



2024 External Equal Opportunity Plan

Michael Carroll, Secretary Department of Transportation

Corey Pellington, Deputy Secretary for Administration

Megan Peterson, Ed.D., Acting Director, Bureau of Equal Opportunity

Helen Zimmer, Contract Compliance Section Chief, Bureau of Equal Opportunity



pennsylvania

DEPARTMENT OF TRANSPORTATION

www.penndot.pa.gov

Table of Contents

Introduction	2
Dissemination of Plan.....	3
Organization and Structure	4
Compliance Procedure	11
Accomplishments	15
Area Wide Plans / Hometown and Imposed	19
Contract Sanctions	20
Complaints	23
External Training Program including Supportive Services	24
Disadvantaged Business Enterprise	27
Liaisons	28
Innovative Programs	30

***Exhibits**

- **Exhibit A:** Department of Transportation Organization Chart
- **Exhibit B:** Bureau of Equal Opportunity Organization Chart
- **Exhibit C:** BEO Contract Compliance Field Agent Procedure Guide (includes review documents, sanctions program documents, and samples)
- **Exhibit D:** PennDOT 2023 Contractor & Consultant Diversity Outreach Events

* Exhibits are considered internal documents and are not included in the public version of this plan.

Introduction

The Pennsylvania Department of Transportation's (PennDOT's) External Equal Opportunity (EO) Plan is set forth under the guidelines established in 23 Code of Federal Regulations (CFR), Parts 200, 230, Appendix A to Subpart C of Part 230, and 633; and Title VI of the Civil Rights Act of 1964, as amended.

The Bureau of Equal Opportunity (BEO), Contract Compliance Section is responsible for administering, monitoring, and reporting compliance related program activities to the Federal Highway Administration (FHWA). Program activities include ensuring contractors take affirmative action that equal opportunity is provided in all aspects of their employment including increasing representation of minorities and women within the respective workforces of those doing business with the PennDOT.

This EO plan includes PennDOT's federal policies with regard to Equal Employment Opportunity (EEO) by the [Federal-Aid Highway Act of 1968](#), [Executive Order 11246](#), and [Form FHWA 1273](#).

PennDOT's plan was developed to satisfy the requirements of the U.S. Department of Transportation, FHWA with input provided by FHWA, PA Division Office.

Questions regarding the plan should be addressed to the Department's Bureau of Equal Opportunity, P.O. Box 3251, Harrisburg, PA 17105, or (717) 787-5891 or by FAX at (717) 772-4026.

Dissemination of Plan

PennDOT's External Equal Opportunity Plan is disseminated to the Department Secretary, Deputy Secretaires, Bureau Directors, District Executives, and District Labor Contract Compliance Agents.

Copies of the plan are made available, upon request, to contractors, subcontractors, consultants, vendors, and any other external partners.

An electronic copy is available at [Bureau of Equal Opportunity](#) .

All applicable documents between PennDOT and its contractors will include Form FHWA 1273, "Required Contract Provisions, Federal-Aid Construction Contracts."

All contractor advertisements must state that they are "An Equal Opportunity Employer"; encouraging minorities, women, and disadvantaged persons to apply for vacancies and training opportunities.

Contractors will be kept apprised of changes and additions to existing policy. In turn, contractors will be required to apprise their subcontractors of changes.

Maintain regular contact with liaisons, recruitment sources and contractors, to update any changes to PennDOT's policies and procedures. Contractors are required to inform its subcontractors of any updates.

Organization and Structure

See Exhibit A: Department of Transportation Organization Chart

The Secretary of Transportation is the Chief Executive Officer of PennDOT. The Secretary's responsibilities include the development, maintenance, and operation of a balanced transportation system that includes highways, mass transit, rail service, aviation, and various forms of assistance to municipalities. The secretary is assisted by a workforce of approximately 11,000, in PennDOT, including 11 engineering districts. PennDOT is the custodian of Pennsylvania's highways, bridges, facilities (including the state's Welcome Centers), and plays a direct role in the administration of financial and management assistance to transit providers, local municipalities, and 67 county governments.

Organizationally, PennDOT is comprised of one Executive Deputy Secretary that reports to the Secretary of Transportation, and Five Deputy Secretaries that report to the Executive Deputy Secretary. Under the Deputates, offices are organized into Bureaus, Offices, Engineering Districts, and County Maintenance Offices.

The BEO is functionally situated within the Administration Deputate and its Director reports directly to the Deputy Secretary for Administration. The Bureau is charged with the administration and oversight of PennDOT's external equal opportunity programs. BEO has an authorized complement of 24, with a Director (EO Manager 2), who is assisted by one Administrative Assistant (AA) and one Assistant Director (EO Manager 1). In addition, there are five Section Chiefs and 16 working positions.

See Exhibit B: Bureau of Equal Opportunity Organization chart

A. State highway EEO Coordinator (External) and staff support.

1. The Bureau Director has the role of EEO coordinator for purposes of this plan. This position has responsibility for administration of PennDOT's Federal Contract Compliance, Disadvantaged Business Enterprise (DBE), Small Business Enterprise (SBE), On-the-Job Training (OJT), Diverse Business (DB), and the Title VI programs. The Title VI program encompasses: Limited English Proficiency (LEP), Environmental Justice, Section 504 of the Rehabilitation Act, Americans with Disabilities Act (ADA) and any state related civil rights laws. The Bureau Director is supported directly by an Assistant Director and an Administrative Assistant. The Director position is currently vacant. An acting director has been

appointed until the position can be filled. The Director position encompasses the following responsibilities:

