

**Information Regarding Signatory Agreements with
Various Unions / DBE Program**

Pavement Reconstruction 2009, Phase 1, 2 & 3
Additional Information

City staff submitted the following question to Caltrans for their input:

"Some prime contractors have signatory agreements with various Unions for work the primes intend to subcontract out. As part of the signatory agreement, the prime has to use labor forces supplied by the Union. What if a UDBE / DBE is not part of a Union? Therefore, the prime who has a signatory agreement with the Union does not meet their good faith effort since they do not go outside the Union. Is this right? What does Caltrans do in these cases?"

Response Received from Caltrans Staff:

There are two types of good faith efforts required in the federal-aid construction contractors nondiscrimination requirements Form 1273:

- Good faith efforts on the part of the Prime to subcontract out to DBEs.
- Good faith efforts on the part of the Prime and all subcontractors (including DBEs) to do a good faith effort to employ minorities and women.

In response to your questions:

Question: Some prime contractors have signatory agreements with various Unions for work the primes intend to subcontract out. As part of the signatory agreement, the prime has to use labor forces supplied by the Union.

Caltrans response: Labor forces in this case mean employees – not subcontractors.

Question: The specifications call for a specific race conscious goal. What if a UDBE / DBE is not part of a Union?

Caltrans response: DBEs are businesses and as such do not belong to a Union.

Question: Therefore, the prime who has a signatory agreement with the Union does not meet their good faith effort since they do not go outside the Union. Is this right?

Caltrans response: Attached is a scanned excerpt from the FHWA Western Resource EEO Contractor Compliance Training Manual that addresses agreements with Unions (applies to employees only) in light of the federal-aid 1273 requirements.

(See attached file: Unions & 1273 requirements.pdf)

The following paragraph is taken from the attached excerpt and is a special note concerning collective bargaining agreements:

"NOTE: A Federal and Federal-aid contractor that have a collective bargaining agreement may not rely upon a union's failure to send minority and/or female referrals as justification for its non-compliance with certain contractual EEO requirements. Under the non-discrimination provisions in its contract (Form 1273), a Federal or Federal-aid contractor must use its BEST EFFORTS to obtain the cooperation of unions to increase opportunities for women and minority groups within their membership and to effect referrals of minority and female employees."

Attachment: Referenced excerpt from the FHWA Western Resource EEO Contractor Compliance Training Manual that addresses agreements with Unions (provided by Caltrans staff)

The State should also provide training and technical assistance to Federal-aid highway construction contractors to help them recruit, hire, train, and retain minorities and women in the highway construction industry. (See Module IV - page 108 for suggestions on training and technical).

C. FEDERAL-AID CONSTRUCTION CONTRACTORS

The contractor has the fundamental role and responsibility to take all reasonable and necessary steps to ensure that the terms and conditions of its employment policy and its selection of subcontractors, etc. is void of discrimination for minorities and women to participate on the Federal and federally-assisted contracts. The contractor has the responsibility to have in place an EO policy that ensures equal access to employment, training and business opportunities for minorities and women. The contractor's EEO Officer must have sufficient authority to speak and act on behalf of the contractor. The contractor shall cooperate fully with the STA and FHWA in meeting the EO requirements of Federal and federally-assisted contracts including providing ready access to all files and records, and submitting all required and requested reports.

A contractor's minimum EO requirements are set forth in the contract provisions referenced in Form FHWA-1273 as "Section II, Nondiscrimination." These include submission of required reports and other information requested by the STA and contractor, acceptance of a general operating policy which prohibits discrimination based on race, color, religion, sex, national origin, age or disability.

Section II obligates a contractor to comply with the following specific EO activities, at a minimum:

1. NON-DISCRIMINATION IN ALL TERMS AND CONDITIONS OF EMPLOYMENT:

- a. Recruitment
- b. Hiring
- c. Promotion
- d. Demotion
- e. Transfer
- f. Rates of pay and other forms of compensation
- g. Opportunities for overtime
- h. Layoff
- i. Termination
- j. Selection for Training
- k. Equipment and tool assignments

2. NON-DISCRIMINATION IN SELECTION OF SUBCONTRACTORS, MATERIALS SUPPLIERS AND LEASORS OF EQUIPMENT

- a. Notify potential subcontractors and suppliers of his/her EO obligations
- b. Solicit bids and utilize DBEs
- c. Ensure subcontractor compliance with EO requirements

3. PROVIDE EO AND WHEN NECESSARY, TAKE AFFIRMATIVE ACTION TO ASSURE EO, INCLUDING A DEMONSTRATION OF GOOD FAITH EFFORTS TO MEET CONTRACTURAL OBLIGATIONS;

4. INVESTIGATE COMPLAINTS OF ALLEGED DISCRIMINATION ATTEMPT RESOLUTION AND TAKE APPROPRIATE CORRECTIVE ACTION WITHIN REASONABLE TIMEFRAME;

5. MAKE FULL USE OF TRAINING PROGRAMS (I.E. APPRENTICESHIP, ON- THE-JOB-TRAINING (OJT) PROGRAMS);

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6. **AND COMPLY WITH TRAINING SPECIAL PROVISIONS (TSP) REQUIREMENTS, AS APPLICABLE;**
 7. **MAINTAIN RECORDS AND REPORTS TO DOCUMENT COMPLIANCE WITH EO REQUIREMENTS; AND**
 8. **MAINTAIN NON-SEGREGATED FACILITIES.**

UNIONS

Unions and other employment referral organizations must meet the requirements of Title VII of the Civil Rights Act of 1964 or other nondiscrimination provisions of Federal law. Accordingly, they are prohibited from discriminating because of race, color, sex, religion, national origin, age, and disability in their referral and employment practices. In addition, unions and other referral organizations must comply with the terms of their Collective Bargaining Agreements or other contracts entered into with the contractor.

NOTE: A Federal and Federal-aid contractor that have a collective bargaining agreement may not rely upon a union's failure to send minority and/or female referrals as justification for its non-compliance with certain contractual EEO requirements. Under the non-discrimination provisions in its contract, a Federal or Federal-aid contractor must use its **BEST EFFORTS** to obtain the cooperation of unions to increase opportunities for women and minority groups within their membership and to effect referrals of minority and female employees.

These efforts may include:

- **specifically requesting women and minorities;**
- **contractor's referrals of walk-in applicants to the union with written follow-up;**
- **flexibility within a collective bargaining agreement and/or special provisions regarding minority and women referrals;**
- **giving unions as much advance notice as is practicable regarding upcoming needs;**
- **inviting union representatives to pre-construction conferences; and**
- **working with unions to modify their membership or selection procedures to eliminate identified barriers.**

If these or similar efforts are unsuccessful, a Federal-aid contractor may be required to affirmatively recruit women and minority employees. The contractor must inform the STA if the union(s) is unable to provide a reasonable flow of appropriate referrals within their contractual time limits.