use and implementation of the Required Contract Provisions. (See the discussion in the FHWA Contract Administration Core Curriculum Manual for current FHWA policy).

4. Executive Order 11246 states, “(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.”

C. Does the State withhold a contractor’s progress payment for failure to comply with EEO requirements?

1. The State can withhold payment but, no payments were withheld in 2018.

Complaints

VI. Complaints

A. Describe the State's procedure for handling discrimination complaints against contractors.

1. When the Department is made aware of complaints filed by employees of contractors or subcontractors, not PennDOT employees, the affected contractor, not the Bureau of Equal Opportunity, should be prompted by the District Project Manager to launch an investigation and keep the respective Project Manager informed. The Project Manager is responsible to inform the BEO Field Agent, as soon as, they are made aware of a complaint. The BEO Field Agent will be responsible to immediately report the complaint and outcome to their respective section chief in Central Office. The BEO Director will inform FHWA of the outcome of the investigation.

The BEO Section Chief will serve in the reviewer role to determine if appropriate and timely action is being taken by the contractor. If a complaint is made by a contractor employee directly to a BEO Field agent, the agent will refer the complainant to his/her employer's HR office, as well as, the PHRC/EEOC. Unless specifically directed by the BEO Director, as a special assignment, a BEO Field Agent should not take on the lead role as an investigator of a contractor's complaint.

Any evidence received by the BEO Field Agent that demonstrates a contractor's unwillingness to investigate, take appropriate action or report findings will be escalated to the BEO Director for coordination with the Office of Chief Counsel to determine next steps.

If the complaint involves conduct at a contract worksite by a PennDOT employee, the District Human Resource Office must be informed.

It should be noted that a contractor who fails to meet its contractual obligation to follow mandated nondiscrimination policies or fulfill its responsibility to investigate of a complaint may be sanctioned under the terms of its contract with the Department and state and federal law.

The employee also has the option of utilizing "Other Avenues of Recourse", such as The Pennsylvania Human Relations Commission (PHRC) and The U.S. Equal Opportunity Commission (EEOC). Contractors are required to post notices for employees, applicants for employment and potential employees regarding the complaint process.

Pennsylvania Human Relations Commission www.phrc.pa.gov

- Harrisburg Regional Office Voice: 717.787.9784; TTY: 717.787.7279
- Philadelphia Regional Office Voice: 215.560.2496; TTY: 215.560.3599
- Pittsburgh Regional Office Voice: 412.565.5395; TTY: 412.565.5711
- Time Frame: 180 days from date of alleged discrimination

U.S. Equal Employment Opportunity Commission www.eeoc.gov

- Nationwide Voice: 800.669.4000; TTY: 800.669.6820
- Philadelphia District Office Voice: 215.440.2601; TTY: 215.440.2610
- Pittsburgh Area Office Voice: 412.395.5902; TTY: 412.395.5904
- Time Frame: 300 days from date of alleged discrimination

B. If complaints are referred to a State fair employment agency or similar agency, describe the referral procedure.

1. The State of Pennsylvania does not have a fair employment agency.

C. Identify the Federal-aid highway contractors that have had discrimination complaints filed against them during the past fiscal year and provide status.

1. There were five (5) complaints filed during the period of January 1, 2018 – December 31, 2018. All are considered closed.
 - D-6 - Buckley - Turned into FHWA
 - D-12 - Morgan Excavating L.P. – Settled by title VI Admin.
 - D-4 - Leeward Construction – Investigated & Settled by Leeward
 - D-8 - Hempt Bros, Inc. - Turned into FHWA
 - D-9 - HRI, Inc. – Investigated & Settled by HRI

External Training Programs Including Supportive Services

VII. External Training Programs (Including Supportive Services).

See Exhibit F: On-the-Job (OJT) Training Special Provisions

A. Describe the State's process for reviewing the work classifications of trainees to determine that there is a proper and reasonable distribution among appropriate craft.

1. In accordance with the Training Special Provisions (TSP) as outlined in Appendix B of 23 CFR, 230A, the Department of Transportation has developed provisions that are incorporated in selected federally funded projects.

