



To:  <b>SUPERSEDED</b> BY EI 03-006 EFFECTIVE 5/8/03		New York State Department of Transportation <b>ENGINEERING          INSTRUCTION</b>	<b>EI</b>  <b>97-026</b>
<b>Title: Equal Employment Opportunity Requirements (Federal Aid) and Equal Employment Opportunity Requirements (non-Federal Aid)</b>			
<b>Distribution:</b> <input type="checkbox"/> Manufacturers (18) <input type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Main Office (30) <input checked="" type="checkbox"/> Consultants (34) <input type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Contractors (39) <input checked="" type="checkbox"/> Regions/Agencies (32) <input type="checkbox"/> _____ ( )		<b>Approved:</b>   12-8-97 K. W. Shiatte, Assistant Commissioner and      Date Chief Engineer	

**PURPOSE.** This Engineering Instruction (E.I.) provides new specifications in the form of proposal inserts for Equal Employment Opportunity Requirements on Federal Aid and non-Federal Aid contracts. These supersede the proposal inserts which were issued effective with the letting of June 2, 1988.

**EFFECTIVE DATE.** The attached proposal inserts shall be effective on all Department contracts initially programmed to be let on or after April 9, 1998.

**TRANSMITTED MATERIALS:**

Proposal Inserts :

1. Equal Employment Opportunity Requirements (Federal Aid)
2. Equal Employment Opportunity Requirements (non-Federal Aid)

**BACKGROUND.** Historically, minority and women tradespeople have been underutilized in government contracting programs. In order to facilitate the participation of these individuals, various programs have been created at both the federal and state level.

The legislative and executive mandates for these requirements can be traced as far back as the Civil Rights Act of 1964. The current federal statutory authority is Title 23 USC Section 140a, which is promulgated by Title 23, Part 230, Subparts A and D of the Code of Federal Regulations. Additionally, the "Required Contract Provisions Federal-Aid Construction Contracts" (Form FHWA-1273), require the contractor to comply with Title 41, Part 60 of the Code of Federal Regulations. The current state statutory authority is NYS Executive Law Article 15-A, which is promulgated by Title 5, Part 140 of the New York Code of Rules and Regulations.

**FIELD INFORMATION.** Field personnel shall continue to monitor the contractor's conformance to these requirements, including EEO goals.

**SUMMARY OF CHANGES.** The change in the Federal Aid proposal insert is the removal of the statement "No payment will be made for the training required of the Contractor under the Training Special Provision", which was contained in the Training Special Provision section. The changes in the non-Federal Aid proposal insert are the replacement of "NYS

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Governor's Executive Order 21" with "NYS Executive Law Article 15-A" and "Office of Contract Compliance and Minority and Women-Owned Business Enterprise" with "Division of Minority and Women's Business Development". These are the only changes that have been made to these proposal inserts.

**ACTIONS FOR THE MAIN OFFICE.** The Design Quality Assurance Bureau (DQAB) will insert Equal Employment Opportunity Requirements (Federal Aid) or (non-Federal Aid), as appropriate, in all contract proposals initially programmed to be let on or after April 9, 1998.

**DISTRIBUTION.** Distribution of the proposal inserts, as an attachment to this E.I., was made as follows:

- List 30: Recipients received 1 copy.
- List 32: Copies have been sent to the Regional Design Engineer, Regional Estimating Engineer, and Regional Construction Engineer.
- List 34: 1 copy each.
- List 39: 1 copy each.

**CONTACT PERSON.** Naim Orayfig, (518) 457-1129 (OEODC).

## **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (FEDERAL AID)**

Title 23 USC §140a requires the Secretary of Transportation to ensure non-discrimination in employment generated by Federally-aided construction by the inclusion of Equal Employment Opportunity provisions in the contract specifications. These provisions are found in the "Required Contract Provisions Federal-Aid Construction Contracts", Form FHWA-1273 or "Required Contract Provisions Appalachian Development Highway System and Local Access Roads Construction Contracts", Form FHWA-1316 one of which is incorporated in this proposal. Those provisions require the Contractor to comply with 41 CFR 60, the applicable portions of which are included in this contract. The New York State Department of Transportation is required to enforce those provisions on its Federally-aided construction contracts by 23 CFR, Part 230, Subparts A and D. Such enforcement includes (but is not limited to) monitoring the Contractor's and Subcontractor's employment practices, requiring employment related reports to be filed by the Contractor in a timely manner on forms acceptable to the Department, determining the Contractor's compliance with these provisions and taking such actions as authorized by law, rule, or regulation to enforce compliance by the Contractor. In the enforcement of those rules by the Department, the term Director means the Director of the Department's Office of Equal Opportunity Development and Compliance.