- i.** Monitors agency activity to ensure compliance with applicable state laws, executive orders, federal regulations, and management directives.
- ii.** Oversees the development and implementation of policies, procedures, and objectives to ensure non-discrimination in PennDOT programs, services, and activities subsidized with state and/or federal funding.
- iii.** Provides guidance to PennDOT's executives, managers, and supervisors regarding equal opportunity policies and programs administered by PennDOT. Develops or participates on behalf of PennDOT in any civil rights or equal opportunity related initiatives or special projects.
- iv.** Oversees the development and implementation of contract compliance procedures.
- v.** Provides guidance to the Contract Compliance Section Chief in the final determination of compliance/non-compliance for state "Contractor EEO Compliance Reviews" and the imposition of non-economic sanctions, as warranted.
- vi.** Supervises the OJT Program Section Chief and provides guidance for the day-to-day administration of the program. The section chief responsibilities include monitoring and oversight of the trainees, construction firms and District staff to ensure compliance with the program requirements, and the OJT program.
- vii.** Provides oversight in the administration of PennDOT's state and federal OJT programs geared to provide training opportunities for minorities, females, and disadvantaged persons to meet journey person status for highway construction employment.
- viii.** Provides guidance to the Title VI/Civil Rights and Planning Section Chief in the investigation of Title VI complains, Title VII complaints (contractors), renders determinations, and makes recommendations for corrective actions, as warranted to the FHWA for concurrence.
- ix.** As directed by FHWA, investigates, or provides assistance to FHWA for section 504 and Americans with Disabilities Act (ADA) complaints filed against funding recipients and sub-recipients.
- x.** Directs the development and presentation of equal opportunity curriculum to be delivered to internal and external customer, contractors/vendors, planning partners, Metropolitan Planning Organizations (MPOs)/ Regional Planning Organizations (RPOs), transit and aviation grantees, and funding recipients/sub-recipients to ensure the equitable delivery of their respective programs, services and activities.

- xi.** Provides guidance and technical assistance to the above entities to ensure compliance with applicable mandates.
 - xii.** Provides support to the Chair in effective administration of the PA Unified Certification Program (PAUCP one-stop shopping for DBE certification in the state of Pennsylvania) and is a voting and certifying member of the Oversight Committee and a voting member of the Administrative Appeals Committee.
 - xiii.** Makes application decisions for DBE certifications submitted to the Department (a certifying member of the PA UCP). Makes application decisions for SBE certifications submitted to the Department.
 - xiv.** Directs the development of the PennDOT's DBE and OJT Supportive Services work-plans and provides the necessary support to ensure the objectives of the programs are met.
 - xv.** Makes decisions based on recommendations made by the Department's Interdisciplinary Review Team (IRT) in the evaluation of construction contractors' good faith effort submission.
 - xvi.** Responsible for developing the DBE, Title VI, Limited English Proficient (LEP) plans, Contract Compliance Plans, and any additional reporting requirements.
 - xvii.** Directs the preparation, allocation disbursement, and reconciliation of the bureau's budget.
 - xviii.** Participates in local and national civil rights seminars, conferences, and trade shows for training and education, benchmarking, and examination of EO best practices.
 - xix.** Serves as PennDOT's representative on the American Association of State Highway Transportation Officials, Civil Rights Subcommittee.
 - xx.** Oversees participation and maintains memberships on behalf of the Department in varying local, state, and national Civil Rights and EEO related organizations.
 - xxi.** The Bureau Director is a full-time position that expends 100% of time as the EEO coordinator.
- 2.** PennDOT's contract Compliance program is centralized, and district offices receive instruction from central office. The information is disseminated through liaisons to the districts and project managers, who then forward the information to the contractors and subcontractors. The District Offices also receive reports and other data from project managers and the information is reviewed by designated representatives, data is transmitted to central office for monitoring and oversight requirements.

3. Bureau Staff/Titles/Areas of Responsibility:

- i. The Bureau's Assistant Director, currently vacant, is responsible for the day-to-day operations for the bureau and supervision of the DBE program. This includes the DBE and SBE Certification section, and the DBE Policy, Planning, and Compliance section. The Assistant Director provides personnel support, and assists the director to meet plan and reporting requirements. The Assistant Director is enabled to support the Director with all the EEO compliance requirements and is responsible for PennDOT outreach and special projects.
- ii. The Bureau has five divisions with Section Chiefs that currently report to the Director. All BEO employees are afforded and receive ongoing training as provided by PennDOT, FHWA, other federal entities, and outside organizations.
- iii. The Title VI/Civil Rights and Planning Section is responsible for monitoring and oversight of the Title VI program to include Section 504, 508 requirements. Providing policy interpretation and guidance to program areas for applicable federal, state regulations, i.e., Civil Rights Act (Title II, title VI), Section 504, 508 of the Rehabilitation Act, ADA, and Section 303 of PA Code. In addition, this section develops required plans, provide compliance reviews, technical support and training for Department personnel and outside contractors. This section also administers the DBE, SBE, and DB supportive services contracts. The section also plans and manages Bureau EO initiatives and outreach events to promote doing business with the PennDOT. The section's staff is comprised of a Section Chief, Equal Opportunity Specialist (EOS) 3, one EOS 2, and one Equal Opportunity Assistant (EOA). The Title VI/Civil Rights and Planning Section Chief reports to the Director.
- iv. The Disadvantage Business Enterprise (DBE) Policy, Planning, and Compliance section responsible for monitoring and compliance of the DBE program. This includes overseeing the planning and development of the PennDOT's DBE triennial plans for FHWA, Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), and administering methodology & contract goals, and providing regulation guidance and review of said plans. This includes technical assistance and training of internal and external stakeholders, setting project goals, and monitoring others that set goals on behalf of PennDOT which include other department staff and contractors. Additionally, oversight and monitoring of data collection for purposes of Uniform Report submittals and other federal and state reports. Requirements include being a member of the DBE Good Faith Effort (GFE) IRT (pre-award and post-award). The Section Chief oversees the review and update of the DBE Implementation plan as policies and regulations update and aids program areas on interpretation and guidance of 49 CFR. This section also monitors and makes determinations on all EO-354 Commercially