Identification of Projects for Inclusion of Training Special Provisions;

- The Bureau of Project Delivery in coordination with District Construction and Design personnel, and the Bureau of Equal Opportunity OJT Program Administrator, determines which construction projects can support training slots.
 - Before each construction season, the Bureau of Project Delivery in coordination with District Construction and Design personnel, and the OJT Program Administrator, identify potential availability of work under contract, the duration of the work (to ensure adequate time for completion of training), and the potential long-term benefits to trainees. Assignment of training slots to specific projects is based on the following:
 - The availability of minorities, women and disadvantage individuals
 - The potential for effective training
 - The duration of the contract
 - The dollar value of the contract
 - The total normal workforce the average bidder is expected to use
 - The geographic location
 - The type of work
 - The need for additional journeymen in the area
 - The total trainees established, and trainee goal submitted to FHWA
 - The ration of journeymen to trainees during normal operations
2. OJT Project Office Manual; lays out the contract provisions requiring contractors to submit a training program within ten (10) calendar days following the project's notice to proceed. Contractors may utilize OJT programs from PennDOT's OJT Training Manual, develop their own, or utilize a training program approved by the U. S. Department of Labor, Office of Apprenticeship. Contractors are required to submit name, last 4 of the social security number, classification, rate of pay, ethnicity and sex of proposed trainees prior to starting training. Additionally, contractors must submit a monthly training report, containing the following information; training hours per month, hours to date and hours remaining, summary of specific tasks performed, evaluation of trainee, termination (include date), lay-off date and anticipated recall date and signatures of the contractor, trainee and PennDOT.

B. Describe the State’s procedures for identifying the number of minorities and women who have completed training programs.

1. OJT Supportive Services provides a monthly, quarterly and annual report that identifies participants in the OJT program. Certificates are given to the trainees at the conclusion of their training.

C. Describe the placement of trainee participants for 2018.

1. There were **112** new trainees placed in 2018. The data is from the OJT quarterly status report, provided by OJT Supportive Services.

D. The OJT Trainee goal for 2019.

1. The OJT Trainee goal for 2019 is anticipated to be **115**. This number is estimated, from data received on the prior OJT quarterly status report from 2018. This report is provided by OJT Supportive Services.

E. Federal-Aid Projects – Let data for Calendar Year 2018

1. In accordance with 23 CFR § 230.111 (b), “Implementation of Special Requirements for the Provision of On-The-Job Training,” the Pennsylvania Department of Transportation will provide a summary of accomplishment for calendar year CY2018 to FHWA through the “Annual OJT Year End Report” and will no longer provide that data as part of this plan.

F. Describe the efforts made by the State to locate and use the services of qualified minority and women supportive service consultants. Indicate if the State’s supportive service contractor is a minority or female owned enterprise.

1. PennDOT utilizes a consultant to provide the federally obligated on-the-job training supportive services. One Hundred Percent (100%) of the contract is State-funded. As of July, of 2018, Global Quality & Engineering Consulting (GQEC) was awarded the contract to provide on-the-job training supportive services (OJT/SS). Global Quality & Engineering Consulting (GQEC) is a minority women-owned enterprise.

The consultant’s field representatives visit with all active trainees on construction projects throughout the state. It is a requirement that all trainees are provided in-person counseling each month. An OJT/SS field counselor conducts orientation and monthly interviews in addition to close out interviews at the completion of training. Monthly and quarterly reports are submitted by GQEC identifying minorities, women and disadvantaged individuals who have been enrolled for on-the-job training and have successfully completed training during the reporting period. The reports also identify the trainees who were laid off, resigned, or were terminated.

The OJT SS field counselors also maintain regular, “in-person” contact with project personnel to develop an evaluation of the trainee’s performance and progress throughout the on-the-job training period, and to “be available” to assist in addressing issues and/or concerns regarding the training. If the Prime is signatory to the union, the OJT SS field counselor will act as a liaison with the union; to ensure the apprentice being referred, meet the program criteria.

The OJT SS consultant can assist contractors with OJT tasks, including, but not limited to, the following; trainee referrals, trainee record keeping, trainee performance issues, union liaison and EO-363, EO-364 & EO-365 submission requirements.

The OJT SS Consultant is tasked with conducting Outreach events on behalf of PennDOT. A major objective of PennDOT's outreach is to market career opportunities that exist in the highway construction industry to minorities and women. Surveys indicate that women of color are the most under-represented group in the highway construction industry, so emphasis is placed on marketing various highway construction industry career opportunities to women, minorities and economically disadvantaged job seekers, to include women of color. The outreach events highlight PennDOT's On-The-Job (OJT) Training program. The primary objective of the OJT program is to train and/or upgrade women and minorities into higher paying skilled trades and transportation related careers. OJT SS partners with PA CareerLink, construction industry associations, and trade organizations to provide education and outreach.