Included in this contract are sections of 41 CFR 60 as required by regulation of the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor. The enforcement of those provisions is also the responsibility of the Office of Federal Contract Compliance Programs, separate and independent of the Department's enforcement responsibility.

## **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (FEDERAL AID)**

### **PART 60-1 - OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS**

#### **Subpart A - Preliminary Matters; Equal Opportunity Clause; Compliance Reports**

##### **§60-1.4 Equal Opportunity Clause.**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such actions shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (FEDERAL AID)**

### **PART 60-4 - CONSTRUCTION CONTRACTORS-AFFIRMATIVE ACTION REQUIREMENTS**

#### **§60-4.2 Solicitations.**

#### **NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as set forth in the solicitations from which this contract resulted.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

If the Contractor fails to meet the employment goals for minorities or women specified in these requirements, the Department may require training of minorities and women to satisfy the employment goals.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the county where the contract is to be performed.

## EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (FEDERAL AID)

### §60-4.3 Equal opportunity clauses.

#### STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraph 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each

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construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities.

The Department requires that apprentices be trained pursuant to apprenticeship programs registered with either the United States Department of Labor or the New York State Department of Labor. Trainees must be trained pursuant to training programs approved by the New York State Department of Transportation. All programs must be deemed appropriate for utilization on New York State Department of Transportation projects.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a

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minority person or woman sent by the contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personal practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

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- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for

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each employee the name, address, telephone number, construction trade, union affiliation if any employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### **§60-4.5 Hometown plans.**

- (a) A Contractor participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the plan: Provided, that each Contractor or Subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other Contractors or Subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables. If a Contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in §60-4.3 of this part and with the goals and timetables for the appropriate area as listed in the notice required by 41 CFR 60-4.2 with regard to that trade. For the purposes of this part 60-4, a Contractor is not participating in a Hometown Plan for a particular trade if it:
  - (1) Ceases to be signatory to a Hometown Plan covering that trade;
  - (2) Is signatory to a Hometown Plan for that trade but is not party to a collective bargaining agreement for that trade;
  - (3) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organizations which are not or cease to be signatories to the same Hometown Plan for that trade;
  - (4) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan for that trade;
  - (5) Is participating in a Hometown Plan for that trade which is no longer acceptable to the Office of Federal Contract Compliance Programs;
  - (6) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade and the labor organization and the Contractor have failed to make a good faith effort to comply with their obligations under the Hometown Plan for that trade.
- (b) Contractors participating in Hometown Plans must be able to demonstrate their participation and document their compliance with the provision of the Hometown Plan.

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### **§60-4.6 Goals and timetables.**

The OFCCP, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data and which shall cover construction projects or construction contracts performed in specific geographical areas. The goals, which shall be applicable to each construction trade in the covered Contractor's or Subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be published as notices in the FEDERAL REGISTER, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed.

### **§60-4.8 Show cause notice.**

If an investigation or compliance review reveals that a construction Contractor or Subcontractor has violated the Executive Order, any contract clause, specifications or the regulations in this chapter and if administrative enforcement is contemplated, the Director shall issue to the Contractor or Subcontractor a notice to show cause which shall contain the items specified in paragraphs (i) through (iv) of 41 CFR 60-2.2(c)(1). If the Contractor does not show good cause within 30 days, or in the alternative, fails to enter an acceptable conciliation agreement which includes where appropriate, make up goals and timetables, back pay, and seniority relief for effected class members, the OFCCP shall follow the procedure in 41 CFR 60-1.26(b): Provided, that where a conciliation agreement has been violated, no show cause notice is required prior to the initiation of enforcement proceedings.

### **§60-4.9 Incorporation by operation of the order.**

By operation of the order, the equal opportunity clause contained in §60-1.4, the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) contained in §60-4.2, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) contained in §60-4.3 shall be deemed to be a part of every solicitation or of every contract and subcontract, as appropriate, required by chapter to include such clauses whether or not they are physically incorporated in such solicitation or contract and whether or not the contract is written.

**EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (FEDERAL AID)**

**GOALS FOR MINORITY PARTICIPATION IN THE CONSTRUCTION INDUSTRY**

COUNTY	%	COUNTY	%	COUNTY	%
Albany	3.2	Herkimer	2.1	* Richmond	
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	* Kings		St. Lawrence	2.5
* Bronx		Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	* New York		Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	* Queens		Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

\* The following goal ranges are applicable to the indicated trades in the Counties of Bronx, Kings, New York, Queens and Richmond.