Useful Function (CUF) reports, on-site monitoring, and project goal monitoring. The section's staff is comprised of a Section Chief (EOS 3), and two EOS 2 positions. The DBE Policy, Planning, and Compliance Section Chief is responsible for the DBE program components and reports to the Director

- v. DBE and SBE Certification section is responsible for the DBE and SBE certification application process including the on-site review, the Annual Affidavit of No Change process, and any other DBE and SBE certification processes, including appeals, as required in 49 CFR 26 and 23. Responsibilities also include day to day case and record management of DBE and SBE firms, provides internal and external training, technical assistance, and acts as the bureau liaison to the other PA UCP certification agencies for process updates, and guidance on regulation. The section chief is actively involved in the PAUCP Oversight Committee and Administrative Appeals Committee and is the secondary voting member on behalf of the director. The section is responsible for the administration and management of the DBE and SBE Directory and DBE and SBE certification management system and communication with other state departments of transportation (DOTs) and unified certification programs (UCPs). This section also includes the DB program oversight, monitoring and compliance including assisting with policy and process development, participating in pre-conferences and verification of certification. The Section Chief and the EOS 2 are members of the DB GFE Interdisciplinary Review Team (IRT). The section's staff is comprised of one Section Chief (Special Investigator 3), one Special Investigator 2, one EOS 2, two EOS 1s, and one EOA. The DBE and SBE Certification Section Chief reports to the director.
- vi. The Contract Compliance section is responsible for the monitoring of highway construction firms to ensure adherence to EO/EEO contractual obligations through compliance reviews, technical assistance, regulation guidance, and training. This section also provides internal and external training in contract compliance and affirmative action. The main objective is to ensure compliance of the Department's equal employment/equal opportunity programs, per Executive Order 11246, Form FHWA 1273, and 23 CFR 230, including the submittal of required reports such as the Contract Compliance Review reports, PennDOT's 's Annual External EO Plan, and the PR-1392 report to FHWA for approval. The section chief (EOS3) is responsible for the day-to-day administration of the contract compliance program, this position reports to the director. The section chief reviews contract compliance reports, issues show cause notices. monitors voluntary corrective action plans, conducts contractor "Show Cause" teleconferences; updates EO forms,

manuals, and reports. The staff is comprised of one section four EOS 2 field agent positions. All report to the contract compliance section chief in central office. However, two are housed in district offices. The field agent compliance responsibilities are assigned by districts and include conducting contract compliance reviews, and providing technical assistance and training as needed. All staff, including the supervisor receive ongoing commonwealth and federal training, as required. Training is provided virtually, web-based, and in-person. One of the contract compliance field agents is currently working on completing the four-year master certificate training with the American Contract Compliance Association (ACCA) accredited through Morgan State University. Additional BEO staff from other programs areas are also attending the ACCA training and working towards their four-year master certificate.

B. District or Section Personnel

1. The bureau field agents perform the contract compliance program functions full-time. The field agents, report to BEO central office, Contract Compliance Section Chief. They are responsible for the monitoring of EEO contractual obligations, in their assigned districts, by conducting contract compliance reviews on highway construction projects and providing technical assistance to ensure compliance with Executive Order 11246, Form FHWA 1273, and 23 CFR 230. Initially, all issues should be handled at this level. Other duties required of project personnel include observation of the contractor's operations, maintaining project EEO reports, checking and transmitting data to the section office and obtaining reports to document the contractor's efforts and accomplishments.
2. The districts have project staff that have compliance responsibilities and work closely with BEO compliance staff. They are the assistant construction engineer (ACE), inspector-in-charge (IIC) and the district labor contract compliance agent (DLCCA). The reporting relationships are through the assistant district executive (ADE) for construction and the district executive (DE). All DEs report to the deputy secretary for highway administration. The ACE has oversight responsibility of the individual projects in each county in the district.
 - i. The IIC is assigned to each construction project to ensure compliance with all state and federal guidelines and maintain all compliance records and data from the contractors.
 - ii. The DLCCA provides BEO with information regarding the contractor's EO/EEO compliance plan. The DLCCAs have various job titles and functions for which they are responsible. Persons serving in this

capacity do not report to the bureau, but act as partners in the administration of the Contract Compliance and OJT Trainee Program. These individuals are the section's point of contact with the field office. They disseminate information to the field and address EO/EEO concerns at the lowest level.

3. BEO staff provides in-person technical assistance and web-based training to district staff. Any additional Federal training related to EO/EEO and compliance is offered and provided to district staff through BEO. District staff has received and will continue to receive training on Title VI, Contract Compliance, DBE CUF, and the OJT program.

Compliance Procedure

A. Applicable Directives

1. PennDOT complies with the contract compliance and organizational responsibilities to carry out the purpose and intent identified at 23 CFR 230.301-part I.
2. EEO Special Provisions (FHWA Federal Aid Highway Program Manual Volume 6, Chapter 4, Section 1, Sub-Section 2). The Department complies with and appends the EEO Special Provisions to its highway construction program.
3. Training Special Provisions (FHWA Federal Aid Highway Program Manual Volume 6, Chapter 4, Section 1, Sub-section 2). PennDOT complies and appends the Training Special Provision to its highway construction program.
4. FHWA Federal-Aid Highway Program Manual, Vol. 6, Chap 4, Sec. 1, Subsection 6 (Contract Procedures), and Subsection.

B. Implementation

See Exhibit C: Contract Compliance Field Agent Procedures Manual

1. An effective Contract Compliance Review Process is the means for determining whether a firm performing on a federal-aid highway contract is complying with EO/EEO program requirements. A contract compliance program involves objectively analyzing all pertinent documentation to make a compliance determination. If PennDOT determines that the contractor is not in compliance, they follow a systematic process to ensure compliance. The compliance review process consists of the following major components: planning, preliminary analysis, on-site verification, compliance determination and, where necessary, corrective action. If the contractor has not fulfilled its commitments, PennDOT will initiate enforcement actions to address the contractor's non-compliance. This will assist the contract compliance field agent with ensuring that the contractor produces positive and meaningful "good faith" results.