G. Describe the extent to which reports from the supportive contractors provide sufficient data to evaluate the status of training programs with particular reference to minorities and women.

1. In accordance, with 23 CFR, Part 230, Subpart A, paragraph 230.113 (f) (5) & (6) Supportive Service Contractors are required to provide monthly and quarterly reports to the State Agency that comprise sufficient statistical data and narrative content to enable evaluation on both progress and problems within the program. Supportive Service Contractors are also required to conduct a follow up review on the employment status of on-the-job training program graduates at ninety (90), one hundred-eighty (180), and three hundred and sixty-five days (365), subsequent, to the effective date of their contract.

The PennDOT Supportive Services program's primary purpose is designed to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women and the disadvantaged on Federal-aid highway projects. PennDOT uses the data contained in the monthly and quarterly reports to identify and correct areas of concern within a prompt timeframe and to insert innovative ideas into the implementation of the PennDOT Supportive Service Program. PennDOT will continue to utilize the monthly and quarterly progress reports submitted, to evaluate the status of training programs, with reference to minorities and women.

Disadvantaged Business Enterprise (DBE) Program

VIII. Minority Business Enterprise Program

Section VIII, Minority Business Enterprise Program, is addressed in the formal DBE Plan submission. The Pennsylvania Department of Transportation does not have a separate Minority Business Enterprise program but does have the Disadvantaged Business Enterprise (DBE) program, which is carried out under the rules and guidelines in the Code of Federal Regulations, Title 49, Part 26. The DBE program plan was received by FHWA in December 2015 and approved in February 2016.

- The Contract Compliance Section monitors DBE participation on federally funded projects. Monthly reports monitor the efforts made by the prime to solicit DBEs for subcontracting, scheduling concerns, payment issues, etc.
- A DBE must perform a commercially useful function (CUF) on a project. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. Failure of a DBE to perform a CUF will result in the reduction in the amount of credit a prime contractor receives toward the DBE goal. The EO-354 (CUF Report) form must be completed when a DBE is utilized on a project. BEO monitors the contractor's compliance with CUF requirements throughout the life of a project. The EO-354 form is reviewed for completeness and adherence to federal regulations. Sanctions for non-compliance include, withholding payments, suspending the contract until compliance is obtained, terminating the contract, and/or damages.
- PennDOT is a member of the Pennsylvania Unified Certification Program (PA UCP). The PA UCP provides "one-stop shopping" for firms seeking DBE certification in accordance with 49 CFR Part 26 and Airport Concession Disadvantaged Business Enterprises (ACDBE) in accordance with 49 CFR Part 23. The PA UCP makes certification decisions on behalf of all agencies and organizations in the Commonwealth with respect to participation in the DBE and ACDBE Programs. Other certifying participants of the PA UCP include: Allegheny County Department of MBE/WBE/DBE, the Port Authority of Allegheny County, the Southeastern Pennsylvania Transportation Authority, and the City of Philadelphia. Firms certified as a DBE or ACDBE with the PA UCP are eligible to participate on any Federal Aviation, Highway, and Transit funded contracts/grants as a DBE or ACDBE. DBE certification does not expire, firms are removed from the program in accordance with ineligibility removal procedures outlined under 49 CFR Part 26.87.

- A. Describe the method used for the listing of minority contractors capable of, or interested in, highway construction contracting or subcontracting. Describe the process used to circulate names of appropriate minority firms and associates to contractors obtaining contract proposals.**

Refer to the Disadvantaged Business Enterprise (DBE) Program Document.

- B. Describe the State's procedure for insuring that contractors take action to affirmatively solicit the interest, capability, and prices of potential minority subcontractors.**

Refer to the Disadvantaged Business Enterprise (DBE) Program Document.

- C. Describe the State's procedure for insuring that contractors have designated liaison officers to administer the minority business enterprise program in an effective manner. Specify resource material, including contracts, which the State provides to liaison officers.**

Refer to the Disadvantaged Business Enterprise (DBE) Program Document.

- D. Describe the action the State has taken to meet its goals for prequalification or licensing of minority business. Include dollar goals established for the year and describe what criteria or formula the State has adopted for setting such goals. If it is different from the previous year, describe in detail.**

Refer to the Disadvantaged Business Enterprise (DBE) Program Document.

- E. Outline the State's procedure for evaluating its prequalification/licensing requirements.**

Refer to the Disadvantaged Business Enterprise (DBE) Program Document.

