

Illinois State Toll Highway Authority
SPECIAL PROVISIONS FOR
EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I. OBJECTIVE OF THE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM (EEO):

To promote equality of employment opportunity for minority and female tradespersons on Illinois State Toll Highway Authority (ISHTA or "Tollway") capital construction projects. In its efforts to achieve this equality, it is the desire of ISTHA to follow the guidelines as instituted by the United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") as established through Executive Order 11246 and by Title VII of the Civil Rights Act of 1964.

II. CONTRACTOR ASSURANCE:

The Contractor will assure that each of its employees and its subcontractors' employees associated with the contract shall not discriminate on the basis of race, color, national origin, sexual orientation or sex in the performance of this contract in compliance with 42 U.S.C § 2000e, *et seq.* Discrimination is the unfair treatment or denial of normal privileges to persons because of their race, age, nationality, sex, sexual orientation, physical condition, religion or any other characteristic protected by law. The Tollway encourages the prompt reporting of incidents of suspected discrimination, harassment or retaliation, regardless of the offender's identity or position. Any Contractor who fails to carry out these requirements is in material breach of this contract, which may result in the termination of this contract such other remedy, as the Tollway deems appropriate.

III. EEO GOAL TO BE ACHIEVED BY THE CONTRACTOR:

The Contractor will adhere to the EEO goals established by the U.S. Dept. of Labor - Office of Federal Contract Compliance Programs ("OFCCP") for construction trade workers in the Chicago area, which is provided through Executive Order 11246. The EEO goals are measured through the following percentages of construction aggregated work hours in each of the categories;

At least 19.6 percent by minorities, as defined herein; and

At least 6.9 percent by women.

IV. DEFINITIONS OF ETHNIC CLASSIFICATIONS:

AFRICAN AMERICAN: Persons having origins in any of the Black racial groups of Africa.

ASIAN INDIAN: Persons whose origins are from India, Pakistan, or Bangladesh.

ASIAN PACIFIC: Persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Northern Marinas.

HISPANIC: Persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race.

NATIVE AMERICANS: Persons who are American Indians, Eskimos, or Native Hawaiians.

V. CALCULATING EEO CREDIT TOWARDS THE GOALS:

Actual amounts of minority and female work will be measured for the total hours of construction workers employed on the contract within each of the categories of journeyworker, apprentice and laborer by the Contractor and all of the worksite subcontractors. Minority female trade worker hours are counted in applicable ethnic category and also in the female category.

In the weekly payroll reports, the following ethnic categories should be used to indicate minority personnel for purposes of reporting compliance with the weekly certified payroll report: African American, Asian Indian, Asian Pacific, Hispanic and Native American.

Included in the weekly certified payrolls, as "Apprentices" are only bona fide apprentices currently in a training program certified by the U.S. Department of Labor - Bureau of Apprenticeship and Training, and hours credited towards the EEO Program are only those hours the apprentice was employed at the construction site. "Journeyworkers" are the construction site journeyworkers from the major trades. Other "Helpers," watchmen, custodial workers, clerical workers, and salaried superintendents are not creditable in the formula. Hourly wage "Foremen" and "Foremen" otherwise known as working foremen, will be counted as journeyworkers for purposes of the EEO Program reporting.

In addition to the timely submission of certified payroll required by the Prevailing Wage Act, the Contractor must have submitted all weekly certified payrolls for the Contractor and all subcontractors before the Contractor submits its request for the final release of retention and the final waiver of lien. No adjustments to weekly certified payrolls will be accepted after the transmission of the final waiver of lien.

VI. EEO FORM 0003 WORKFORCE ANALYSIS.

All contractor and subcontractors' EEO 0003 reports must be submitted electronically to the Tollway.

The party preparing the report must give their name, title, email address and telephone number. The contractor is required to submit EEO Form 0003, Workforce Analysis, electronically before transmittal of each pay estimate commencing with the third pay estimate and every odd pay estimate thereafter. EEO Form 0003 is to reflect all hours worked by trade by the Contractor and all subcontractors during the time period covered in the previous pay estimate. Failure to submit the EEO 0003 Report electronically **before transmittal of the pay estimate** will cause the pay estimate to be deemed incomplete and will be returned to the Contractor for completion.

The Supplement to EEO 0003 for quarterly reporting must also be submitted electronically to the Tollway. Hard copy reports will not be accepted. This Supplement is due by the fifteenth of each month following the end of the quarter (April 15 for quarter ending March 31, July 15 for quarter ending June 30, October 15 for the quarter ending September 30 and January 15 for the quarter ending December 31). Construction Managers will verify timely submission of this report when their review coincides with the quarterly reporting period, as indicated on the Pay Estimate Checklist.

The Contractor is responsible for maintaining a hard copy of the Contractor's and subcontractors' weekly certified payrolls, including all properly executed certifications, organized by contract for every construction worksite. Failure to report fully all required workforce information will cause a delay in processing the Contractor's pay estimates. Disclosure of this information is required. Patterns of delinquent reporting may be cause to terminate this contract or such other remedy as the Tollway deems appropriate.

The Contractor is required to identify an individual responsible for all EEO related reporting issues and the electronic submission of reports to the Tollway. By the submission of such reports by the individual so identified, the Contractor certifies that the information contained in the reports is complete and accurate.

VII. SUBCONTRACTOR OBLIGATIONS:

The Contractor is required to clearly identify in their subcontract agreements the specific obligations that each subcontractor has toward assisting the Contractor in meeting the EEO obligations.