2. Contractor selections for a PennDOT compliance review is guided by the FHWA guidelines for selection criteria. The following items are taken in consideration along with those listed in 23 CFR 230, Subpart D: district work projections, field agent assignments outside of field work, Office of Federal Contract Compliance Program (OFCCP) plan for the season, current letting schedule, follow up reviews, OJT projections, and projects identified prior to peak employment. Project reviews can also be conducted as a result of a complaint, a follow-up, or a reported issue on how a particular project has dealt with recruitment.

PennDOT conducts project specific reviews. Project specific is defined as generally involving the review of a single project to determine whether contractors are in compliance with the Equal Opportunity and Equal Employment Opportunity special provisions of their contracts.

The entire compliance review process will not exceed the time frame as outlined in 23 CFR 230.409 and Appendix D to Subpart D of Part 230 unless an extension is requested and approved.

PennDOT has the following policies that support federal regulations:

- i. [Specifications, Publication 408/2020](#) contains current construction specifications for PennDOT projects. Publication 408/2020 is located on PennDOT's website. Each new change will contain all previous edition/change(s) in their entirety, with changed pages integrated. The change pages for each new change are located on PennDOT's website and may be printed from this location. Publication 408/2020 contains Designated Special Provisions (DSP), which are standard documents previously included in PennDOT's bid proposals. Effective with the publication of Publication 408 they will be maintained within this Appendix C in all versions (hard copy and internet) and be referenced in bid proposals. Governing Specifications, the applicable Designated Special Provisions, and other details will be specified in a single Standard Special Provision to each bid proposal. This Standard Special Provision is entitled: "GOVERNING SPECIFICATIONS AND APPLICABLE DESIGNATED SPECIAL PROVISION."

- DSP1 – Offset Provision for State Contracts.
- DSP2 – Contractor Responsibility Provisions.
- DSP7 – Disadvantaged Business Enterprise Requirements.
- DSP8 – Required Contract Provisions Federal-Aid Construction Contracts
- DSP9 – Special Supplement – Anti-Pollution Measures
- DSP10 – Nondiscrimination/Sexual Harassment Clause
- DSP11 – Contractor Integrity Provision
- DSP12 – Executive Order 11246, with Appendices A and B.
- DSP13 – Buy America
- DSP14 – Enhance Minimum Wage Provisions

The applicable DSPs for the purposes of Contract Compliance are DSP8. F. A. R. Required Contract Provisions Federal-Aid Construction Contracts Form FHWA-1273 and DSP12, Executive Order 11246, with Appendices A and B.

- DSP8: [Specification Publication 408 DSP 8](#)
- DSP12: [Specification Publication 408 DSP 12](#)

ii. The Project Office Manual (POM) Publication 2 is a compilation of

PennDOT’s policies and procedures relating to field administration and inspection of construction contracts. The purpose of the POM is to act as a reference for the appropriate PennDOT and district staff, to perform their duties in accordance with PennDOT policies and procedure. Each project field office shall have a copy of the POM and each district office shall have copies of the POM for the district construction staff’s use. The POM is a reference for performing EEO, trainee and DBE job duties in accordance with Department policy and procedure.

Contract compliance field agents provide technical assistance before, during and after onsite reviews. Contractors and subcontractors are also provided with the following document and information:

- Prequestionnaire packets, including document samples, assist contractors in complying with EO/EEO contractual requirements (see Contract Compliance Field Agent Procedures Guide Exhibit C)
- Contractor Compliance Training – [Engineering and Construction Management System \(ECMS\) Training Calendar](#)
- OFCCP Guide – [Construction Contractors Technical Assistance Guide](#)

- Affirmative Action Plan sample (see Contract Compliance Field Agent Procedures Guide Exhibit C)
 - Voluntary Identification Survey sample (see Contract Compliance Field Agent Procedures Guide Exhibit C)
3. BEO provides training and technical assistance to district personnel with EO responsibilities through meetings, web-based training and at district winter schools. BEO holds a monthly meeting for district compliance staff and other PennDOT staff to discuss and resolve contract compliance issues that may arise, and to provide clear direction to the field staff and review and discuss the EEO, trainee and DBE programs and requirements. The FHWA PA division office takes part in the meetings to provide federal guidance and feedback. BEO has also developed web-based trainings on Contractor Compliance and the OJT program. BEO provides presentations and training available for all district annual winter schools. Winter school is provided in all districts on a variety of topics to staff during “off season” in preparation for the next construction season. Federal training is also provided to PennDOT staff when it is made available through the US Department of Transportation (USDOT).
 4. The procedure for advising contractors on EEO requirements is communicated at the pre-construction meeting. BEO compliance staff and the DLCCA participates in the pre-construction meeting. The pre-construction meeting is held after the contract is awarded, and prior to the start of work. The district project engineer arranges a conference with the contractor, subcontractors, and all other interested parties to review contract requirements, construction details, work schedules, and any items pertinent to the project. Prior to the pre-construction meeting, the project engineer, all key inspectors, and the survey chief, study the project plans and become familiar with the project site to gain a thorough understanding of project requirements and existing project conditions. At the conference, department personnel and the contractor’s staff become acquainted, establish lines of authority, and determine responsibilities and duties. A detailed written record of the meeting is maintained in the contract file along with any required documentation provided to resource agencies. BEO provides contractors with information regarding EO/EEO compliance through technical assistance and web-based trainings. The information is directed to the contractor’s EEO officer, who has the responsibility and authority to administer the contractor’s EEO Policy/Program. The EEO officer is also responsible for the periodic review of project sites, wages, personnel actions, etc., for evidence of discriminatory treatment and the prompt investigation of all alleged discrimination complaints.

Accomplishments

The following information is a summary of the Construction Contract Compliance Program from January 1, 2023 – December 31, 2023.