Electricians	9.0 to 10.2
Carpenters	27.6 to 32.0
Steam fitters	12.2 to 13.5
Metal lathers	24.6 to 25.6
Painters	26.0 to 28.6
Operating engineers	25.6 to 26.0
Plumbers	12.0 to 14.5
Iron workers (struct)	25.9 to 32.0
Elevator constructors	5.5 to 6.5
Bricklayers	13.4 to 15.5
Asbestos workers	22.8 to 28.0
Roofers	6.3 to 7.5
Iron workers (ornamental)	22.4 to 23.0
Cement masons	23.0 to 27.0
Glaziers	16.0 to 20.0
Plasterers	15.8 to 18.0
Teamsters	22.0 to 22.5
Boilermakers	13.0 to 15.5
All others	16.4 to 17.5

**GOAL FOR PARTICIPATION OF WOMEN**

**FEMALE GOAL - 6.9%**

Goals for the utilization of women by Federal and federally assisted construction contractors were last published on April 7, 1978 (43 FR 14888, 14900). The April 7, 1978 publication included a 6.9% goal for the period from April 1, 1980 until March 31, 1981. Pursuant to 41CFR 60-4.6, the 6.9% goal for female utilization is extended until further notice.

## EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (NON-FEDERAL AID)

1. **REQUIREMENTS** - During the performance of this contract, the Contractor agrees to comply with the Equal Employment Opportunity (EEO) requirements specified herein.
2. **DEFINITIONS** - As used in these requirements, the following definitions will apply:
  - A. "Covered area" means the geographical area described in the solicitation from which this contract resulted or the geographical area within which this contract will be performed.
  - B. "Department" means the New York State Department of Transportation.
  - C. "Commissioner" means the Commissioner of the New York State Department of Transportation, or his/her duly authorized representative.
  - D. "Director, OEODC" means the Director of the Department's Office of Equal Opportunity Development and Compliance or his/her duly authorized representative.
  - E. "Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - F. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (a person of Spanish or Portuguese culture with origins in South or Central America or the Caribbean Islands regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification. Identification may be made by any suitable authority in the community such as an educational institution, religious organization, or a state agency).
3. **NON-DISCRIMINATION CLAUSE** - The Contractor will ensure equal employment opportunity by not discriminating against any applicant for employment because of race, color, religion, sex, national origin, age, disability, or marital status, regarding (among other things) the following: upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
4. **MINORITY AND WOMEN EMPLOYMENT GOALS** - The Contractor shall make a good-faith effort to ensure equal employment by taking the affirmative actions set forth in paragraph 5A through P of these requirements. The Contractor's success in achieving or bettering the goals set forth herein shall be a substantial factor in any determination of whether the Contractor has complied with its obligation to ensure equal employment opportunity in the performance of this contract. These goals are expressed as percentages of the total hours of employment and training that the Contractor should reasonably be able to give to female or minority employees in a certain covered area. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. These goals were established from materials published by the Office of Federal Contract Compliance Programs based on appropriate workforce, demographic or other relevant data. If the Contractor fails to meet the employment goals for minorities or women specified in these requirements, training of minorities and women may be required to satisfy the employment goals.

## **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (NON-FEDERAL AID)**

- 5. AFFIRMATIVE ACTION STEPS** - The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - C. Maintain a current file of the name, address, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reasons therefor, along with whatever additional actions the Contractor may have taken.
  - D. Provide immediate written notification to the Director, OEODC when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - E. Develop on-the-job training opportunities and/or participation in training programs which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by either the United States Department of Labor or the New York State Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 5.B. above.
  - F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
  - G. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general forepersons, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

## EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (NON-FEDERAL AID)

- H. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- I. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth on both the site and in other areas of a Contractor's workforce.
- K. Validate all tests and other selection requirements in accordance with state and federal laws, rules and regulations.
- L. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- N. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female construction contractors and suppliers, and circulation of solicitations to minority and female contractor associations and other business associations.
- P. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

**6. CONTRACTOR ASSOCIATIONS** - Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (5A through P). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling one or more of its obligations under this requirement provided that the Contractor actively participates in the group, makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