VIII. GOOD FAITH EFFORT PROCEDURES:

If the Tollway determines that the Contractor and/or its subcontractors are not in compliance with the EEO goals, the Tollway will notify the Contractor of said non-compliance. The Contractor must submit a Corrective Action Plan within fifteen (15) business days of the date of its receipt of the notice of non-compliance. The Corrective Action Plan must contain evidence of good faith efforts the Contractor has made in an effort to meet the EEO goals and outline the additional good faith efforts the Contractor will be making, including but not limited to timelines, through the remaining life of the contract.

IX. CORRECTIVE ACTION PLAN:

The Corrective Action Plan must show that the Contractor took all necessary and reasonable steps to achieve the established EEO goals. Necessary and reasonable steps are those that could reasonably be expected to employ and retain a sufficient number of minority and female trade workers to meet or exceed the federally established EEO goals for the Chicago area. The Tollway will consider the quality, quantity and intensity of the kinds of efforts that the Contractor and its subcontractors have made throughout the life of the contract. Mere pro forma efforts are not good faith efforts; rather, the Contractor and its subcontractors are expected to have taken those efforts that would be reasonably expected of a Contractor and its

subcontractors who are actively and aggressively trying to employ and retain minority and female trade workers sufficient to meet the contract EEO goals.

X. AMENDED CORRECTIVE ACTION PLAN:

If the Illinois Tollway determines that the Contractor has not made a good faith effort to meet the EEO goals, the Tollway will notify the Contractor of that preliminary determination by contacting the responsible company official designated in the Corrective Action Plan. The preliminary determination will include a statement of reasons why a finding of insufficient good faith efforts has been made and may include additional good faith efforts that the Contractor could take to remedy the deficiency. The notification will designate a fifteen (15) business day period during which the Contractor may make additional efforts to demonstrate a good faith effort to meet the EEO goals. The Contractor is not limited by the Tollway's suggestions per Sections VIII. and IX. of additional good faith efforts, but may take other actions in order to demonstrate good faith efforts to employ and retain additional minority and female trade workers on the project. The Contractor shall submit an amended Corrective Action Plan if additional employment commitments to meet the EEO contract goal are secured and/or to document its additional good faith efforts. If additional hiring commitments sufficient to meet the EEO contract goal are not secured, the Contractor shall report the final good faith efforts made in the time allotted. All additional efforts taken by the Contractor will be considered as part of the Contractor's good faith efforts. If the Contractor is not able to meet the EEO goal after making additional efforts, the Tollway will make a pre-final determination as to the good faith efforts of the Contractor and will notify the designated responsible Contractor official of the reasons for an adverse determination, if applicable.

XI. DETERMINATION OF NON-COMPLIANCE:

If the Tollway determines that the Contractor has failed to make a good faith effort to meet the EEO goals on the contract, the Tollway will document its findings in a "Letter of Non-Compliance" that will be filed and will become part of the permanent file maintained on the Contractor by the Tollway. The Letter may include a proposed sanction under Section XIII if the Contractor fails to take corrective action in a timely fashion. Upon a finding that a Contractor has failed to make good faith efforts to achieve the applicable EEO goals, the Tollway may exercise any appropriate sanction available to it under Section XIII, including the revocation of the contract award to the Contractor and any other remedy available to the Tollway under its contract with the Contractor or by law.

XII. ADMINISTRATIVE RECONSIDERATION:

The Contractor may request administrative reconsideration of a Letter of Non-Compliance within the fifteen (15) business days after its receipt of the Letter by actual delivery of a reconsideration request by the Tollway, Department of Diversity and Strategic Development, 2700 Ogden Avenue, Downers Grove, Illinois 60515-1703 or via email to E-mail address: form0003wfa@getipass.com. Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The Letter of Non-Compliance shall become final if the Contractor fails to submit a timely request for administrative reconsideration. A request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the contract goal.

The Tollway Chief of Diversity and Strategic Development or his/her designee will send the Contractor a written decision within fifteen (15) business days after receipt of the request for reconsideration, explaining the basis for finding that the Contractor did or did not meet the EEO goals or demonstrate good faith efforts towards meeting those goals. A decision by the Chief of Diversity and Strategic Development that a good faith effort was made shall be deemed approval of the Corrective Action Plan submitted by the Contractor. A final decision that a good faith effort was not made shall render the Contractor in breach as non-compliant with its contract with the Tollway and may subject the Contractor to sanctions under Section XIII.

XIII. SANCTIONS:

The Contractor's failure to achieve its EEO goals or to demonstrate good faith efforts towards meeting those goals may subject the Contractor to administrative sanctions. These sanctions include, but are not limited to, monetary sanctions, including non-release of retainage, and other reasonable sanctions as are permitted by law or equity. In imposing sanctions, the Tollway will consider the bona fide efforts of the Contractor to meet the EEO goals, its history of good faith efforts on other Tollway contracts, the size of the contract, the degree to which the Contractor fell below the EEO goals, and other factors deemed relevant by the Tollway.

Sanctions for non-compliance may include, but are not limited to deeming the Contractor as non-responsible with respect to future business with the Tollway. Thus, a Contractor's repeated failure to meet its EEO obligations on Tollway contracts can be grounds for the Tollway to not award future contracts to the Contractor.

XIV. INACCURATE OR FRAUDULENT REPORTING:

Contractors and subcontractors have a duty to accurately report information pursuant to this Special Provision. A Contractor or subcontractor who fails to supply accurate information may be subject to sanctions imposed by the Tollway under Section XIII. A Contractor or subcontractor who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions. A Contractor must maintain and make available pursuant the Record Retention and Audit Clause of this contract adequate books, records, and supporting documents to verify the accuracy of the information supplied to the Tollway pursuant to this Special Provision.

XV. OTHER REGULATIONS:

The adherence to the EEO goals does not abrogate other responsibilities of the Contractor to comply with equal employment opportunity requirements under federal or state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the Contract.