Number of contractor compliance reviews conducted	7
Number of contractors under “conditional compliance” status	2
Number of contractors found in compliance	5
Number of contractors found in non-compliance	0
Number of “Show Cause Notices” issued	0
Number of “Corrective Action Plans” (CAP) issued	2
Number of “CAPs” rescinded	2
Number of follow-up reviews conducted	1

One Cap from 2022 required a follow-up in the 2023 calendar year. The contractor’s “noncompliance” determination was rescinded, and the contractor was determined to be “in compliance.” There were two Voluntary Corrective Action Plans (VCAP) in the 2023 calendar year. They contained issues that were corrected before the reviewer made their determination. There were two “conditional compliance” review determinations which removed the firm’s status from a possible “non-compliance” to “conditional compliance.” The reviewer will conduct follow-up reviews in the 2024 calendar year to determine compliance. Additionally, all of the contract compliance reviews conducted contained the OJT Training Special Provisions (TSP), which offers the opportunity for a complete analysis of the project.

The PR-1392 is a workforce analysis report. The report is used by FHWA annually, to compare employment data, and to measure if PennDOT is accomplishing its goals of assisting contractors with hiring the under-represented.

In 2023, the following workforce data was revealed:

- **Number of Projects: 516**
 - An increase of 95 project lettings from 2022
- **Total dollar value (2023): \$6,801,064,351**
 - An increase in the dollar expenditure of \$ 761.625,737 over 2022
- **Total Workforce: 14,594**
 - An increase in total employment of 4819 over 2022

The following actions will be taken by PennDOT (central office and district personnel) to address underrepresentation of women, especially minority women in the workforce of department contractors:

- The contract compliance section will work towards improving the number of compliance reviews completed. BEO has hired two new contract compliance field agents in August of 2023. The new staff will be prepared to start conducting compliance reviews in the 2024 construction season.
- Participate on EEO Committees with OFCCP for designated Mega projects.
- Provide EO compliance training and guidance for National Electric Vehicle Infrastructure (NEVI) Formula Program funding recipients.
- Conduct contract compliance reviews with NEVI contract holders and their contractors to ensure adherence to the requirements of Form FHWA 1273 in their contracts.
- Continue to request EEO be an agenda item at district pre-construction and construction progress meetings and at all project progress meetings.
- Attend and present at the Associated Pennsylvania Constructors (APC)/PennDOT Fall Conference.
- PennDOT will work with the contractors in understanding the job classifications on the required workforce report, so that all classifications are counted including supervisors and clerical personnel.
- Work with the districts and Bureau of Project Design and Delivery (BPDD) to find additional OJT program training slots in construction contracts.
- Provide technical assistance to contractors for identifying best practices for good faith efforts and overall improvement in recruitment and retention efforts for the trainee program and diversifying its general workforces. Information will be provided on the OJT program and the OJT Supportive Services Center (SSC) at every review.
- Continue to coordinate with FHWA, the US Department of Labor, OFCCP, the PA Department of Labor and Industry's Career Link, and the PA Department of Education.
- Continue to hold outreach meetings with community-based organizations and other women organizations.
- Continue to conduct quality compliance reviews and project site inspections.
- Initiate show cause notices and conduct show cause meetings with delinquent contractors. Steps will be taken to block delinquent contractor's prequalification status for firms who are non-compliant for two consecutive years.
- 2024 Workforce Development events will be held by the Contract Compliance and OJT Programs sections.

Consolidated compliance reviews

- There were no target areas reviewed since the inception of the consolidated compliance program.
- There is no negative impact or effect on the contract compliance division.

Home office reviews

PennDOT conducts project reviews. PennDOT conducts compliance reviews solely of project workforces engaged in on-site construction (employees at the physical location of the construction activity). Area-wide work force reviews are permissible under the FHWA regulations, as well as home office reviews.

Major problems encountered

- The perception of BEO as an enforcement organization.
- Contractors continue to struggle to find best practices for good faith efforts in the recruitment process.
- Contractor/Subcontractor EEO Officers are new in their positions and require extensive technical assistance by the reviewer.

Major breakthroughs

- BEO implemented cross program trainings for BEO staff and internal partners.
- Updates to the Form FHWA 1273 were made in October of 2023. PennDOT has coordinated with the Department of Labor to provide a statewide Davis Bacon Final Rule training for all DLCCA's, DE's, ACE's, and district field staff scheduled for January 2024.
- The Contract Compliance Field Agent Procedures Guide was updated along with review letters, forms, and questionnaires (see Exhibit C).
- Seven candidates, in various program areas, have been appointed towards filling the vacant positions in the BEO.
- BEO holds monthly meetings with the DLCCAs and other BEO administrators to build the relationships with the field staff and provide technical assistance on compliance duties to include OJT requirements.
- BEO initiated a "Paths to PennDOT" informational outreach events in 2022. The events continued throughout 2023. The event provided information on the program areas in the BEO along with information on upcoming projects, supportive services, and DBE certification assistance.
- Contract Compliance training and guidance for National Electric Vehicle Infrastructure Formula Program funding recipients has been provided for contracts awarded in 2023 and will be provided for contracts awarded going forward.
- A NEVI project Contract Compliance Review plan has been initiated and will be implemented upon completion for the 2024 NEVI project contracts.
- Workforce Development trainings will be provided by the Contract Compliance and OJT Program areas for 2024.

- DBE "Roads to Opportunity" Certification outreach events will be initiated in 2024 to provide information to businesses seeking DBE Certification.
- DBE "Roads to Opportunity" procurement events will be conducted in 2024. The events will assist certified DBEs in navigating PennDOT systems to provide them with the tools and information needed to assist with securing contracts.