## **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (NON-FEDERAL AID)**

- 7. TRANSFER OF MINORITY OR FEMALE EMPLOYEES** - Through implementing the affirmative actions set forth above and the Contractor's other efforts to ensure equal employment opportunity, the Contractor shall make every effort to employ minorities and women throughout the life of the contract. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be in violation of the contract.
- 8. CREDITING NONWORKING TRAINING HOURS TOWARD EMPLOYMENT GOALS** - In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Apprentices must be trained pursuant to apprenticeship programs registered with either the United States Department of Labor or the New York State Department of Labor. Trainees must be trained pursuant to training programs approved by the New York State Department of Transportation. All programs must be deemed appropriate for utilization on New York State Department of Transportation projects.
- 9. REQUIRED RECORDS** -
- A. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the Contractor's equal employment opportunity policy is being carried out and to keep records. The records shall include the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed for each employee. Records shall be maintained in an understandable and retrievable form. To the extent that records kept by the Contractor for other purposes satisfy the requirements of this paragraph, the Contractor need not maintain separate records.
  - B. The Contractor shall submit monthly employee utilization reports to the Engineer on forms prescribed by the Department. Records of the total employee utilization from the start of the contract up to and including the month being reported shall be submitted with each monthly report. For the purpose of these reports, the hours of female employment and training and the hours of minority employment and training shall be separately calculated.
  - C. For the purpose of the reports required above, the employment and training hours worked by each person may only be used once in any one month and the Contractor is cautioned that it may not discriminate in connection with attaining its affirmative action goals under this requirements.
- 10. GOALS NOT TO BE USED TO DISCRIMINATE** - The Contractor shall not use the goals or affirmative action requirements to discriminate against any person because of race, color, religion, sex, national origin, age, disability, or marital status.
- 11. DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT** - The Contractor will comply with any procedures and guidelines established by the Director of the Division of Minority and Women's Business Development (DMWBD) under the authority of New York State Executive Law Article 15-A (hereinafter Article 15-A), and will comply with any rules, regulations and orders of the Commissioner as may be promulgated pursuant to or under the authority of Article 15-A, or other applicable law or order.
- 12. AVAILABILITY OF CONTRACTOR'S RECORDS** - The Contractor will furnish all information and reports as may be required by the Director of the DMWBD under the authority of Article 15-A, or by rules, regulations and orders of the Commissioner as may be promulgated under or pursuant to Article 15-A, and will permit access to its books, records and accounts by the Department or the Director, OEODC for purposes of investigating compliance with these requirements and such rules, regulations, orders, procedures and guidelines.

## **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (NON-FEDERAL AID)**

- 13. ENFORCEMENT** - In order to determine whether the Contractor has complied with the requirements, the Department may proceed by order to show cause, compliance conference, hearing or any other lawful procedure upon due notice in writing to the Contractor. In the event the Department finds that the Contractor has failed to comply with these requirements, this contract may be canceled, terminated, or suspended in whole or in part in accordance with the procedures authorized in Section 40 of the Highway Law, and the Contractor may be declared ineligible for further New York State government contracts or construction contracts, and such other sanctions may be imposed and remedies invoked as provided under the authority of Article 15-A or by rule, regulation, or order of the Commissioner, or as otherwise provided by law.
- 14. CONTRACTOR'S RESPONSIBILITY REGARDING COLLECTIVE BARGAINING AGREEMENT** - Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these requirements, any rules and regulations of the Commissioner, or the rules, regulations, procedures and guidelines promulgated or established pursuant to Article 15-A.
- 15. APPLICABILITY TO SUBCONTRACTS** - The Contractor will physically include this document, Equal Employment Opportunity Requirements (non-Federal Aid), as part of every subcontract or purchase order unless exempted by rules, regulations, or orders of the Commissioner, pursuant to Article 15-A, and such requirements with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance; PROVIDED, HOWEVER, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of any provision or direction issued pursuant to these requirements or by the Department, the Contractor may request the State of New York to enter into such litigation or dispute to protect the interests of the State of New York.
- 16. EQUAL EMPLOYMENT OPPORTUNITY OFFICER** - The Contractor will designate and make known to the Department an Equal Employment Opportunity Officer (EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.
- 17. COMPLAINTS OF ALLEGED DISCRIMINATION** - The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of his or her avenues of appeal.

**EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (NON-FEDERAL AID)**

**GOALS FOR MINORITY PARTICIPATION**

<b>COUNTY</b>	<b>%</b>	<b>COUNTY</b>	<b>%</b>	<b>COUNTY</b>	<b>%</b>
Albany	3.2	Herkimer	2.1	* Richmond	
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	* Kings		St. Lawrence	2.5
* Bronx		Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	* New York		Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	* Queens		Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

\* The following goal ranges are applicable to the indicated trades in the Counties of Bronx, Kings, New York, Queens and Richmond.

Electricians	9.0 to 10.2	Bricklayers	13.4 to 15.5
Carpenters	27.6 to 32.0	Asbestos workers	22.8 to 28.0
Steam fitters	12.2 to 13.5	Roofers	6.3 to 7.5
Metal lathers	24.6 to 25.6	Iron workers (ornamental)	22.4 to 23.0
Painters	26.0 to 28.6	Cement masons	23.0 to 27.0
Operating engineers	25.6 to 26.0	Glaziers	16.0 to 20.0
Plumbers	12.0 to 14.5	Plasterers	15.8 to 18.0
Iron workers (struct)	25.9 to 32.0	Teamsters	22.0 to 22.5
Elevator constructors	5.5 to 6.5	Boilermakers	13.0 to 15.5
		All others	16.4 to 17.5

**GOAL FOR PARTICIPATION OF WOMEN:** The last publication of a goal for the participation of women was April 7, 1978 (43 FR 14888, 14900). The 6.9% goal published on that date is hereby made the goal for all State contracts and grant agreements.