

# Reclamation Manual

## Directives and Standards

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<b>Subject:</b>	Reclamation Standard Water-Related Contract Articles, Standard Article 23: Equal Employment Opportunity (Federal Construction)
<b>Purpose:</b>	To provide the text of and requirements for the application of Standard Article 23: Equal Employment Opportunity (Federal Construction) (Standard Article 23), for the benefit of supporting general policy and specific requirements set forth in Reclamation Manual Policy, <i>Reclamation Standard Water-Related Contract Articles</i> (PEC P10).
<b>Authority:</b>	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto; Executive Order No. 11246 of September 24, 1965; and 41 C.F.R. §§ 60-1.1 and 60-1.3 – 60-1.5. <sup>1</sup>
<b>Approving Official:</b>	Director, Policy and Administration
<b>Contact:</b>	Reclamation Law Administration Division (84-55000)

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1. **Introduction.** There are two versions of Standard Article 23 - Versions A and B. Both versions confirm the contractor's obligation to comply with applicable Equal Employment Opportunity requirements and to include similar language in any non-exempt subcontracts. Version A is required in contracts as indicated at Paragraph 4.B. of PEC P10, except where it conflicts with subsections 701(b)(1)<sup>2</sup> and 703(i)<sup>3</sup> of Title VII of the Civil Rights Act of 1964. Version B provides alternative language for and is required in contracts under which Indian employment is a condition pursuant to subsection 703(i).
2. **Applicability.** This Directive and Standard applies to Bureau of Reclamation staff and officials involved in the contracting process, as defined at Paragraph 5.A. of PEC P10.
3. **Requirements and Responsibilities.** Reclamation staff and officials involved in the contracting process will include the appropriate text below in all contracts requiring Standard Article 23 under Paragraph 4.B. of PEC P10.

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<sup>1</sup>Use of the Equal Employment Opportunity provisions set forth in 41 C.F.R. § 60-1.4 is directed by Executive Order No. 11246 of September 24, 1965.

<sup>2</sup>Subsection 701(b)(1) defines the term "employer" to exclude the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined at 5 U.S.C. § 2102).

<sup>3</sup>Subsection 703(i) states: "Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation."

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### A. Text of Standard Article 23 – Version A.

#### EQUAL EMPLOYMENT OPPORTUNITY<sup>4</sup>

(Federal Construction)

The following language is required by Executive Order No. 11246 of September 24, 1965, in all government contracts unless and until it is superseded or amended.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, sex identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, sex identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, sex identity, or national origin.

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<sup>4</sup>Approved 02/79; reviewed 11/84; revised 04/01; 04/10.

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(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and

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accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) 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 Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided 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.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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### B. Text of Standard Article 23 – Version B.

#### INDIAN EMPLOYMENT – EQUAL EMPLOYMENT OPPORTUNITY

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

(b) The following language is required by Executive Order No. 11246 of September 24, 1965, in all government contracts unless and until it is superseded or amended.

Except as provided by clause (a), during the performance of this contract the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, sex identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, sex identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive

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consideration for employment without regard to race, color, religion, sex, sexual orientation, sex identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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(6) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) 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 Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided 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.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor

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or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. **Definitions.** See Paragraph 5 of PEC P10 and 41 C.F.R. § 60-1.3.
5. **Review Period.** The originating office will review this release every 4 years.