Area Wide Plans / Hometown and Imposed

Area-wide plans are defined as affirmative action plans and are categorized as “hometown” or an “imposed” plan pursuant to Executive Order 11246. The U.S. Department of Labor (USDOL) is the only authority to determine compliance with EO 11246 (FHWA Order 4710.8 issued February 1, 1999). The Form FHWA 1273 and the Special Provisions (23 CFR 230 Appendix A) are specific affirmative action requirements for project activities under contract established by section 22 of the Federal-Aid Highway Act of 1968.

- A. Not Applicable
- B. Not Applicable
- C. Not Applicable
- D. Not Applicable
- E. Not Applicable

Contract Sanctions

See Exhibit C: Contract Compliance Sanctions Program Documents

A. The procedures used by PennDOT to impose contract sanctions to institute legal proceedings are as follows.

1. Sanctions for non-compliance include, but are not limited to, withholding payments, suspending the contract until compliance is obtained, terminating the contract, and/or damages.
2. The Voluntary Corrective Action Plan (VCAP) is a negotiated plan completed by the reviewer at the exit conference. Minor deficiencies that can be corrected within 15 days are listed and concerns and enforcement language are agreed upon and signed by the responsible official. Contained within the VCAP, are detailed time frames and the person responsible for implementing the corrective action. VCAP does not preclude a determination of noncompliance and project personnel conduct follow-up reviews to ensure compliance.
3. A determination of conditional compliance may be issued if a contractor requires additional time to complete a VCAP or if a contractor exhibits cooperation and provides evidence of efforts towards corrective action prior to a CAP agreement.
4. The Letter of Findings and Conciliation Agreement/Corrective Action Plan (CAP) lists deficiencies with recommended corrective action and is issued to the contractor. The contractor has 30 days to show cause and commit to a CAP. A conference is scheduled with the contractor within five days after receipt of the Letter of Findings.
5. The Show Cause Meeting Notice is a letter to the contractor for a mandatory meeting to discuss corrective action measures. This meeting is a detailed discussion of changes, to be made, with mandated time frames, to achieve compliance. A Sanctions Notice may be imposed due to lack of cooperation from the contractor, which requires mandatory submission of monthly and quarterly reports, and/or prequalification restrictions, suspensions, and/or debarment and use of the Contractor Responsibility Program (CRP).
6. PennDOT has included the following provision in Publication 408/2020 Commonwealth of Pennsylvania Department of Transportation, Section 100 General Provisions, 107.25: All federal-aid projects are subject to the

implementing rules and regulations of the various federal departments. Accordingly, the contract provisions and the penalties prescribed for their violations, both of which are required to be incorporated verbatim in all contracts for such federal-aid projects, will be set forth in the proposal and the contract applicable to each project.

7. Sanctions will include placing firms in the Contractor Responsibility Program (CRP). Authority for this granted under Commonwealth Management Directive 215.9, as amended. In addition, PennDOT may initiate suspension and debarment proceedings in relation to the contractor's prequalification status under 67 Pa. Code § 457.13, or more generally under 62 Pa. C.S. §531.
8. The purpose of the CRP is twofold, the first: to ensure that the commonwealth only contracts with responsible contractors, and second to collect any outstanding obligation owed to it. The CRP requires the contractor to certify, in writing, for itself and all its subcontractors that as of the date of its execution of any state contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the state or any governmental entity, instrumentality, or authority. The contractor must also certify that as of the date of execution, of any state contract, that it has no tax liabilities or other outstanding state obligations. Furthermore, the contractor must notify the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other state obligations, or if it or any of its subcontractors are suspended or debarred by the state, the federal government, or any other state or governmental entity. Failure to notify the contracting agency could result in suspension, debarment, or termination of a contract. Failure to carry out or perform all contract requirements, including compliance with all plans and specifications referenced therein, can place a contractor in this program.
9. In accordance with Form FHWA 1273(1)(3) "a breach of any of the stipulations contained in the Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the contracting good faith efforts to supply records needed to determine compliance with EEO requirements in the contract, PennDOT may temporarily withhold monthly payments as a means of impressing upon the contractor the necessity of complying with record requests."

B. State or Federal laws which are applicable

1. Pennsylvania Code 4 - §68.61, §68.1, outlines sanctions and administrative recourse for dealing with contractors and grantees who are not complying with equal opportunity requirements.
2. Form FHWA 1273 – Required Contract Provisions Federal-Aid Construction Contracts generally apply to all federal-aid highway construction projects, and must be incorporated into the construction contract, subcontracts, and lower-tier subcontracts. A state highway agency (STA) is not permitted to modify the provisions of Form FHWA 1273. However, an STA may develop a separate supplemental specification or special provision if the content does not conflict with federal requirements or change the intent of the provision.
3. Title 23 CFR 633.102 provides the FHWA’s regulatory policy of required use and implementation of the required contract provisions. (See the discussion in the FHWA Contract Administration Core Curriculum Manual for current FHWA policy).
4. Executive Order 11246 states, “(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 No. 11246 of September 24, 1965, or by rule, regulation, or order of the secretary of labor, or as otherwise provided by law.”

C. The Department can withhold a contract’s progress payment for failure to comply with EEO requirements. No payments were withheld in 2023.

Complaints

A. PennDOT's procedures for handling discrimination complaints against contractors, are as follows:

1. When PennDOT is made aware of complaints filed by employees working for either contractors or subcontractors, the affected contractor should be prompted by the district project manager to launch an investigation, as per the contractor's complaint procedure and policy, and provide updates. The project manager is responsible for informing the BEO field agent as soon as they learn of the complaint. The BEO field agent will be responsible to immediately report the complaint and outcome to the section chief. The BEO director will inform FHWA of the outcome of the investigation. The BEO section chief will serve in the reviewer role to determine if appropriate and timely action is being taken by the contractor. If a complaint is made by a contractor employee directly to a BEO field agent, the agent will refer the complainant to the employer's Human Resource Office, as well as the Pennsylvania Human Relations Commission (PHRC) and/or the Equal Employment Opportunity Commission (EEOC). Unless specifically directed by the BEO director, as a special assignment, a BEO field agent should not take on the lead role as an investigator of a contractor's employee's complaint. Any evidence received by the BEO field agent that demonstrates a contractor's unwillingness to investigate, take appropriate action, or report findings, will be escalated to the BEO director for coordination with the Office of Chief Counsel to determine next steps.

