

Reclamation Manual

Directives and Standards

Subject: Reclamation Standard Water-Related Contract Articles, Article 24: Equal Employment Opportunity (Federally Assisted Construction Programs)

Purpose: To commit Reclamation’s Standard Contract Article 24 to the Reclamation Manual, introduced by a brief description and direction regarding its use, for the benefit of making it easily accessible and promoting Reclamation-wide consistency in its use and content.

Authority: The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto; Executive Order No. 11246 of September 24, 1965; 41 CFR 60-1.3.¹

Approving Official: Director, Office of Program and Policy Services

Contact: Office of Program and Policy Services; Contract Services Office, 84-56000

1. **Equal Employment Opportunity (Federally Assisted Construction Programs).** This article is required in contracts under which the contractor will construct facilities with Federal funds. It prohibits the contractor from discriminating against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin and provides remedies for violations. Unless exempted, the contractor must also require this article in any subcontracts it executes. The charts included in Reclamation Manual Policy PEC P10 specify which contract types require standard article 24.

2. **Reclamation Standard Contract Article 24.**

(Federally Assisted Construction Programs)

EQUAL EMPLOYMENT OPPORTUNITY²

(a) The Contractor hereby agrees to incorporate, or cause to be incorporated, into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee or undertaken pursuant to any Federal

¹Use of the Equal Employment Opportunity provisions set forth in 41 CFR 60-1.4 are directed by Executive Order No. 11246, as amended and supplemented. Incorporation by reference, as provided for by 41 CFR 60-1.4(d), is not recommended. Where appropriate for consistency, letters may be substituted for the numbers 1-7

²Approved 2/79; Reviewed 11/84; Revised 01/02.

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program involving such grant, contract, loan, insurance, or guarantee, the following Equal

Employment Opportunity (Federally Assisted Construction) clause:

(Federally Assisted Construction Programs)

EQUAL EMPLOYMENT OPPORTUNITY

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, disability, 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, disability, or national origin. Such action 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 nondiscrimination 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, disability, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, 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.

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(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the 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 such 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 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 provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the 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.

(b) The Contractor further agrees that it will be bound by the above Equal Employment Opportunity (Federally Assisted Construction) clause with respect to its own employment practices when it *participates* in federally assisted construction work: *Provided, That* if the

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Contractor so participating is a state or local government, the above Equal Employment Opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

(c) The Contractor agrees that it will assist and cooperate actively with the Contracting Officer and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Employment Opportunity (Federally Assisted Construction) clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Contracting Officer and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Contracting Officer in the discharge of his primary responsibility for securing compliance.

(d) The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to said amended Executive Order and will carry out such sanctions and penalties for violation of the Equal Employment Opportunity (Federally Assisted Construction) clause as may be imposed upon contractors and subcontractors by the Contracting Officer or the Secretary of Labor pursuant to Part II, Subpart D, of Executive Order 11246 of September 24, 1965. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the Contracting Officer may take any or all of the following actions: cancel, terminate, or suspend, in whole or in part, this contract; refrain from extending any further assistance to the Contractor under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from such contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

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3. **Alternate Language for Contracts Under Which Indian Employment is a Condition.**

A. The provisions of this article apply except where they conflict with sections 701(b)(1) and 703(i) of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(i)). Section 701(b)(1) states that the term “employer” does not include the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service. (As defined in section 2102 of Title 5 of the United States Code. Section 2000e-2(i) states: “Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.”)

B. Memorandum dated February 6, 1980, recommended that when employment of Indians is to be a contract condition the equal employment opportunity article be re-titled as: “INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY.” The article should then begin with subsection (a) as follows:

(I) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Contractor shall give preference in employment to Indian residents of the _____ Indian Reservation. The Bureau of Indian Affairs Office of Employment Assistance shall be notified of employment opportunities 48 hours before any positions are advertised to the general public.

C. The remaining provisions of the clause will become part of subsection (II) as follows:

(II) Except as provided above, during the performance of this contract the Contractor agrees as follows:

(1) The Contractor will not discriminate . . .

D. Following the “INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY” clause, the remaining provisions (b) through (d) will be included and unchanged.