

ALABAMA DEPARTMENT OF TRANSPORTATION

DATE: November 14, 2017

Special Provision No. 18-0097

EFFECTIVE DATE: January 1, 2018

SUBJECT: Required Contract Provision for all Federal Aid Projects for Equal Employment Opportunity

Alabama Standard Specification, 2018 Edition, are hereby amended to include the following:

In compliance with Executive Order 11246, the following Standard Federal Equal Opportunity Construction Contract Specifications shall apply:

General Requirements

(41 CFR 60-4.3)

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 paragraphs 7a through 7p 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 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 being performed. Goals are as shown on Attachment No. 1. 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. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
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 on-site 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 organization's 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 therefore, 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 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 areas 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 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their co-operation 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 workforce.
 - 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 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 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 that assist in fulfilling one or more of their affirmative action obligations (7a through 7p). 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 7p 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 Contract may be in violation of the Executive Order if a specific minority group of women is under-utilized).

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 the 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 each employee the name, address, telephone numbers, 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 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).

Hometown Plans

(41 CFR 60-4.5)

- (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 4.2 with regard to that trade. For the purposes of this part 60-4, the 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 and is party to a collective bargaining agreement with 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 provisions of the Hometown Plan.

Solicitations

(41 CFR 60-4.2)

- (d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.6 of this part (see 41 CFR-4.2 (a)):

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 shown on Attachment No. 1.
 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 Employment 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.
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; employer identification 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 that shown on Attachment No. 1.

Show Cause Notice

(41 CFR 60-4.8)

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 (i) - (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 affected class members, the compliance agency 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.

Attachment No. 1**Goals & Timetables**

(41 CFR 60-4.2)

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 follows:

FEMALE**Area Covered – Statewide**

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	6.9%

MINORITY**Area Covered – Etowah, Jefferson, Shelby, St. Clair & Walker Counties**

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	24.9%

Area Covered – Autauga, Barbour, Bullock, Butler, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Elmore, Geneva, Henry, Houston, Lowndes, Macon, Montgomery, Perry, Pike & Tallapoosa Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	29.9%

Area Covered – Tuscaloosa County

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	20.6%

Area Covered – Russell County

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	29.6%

Area Covered – Franklin, Lawrence & Morgan Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	11.2%

Area Covered – DeKalb & Jackson Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	8.6%

Area Covered – Baldwin & Mobile Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	25.9%

Area Covered – Choctaw, Clarke, Conecuh, Escambia, Marengo, Monroe, Washington & Wilcox Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	26.4%

Area Covered – Calhoun County

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	14.3%

Area Covered – Bibb, Blount, Cherokee, Chilton, Clay, Cleburne, Cullman, Fayette, Greene, Hale, Lamar, Marion, Pickens, Randolph, Sumter, Talladega & Winston Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	20.7%

Area Covered – Limestone, Madison & Marshall Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	12.0%

Area Covered – Chambers & Lee Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	31.6%

Area Covered – Colbert & Lauderdale Counties

<u>Timetable</u>	<u>Trade</u>	<u>Goals %</u>
Until Further Notice	All	11.9%