

Reclamation Manual

Directives and Standards

Subject: Reclamation Standard Water-Related Contract Articles, Article 23: Equal Employment Opportunity (Federal Construction Programs)

Purpose: To commit Reclamation’s Standard Contract Article 23 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.

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 (Federal Construction Programs).** This article is included in all contracts. Taken verbatim from Executive Order No. 11246, the article prohibits the contractor from discriminating against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin and provides the United States with remedies for violations. The contractor must also put this article in any non-exempt subcontracts it executes.

2. **Reclamation Standard Contract Article 23.**

(Federal Construction Programs)

EQUAL EMPLOYMENT OPPORTUNITY¹

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;

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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 No. 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 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

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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.

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:

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(a) 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 article will become subsection (b) as follows:

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

(1) The Contractor will not discriminate . . .