

Section 2 Equal Employment Opportunity

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8-201 General

This section presents the guidelines for administration of the nondiscrimination and equal employment opportunity provisions of the contract. The total equal employment opportunity program is complex and involves functional units outside of construction. The guidelines in this section apply primarily to activities and responsibilities resulting from contractual requirements and are not necessarily complete insofar as the total responsibilities and activities for either Caltrans or the contractor.

8-201 General

8-202 Laws, Regulations, and Specifications

California requirements for public works contractors on the subjects of nondiscrimination and equal employment opportunity are located in the Government Code, Sections 12990 and following, and in the regulations of the Fair Employment and Housing Commission in Title 2, California Code of Regulations, Sections 8100, “Contractor Nondiscrimination and Compliance,” and following. Section 7-1.01A(4), “Labor Nondiscrimination,” of the *Standard Specifications*, and the “Fair Employment Practices” section of the contract special provisions call the contractor’s attention to these and other requirements. Federal requirements which apply to contracts of federal-aid construction projects are located in the “Equal Employment Opportunity” sections of the contract special provisions. Under the terms of the contract, the contractor has responsibility for compliance by its subcontractors.

8-202 Laws, Regulations, and Specifications

8-203 Preconstruction Conference

Either the resident engineer or the district labor compliance officer must cover the equal employment opportunity and fair employment practices provisions of the contract at the preconstruction conference. See Section 5-0, “Conduct of the Work,” of the *Construction Manual* (manual) for details on preconstruction conferences.

8-203 Preconstruction Conference

8-204 Reports to Other Agencies

Contractors and certain subcontractors are required by terms of the contract to submit information and reports directly to the United States Department of Labor’s director, Office of Federal Contract Compliance Programs, and to the administrator, Office of Compliance Programs, California Department of Fair Employment and Housing. Normally, there will be no copies of these reports sent to Caltrans. Contractors are also required by law to send notices of their status as equal employment opportunity employers to the labor unions or other worker organizations with which they have agreements.

8-204 Reports to Other Agencies

8-205 On-Site Interviews

District labor compliance officers or project personnel are to conduct on-site interviews with employees of the contractor and subcontractors. The interviews are to be recorded on Form CEM-2504, “Employee Interview: Labor Compliance / EEO” or Form CEM-2504 (Spanish), “Entrevista de Empleado: Labor Compliance/EEO,” if applicable.

8-205 On-Site Interviews

These interviews are done in conjunction with the labor compliance interviews as a means to verify that the contractors and subcontractors are in compliance with the equal employment opportunity and the labor nondiscrimination contract provisions as mandated by state and federal statutes and regulations.

When an employee's response to the equal employment opportunity questions in Form CEM-2504 indicate possible irregularities, then a copy of that interview must be forwarded from the district labor compliance officer to the Division of Construction labor compliance unit for further action.

See Section 8-102A (3), "Interviews With Contractor Personnel," for interview sampling and frequency.

8-206 Federal-Aid Project Equal Employment Opportunity Posters

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Check to see that the contractor has posted the company's equal employment opportunity policy at each construction location as required by the specifications. The contractor must also post the "Equal Employment is the Law" poster as specified in the contract. This poster will be furnished at the preconstruction conference.

The district labor compliance officer will verify that these posting are posted at off site locations during source document reviews. If the contractor is found to be in noncompliance the district labor compliance officer will provide additional posters to affect compliance. The district labor compliance officer will then write a memo to the resident engineer for inclusion in the project file, advising the resident engineer of the contractor's compliance status.

The "Equal Employment Opportunity is the Law" poster must also be posted in the resident engineer's office.

8-207 Employee Complaints - Discrimination Complaint Processing

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While the overall equal employment opportunity program and responsibility rests with Civil Rights, enforcement of equal employment opportunity contract provisions rests with district construction and the Division of Construction. The resident engineer should be aware of the general civil rights requirements of the contract.

When a contractor's employee lodges a complaint concerning the equal employment opportunity or fair employment practices provision of the contract, the resident engineer is to notify the district labor compliance officer. The district labor compliance officer or resident engineer will conduct an employee interview with the complainant and complete a Form CEM-2504, "Employee Interview: Labor Compliance / EEO" or Form CEM-2504 (Spanish), "Entrevista de Empleado: Labor Compliance/EEO," if applicable. The district labor compliance officer will present the complainant with a copy of the flyers: *Department of Fair Employment and Housing's A Guide For Complainants* and the United States Equal Employment Opportunity Commission's *Filing a Charge*. The district labor compliance officer will forward a copy of the Form CEM-2504 to the Division of Construction labor compliance unit. The complaint will be logged and tracked by the Division of Construction. The labor compliance unit will forward a copy of the interview (alleged complaint) to Civil Rights. Within 2 business days the district labor compliance officer will prepare and send a letter to the prime contractor with a copy to Civil Rights that an employee has alleged a discrimination complaint and that the employee was given notice of their proper recourse. The employee's name shall not be divulged unless the employee gives permission. Further district construction actions should only be taken upon the advice and guidance of the Division of Construction.

8-208 Contracts Containing “Federal Requirements Training Special Provision”

The training special provision is used on federal-aid projects whenever it is determined that the project is of sufficient size and duration to support full training periods.

Apprentices, in almost all cases, are employed under programs approved by the Division of Apprenticeship Standards; therefore, it will not be necessary to have contractors submit a separate program. Contractors are required to submit to the district evidence of approval from the Division of Apprenticeship Standards to train apprentices.

Under the contract, the contractor has agreed to provide each trainee or apprentice with a certification showing the type and length of training satisfactorily completed.

Before the work involving the trainee or apprentice begins, the resident engineer must write a contract change order as specified in the special provisions to provide the appropriate compensation for the trainees. The total amount of this contract change order should reflect the contractors plan for use of trainees. No markup will be applied to the specified hourly rate.

When a trainee quits the project, the contractor is to state the reason why the apprentice left.

8-209 Deducting Payment for Failure to Submit Reports

The authority for initiating a deduction is contained in the special provisions, Section 14, “Federal Requirements for Federal-Aid Construction Projects,” of federal-aid construction contracts. Equal employment opportunity deductions should be made in those situations when the contractor or subcontractor fail to submit the required training plans, fail to post the necessary equal employment opportunity posters, or when the contractor or subcontractor fail to provide the Form FHWA-1391, “Federal-Aid Highway Construction Contractors Annual EEO Report.”

Contractors found in noncompliance are to be advised, in writing, of the specific deficiencies prior to making a deduction.

8-208 Contracts Containing “Federal Requirements Training Special Provision”

8-209 Deducting Payment for Failure to Submit Reports