- F. Identify instances where the State has waived prequalification for subcontractors on Federal-aid construction work or for prime contractors on Federal-aid contracts with an estimated dollar value lower than \$100,000.**

Refer to the Disadvantaged Business Enterprise (DBE) Program Document.

- G. Describe the State's methods of monitoring the progress and results of its minority business enterprise efforts.**

Refer to the Disadvantaged Business Enterprise (DBE) Program Document.

Liaisons

IX. Liaison

The Department, through the Bureau of Equal Opportunity (BEO), has developed ongoing dialogue with the following organizations involved in minority and women recruitment:

1. USDOL/OFCCP
2. NAACP
3. Pennsylvania Department of Labor and Industry
 - a. Career Link
 - b. Apprenticeship and Training Office
4. Constructors Association of Western Pennsylvania (CAWP)
5. Western Pennsylvania Operation Engineers Joint Apprenticeship & Training Program
6. Associated Pennsylvania Constructors (APC)
7. Teamster Union
8. Keystone Mountain Lakes Regional Council of Carpenters Union
9. Greater Pennsylvania Regional Council of Carpenters
10. Masons Union
11. United Steelworkers Union
12. Three Rivers Workforce Investment Board
13. American Council of Engineering Companies of PA (ACEC)
14. City of Harrisburg- Department of Community & Economic Development
15. Technical and Vocational Schools (large minority enrollment)
16. Hispanic Community Centers
17. Cheyney University
18. Harrisburg University
19. Pennsylvania Diversity Coalition
20. United States Minority Business Development Agency (Philadelphia and Pittsburgh)
21. Local and Minority Chamber of Commerce Organizations
22. Associated Builders & Contractors, Inc.
23. Small Business Administration, Philadelphia District Office
24. National Association of Minority Contractors, Philadelphia Chapter

25. WTS Advancing Women in Transportation
26. American Association of State Highway and Transportation Officials (AASHTO)
27. PA Department of Corrections
28. PA Department of Human Services
29. PA Department of Education

Innovative Programs

X. Innovative Programs

See Exhibit G: PennDOT Contractor & Consultant Diversity Forums

- BEO Contract Compliance Section developed a Standard Operating Procedures manual for compliance staff.
- BEO Contract Compliance Section developed an internal manual for the 1391/1392 reporting process.
- The Commonwealth retained BBC Research & Consulting (BBC) to conduct a disparity study. The firm provided a PennDOT focused disparity study, as well. Data analysis of availability and utilization of DBE firms in contracting was completed to determine whether discrimination and/or disparity existed. The disparity study final report, which covered the period of July 1, 2011 through June 30, 2016, was released to the public on October 31, 2018. Due to PennDOT's truncated timeline necessary to meet DGS's timeline, the study and its analyses focused on PennDOT's horizontal construction and construction related engineering and professional services contract dollars.
- PennDOT continues to partner with Commonwealth agencies to leverage resources and minimize duplication of effort in providing education and outreach to the small business community and underrepresented populations in the transportation industry.
- The BEO Advisory Council has completed its second successful year of interacting with PennDOT's contracting stakeholders with quarterly meetings. To build on outreach and networking discussions, PennDOT held Construction Contractors & Technical Consultants Diversity Forums in October 2018, in two statewide locations. Presentations and trainings were also held in key areas to aid and encourage increased DBE participation and to provide a venue for technical assistance, outreach and networking.
- BEO is a committee member for the Department of Transportation (DOT) and the Department of Labor (DOL) Workforce Development pilot program. This pilot is for workforce development tools and collaborative methods of increasing employment in the transportation field.
- Since 2018, BEO, in collaboration with PennDOT's Highway Administration, has been developing a new OJT Management System(OMS). Once complete, the new system will bring some "much needed" enhancements to the program's technical side. The new system will follow the trainee from start to finish; with emphasis on the documentation and monitoring of their activities; while allowing for ad-hoc reporting, as needed. The system will also realize the following benefits: increased efficiency by automating the OJT tracking processes, improved capability to monitor activities, ability to maintain consistency with historic reporting, ability to produce ad-hoc reports, and ability to produce required reporting information quickly for FHWA/ USDOT Civil Rights Office.

This concludes The Bureau of Equal Opportunity's External Plan for 2019. Should you have additional questions, please contact The Bureau of Equal Opportunity at 717.787.5891. Thank you