- i. It should be noted that a contractor who fails to meet its contractual obligation to follow mandated nondiscrimination policies or fulfill its responsibility to investigate a complaint may be sanctioned under the terms of its contract with PennDOT and state and federal law. If the complaint involves conduct at a contract worksite by a department employee, the District Human Resource office must be informed.

B. The State has a comparable agency to a fair employment agency, Pennsylvania Human Relations Commission (PHRC). The contractor employee is provided with the option of utilizing other avenues of recourse such as the PHRC and the EEOC. Contractors are required to post the PHRC and EEOC notices for employees and potential employees regarding the complaint process.

C. There were zero discrimination complaints filed against federal-aid highway contractors with the Contract Compliance section, during the period of January 1, 2023 – December 31, 2023.

External Training Programs including Supportive Services

- A. In accordance with the Training Special Provision (TSP), as outlined in Appendix B of 23 CFR, 230A, DOT has developed provisions that are incorporated in selected federally funded projects. Identification process for projects to include the TSPs.
1. Bureau of Project Delivery (BPD), in coordination with district construction and design personnel, and the BEO's OJT program supervisor, determines which construction projects can support training slots.
 2. Before each construction season, BPD in coordination with district construction and design personnel, and the OJT program administrator, identify potential availability of work under contract, the duration of the work (to ensure adequate time for completion of training), and the potential long-term benefits to trainees. Assignment of training slot to specific projects is based on the following:
 - The availability of minorities, women, and disadvantaged individuals
 - The potential for effective training
 - The duration of the contract
 - The dollar value of the contract
 - The total normal workforce the average bidder is expected to use
 - The geographic location
 - The type of work
 - The need for additional journeymen in the area
 - The total trainees established, and trainee goal submitted to FHWA
 - The ration of journeymen to trainees during normal operations
 3. The OJT Training Manual lays out the contract provision requiring contractors to submit a training program within 10 calendar days following the project's notice to proceed. Contractors may utilize OJT programs from PennDOT's OJT Training manual, develop their own, or utilize a training program approved by the USDOL's Office of Apprenticeship. Contractors are required to submit their name, the last four digits of their social security number, classification, rate of pay, and the ethnicity and sex of proposed trainees prior to the trainees beginning training. Additionally, contractors must submit a monthly training report containing the following information: training hours per month, hours to date, hours remaining summary of specific tasks performed, evaluation of trainee, termination date, lay0-off date and anticipated recall date, and signatures from the contractor, trainee, and the applicable Department personnel. The OJT Training Manual outlines the Department's approved

training programs for use by construction contractors on FHWA funded projects that meet the above criteria.

- B.** PennDOT's procedures for identifying the number of minorities and women who have completed training programs is determined by the number of contractors issued trainee completion certificates. The OJT Supportive Services Contractor (SSC) provides a quarterly and annual report that identifies participants in the OJT program, which includes the number of trainees who have completed training.
- C.** There were 165 total trainees in 2023. This data was obtained from the OJT accomplishments report. 26.6 % of the total trainees placed were women. The OJT trainee goal for 2024 is 180. This number is an estimate based on data received on prior OJT status reports and includes new and returning trainees in layoff status. This report is provided by OJT SSC. In accordance with 23 CFR 230.11 (b), Implementation of Special Requirements for the Provision of On-The-Job Training, the Department provides a standalone accomplishments report for the calendar year to FHWA and will no longer provide that data as part of this plan.
- D.** PennDOT utilizes a consultant to provide the federally obligated OJT supportive services. A new contract was competitively bid on using federal-aid funds in July 2021. As of October 1, 2021, services are provided by ProRank Business Solutions, LLC (ProRank), a minority owned DBE. The contract is a one-year contract which began on October 1, 2021 and ending on September 30, 2022. PennDOT reserves the option to renew four times annually unless it is terminated earlier pursuant to the terms of the contract. The contract was renewed for 2023. ProRank is a full-service business development and diversity consulting company. The company has previous experience in developing and implementing successful OJT supportive service programs and initiatives for other STAs.
- E.** PennDOT requires monthly, quarterly, and annual reports be submitted by ProRank. These reports identify minorities, women and disadvantaged individuals who have been enrolled for on-the-job training and have successfully completed training during the reporting period. The reports also identify the trainees who are currently enrolled, were laid off, resigned or were terminated. In addition, ProRank will establish an Individual Trainee Development and Support Program to assist up to 30 active trainees with additional training and support assist trainees when applying for highway construction positions. The potential trainees are identified through a program-specific needs assessment tool. The pilot program will give trainees assistance and support by removing certain financial barriers which potentially limit a trainee's ability to participate in OJT programs. Expenses such as a childcare expense, public transportation, work supplies, and training courses are eligible for reimbursement. ProRank will also develop a needs assessment tool and provide an annual report to PennDOT for the overall OJT SSC.

In accordance, with 23 CFR, 230, Subpart A, paragraph 230.113 (f) (5)-(6), supportive service contractors have reporting requirements that are provided to PennDOT. PennDOT's Supportive Services program's primary purpose is designed to increase the effectiveness of approved OJT training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women and persons who are disadvantaged on federal-aid highway projects. PennDOT uses the data contained in the reports to identify and correct areas of concern within a prompt timeframe and to insert innovative ideas into the implementation of PennDOT's a supportive service program. PennDOT will continue to utilize reports submitted, to evaluate the status of training programs, with reference to minorities and women.

Disadvantaged Business Enterprise (DBE) Program

Minority Business Enterprise (MBE) Program is addressed in the formal DBE Implementation Plan submission, Publication 404.

PennDOT does not have a separate MBE program but does have the DBE program, which is carried out under the rules and guidelines in the 49 CFR 23 and 26. The DBE program plan was received by FHWA in December 2015 and approved in February 2016. Due to regulatory changes, internal organizational, and other DBE program changes, PennDOT's BEO contracted with McCormick Taylor in September 2021 to work on updates and revisions to the DBE Program Plan. The updated plan is scheduled to be published in 2024.

- Describe the method used for the listing of minority contractors capable of or interested in highway construction contracting or subcontracting. Describe the process to circulate names of appropriated minority firms and associates to contractors obtaining contract proposals. [Refer to the DBE Program Plan](#)
- Describe the state's procedure for ensuring that contractors take action to affirmatively solicit the interest, capability, and prices of potential minority subcontractors. Refer to the DBE Program Plan
- Describe the state's procedure for ensuring that contractors have designated liaison officers to administer the minority business enterprise program in an effective manner. Specify resource material, including contracts, which the state provides to liaison officers. Refer to the DBE Program Plan
- Describe the action the state has taken to meet its goals for prequalification or licensing of minority business. Include dollar goals established for the year and describe what criteria or formula the state has adopted for setting such goals. If it is different from the previous year, describe in detail. Refer to the DBE Program Plan
- Outline the state's procedure for evaluating its prequalification/licensing requirements. Refer to the DBE Program Plan
- Identify instances where the state has waived prequalification for subcontractors on federal-aid construction work or for prime contractors on Federal-aid contracts with an estimated dollar value lower than \$100,000. Refer to the DBE Program Plan
- Describe the State's methods of monitoring the progress and results of its minority business enterprise efforts. Refer to the DBE Program Plan

Liaisons

PennDOT, through BEO, has developed ongoing relationships with the following organizations and maintains this through outreach, communication, and technical assistance.

- United State Department of Labor (USDOL) / Office of Federal Contract Compliance Programs (OFCCP)
- National Association for the Advancement of Colored People (NAACP)
- PA Department of Labor and Industry
- CareerLink
- Apprenticeship and Training Office
- Constructors Association of Western Pennsylvania (CAWP)
- Western Pennsylvania Operation Engineers Joint Apprenticeship & Training Program
- Associated Pennsylvania Constructors (APC)
- Teamster Union
- Keystone Mountain Lakes Regional Council of Carpenters Union
- Greater Pennsylvania Regional Council of Carpenters
- Masons Union
- United Steelworkers Union
- Minority Enterprise Center
- Three Rivers Workforce Investment Board
- American Council of Engineering Companies of PA (ACEC/PA)
- City of Harrisburg-Department of Community & Economic Development
- Technical and Vocational Schools
- Hispanic Community Centers
- Cheyney University
- The Lincoln University
- Indiana University of PA (IUP)
- Pennsylvania Diversity Coalition (PADC)
- United States Minority Business Development Agency (Philadelphia and Pittsburgh)
- Diversity & Inclusion Professionals of Central PA (DIPCPA)

- Local and Minority Chamber of Commerce Organizations
- Associated Builders & Contractors, Inc.
- Small Business Administration, Philadelphia District Office
- National Association of Minority Contractors, Philadelphia Chapter
- WTS Advancing Women in Transportation
- American Association of State Highway and Transportation Officials (AASHTO)
- PA Department of General Services
- PA Department of Corrections
- PA Department of Human Services
- PA Department of Education
- PAUCP partners (SPETA, Philadelphia Airport, Allegheny County Department of Equity and Inclusion, Port Authority of Allegheny County, PA Turnpike Commission, Pittsburgh Airport and Delaware Valley Regional Planning Commission)

Innovative Programs

PennDOT's Bureau of Project Design and Delivery notified the ADEs of Design and Construction that PennDOT is looking to pilot a small business set-aside for design and construction inspection agreements from each district. The agreements for the pilot should have the planned project published date and an advertisement date by June 2024. For Design work, the projects can be Bridge replacement, resurfacing, traffic, environmental or any other work that would work well with getting a SBE experience as a prime consultant. For construction inspection, projects that will require six consecutive months of inspection will help the SBE firms attain 1 year of experience for their inspectors.

Mentor-Protégé Program (MPP) – PennDOT developed this program as a pilot using state dollars. Support and input from the Federal Highway Administration (FHWA) has been useful in fully developing the MPP. The MPP has been developed to use a 4-level tiering system to show a DBE's progression. Tier 1 assists willing underutilized DBE consultants and contractors in registering as business partners in the Engineering and Construction Management System (ECMS). Tier 2 assists underutilized consultants and contractors in becoming able teaming partners. Tier 3 underutilized consultants and contractors are ready to work and available for open opportunities with potential mentors. This tier is about building connections between underutilized DBEs and prospective mentor firms. Tier 4 identifies protégés that were part of a team that was ultimately contracted on an MPP project.

The MPP focuses specifically on assisting underutilized Disadvantaged Business Enterprises (DBEs), a subset of all DBEs, to be selected on agreements and contracts. The MPP team, which consists of both underutilized DBEs and DBEs, is working with contractors and consultants to attract and train new employees in the transportation industry. Training will be more predictable and available to a new workforce to construct, inspect, and supervise the delivery of construction projects. ProRank continued to provide services to help underutilized DBEs succeed. ProRank held over 50 sessions in 2023 to provide updates and answer questions for underutilized DBEs. These sessions included informative presentations from PennDOT leadership and technical experts. PennDOT and ProRank, who manages the DBE Supportive Services Center, provided additional training through YouTube. This content served multiple purposes: spreading awareness about the program, educating firms on processes, and providing updates on progress to date. Announcements were made regarding awarded and upcoming projects. Based on feedback from end users at the ACEC/PA and APC conferences, ProRank adjusted its website to create a more user-friendly platform.