



WASHINGTON STATE FERRIES

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

NEW 144 - AUTO FERRIES

DESIGN-BUILD CONTRACT NO. 00-6674

**PART – D, DETAILED DESIGN THROUGH DELIVERY OF UP TO FIVE
VESSELS,**

**EXHIBIT 1, NONDISCRIMINATION AND EQUAL EMPLOYMENT
OPPORTUNITY**

16 February 2021, DRAFT



1-07.11 Requirements for Nondiscrimination

1-07.11(1) General Application

Discrimination in all phases of contracted employment, contracting activities and training is prohibited by Title VI of the Civil Rights Act of 1964, Section 162(a) of the Federal-Aid Highway Act of 1973, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Justice System Improvement Act of 1979, the American with Disabilities Act of 1990, the Civil Rights Restoration Act of 1987, 49 CFR Part 21, RCW 49.60 and other related laws and statutes. The referenced legal citations establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this section of these *Standard Specifications*.

1-07.11(2) Contractual Requirements

1. The Contractor shall maintain a Work site that is free of harassment, humiliation, fear, hostility and intimidation at all times. Behaviors that violate this requirement include but are not limited to:
 - a. Persistent conduct that is offensive and unwelcome.
 - b. Conduct that is considered to be hazing.
 - c. Jokes about race, gender, or sexuality that are offensive.
 - d. Unwelcome, unwanted, rude or offensive conduct or advances of a sexual nature which interferes with a person's ability to perform their job or creates an intimidating, hostile, or offensive work environment.
 - e. Language or conduct that is offensive, threatening, intimidating or hostile based on race, gender, or sexual orientation.
 - f. Repeating rumors about individuals in the Work Site that are considered to be harassing or harmful to the individual's reputation.
2. The Contractor shall not discriminate against any employee or applicant for contracted employment because of race, religion, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability.
3. The Contractor shall, in all solicitations or advertisements for employees, state that all qualified applicants will be considered for employment, without regard to race, religion, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.

4. The Contractor shall insert the following notification in all solicitations for bids for Work or material subject to federal laws and regulations and made in connection with all program and activities and, in adapted form in all proposals for negotiated agreements:

The Contractor in accordance to Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S. Code 2000d to 2000d-4, and Title 49 Code of Federal Regulations, Part 21, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color national origin and sex in consideration for an award.

5. The Contractor shall make decisions with regard to selection and retention of subcontractors, procurement of materials and equipment and similar actions related to the Contract without regard to race, religion, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
6. The Contractor shall send to each labor union, employment agency, or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency or worker's representative, of the Contractor's commitments under this Contract with regard to nondiscrimination.
7. The Contractor shall permit access to its books, records and accounts by the Contracting Agency for the purpose of investigating to ascertain compliance with these Specifications. In the event that information required of a Contractor is in the possession of another who fails or refuses to furnish this information, the Contractor shall describe, in writing, what efforts were made to obtain the information.
8. The Contractor shall maintain records with the name and address of each minority/ female worker referred to the Contractor and what action was taken with respect to the referred worker.
9. The Contractor shall notify the Contracting Agency whenever the union with which the Contractor has a collective bargaining agreement has impeded the Contractor's efforts to effect minority/female workforce utilization. This being the case, the Contractor shall show what relief they have sought under such collective bargaining agreements.
10. The Contractor is encouraged to participate in Contracting Agency and Washington State Human Rights Commission approved program(s) designed to train craft-workers for the construction trades.

1-07.11(2)A Equal Employment Opportunity (EEO) Responsibilities

Title VI Responsibilities

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **Compliance With Regulations** – The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
2. **Nondiscrimination** – The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment** – In all solicitations either by competitive bidding or negotiations made by the Contractor for Work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.
4. **Information and Reports** – The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Washington State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Washington State Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance** – In the event of the Contractor’s noncompliance with the nondiscrimination provisions of this Contract, the Washington State Department of Transportation shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or;
 - b. Cancellation, termination, or suspension of the Contract, in whole or in part.

6. **Incorporation of Provisions** – The Contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any Subcontractor or procurement as the Washington State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the Washington State Department of Transportation enter into such litigation to protect the interests of the state and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

1-07.11(3) Equal Employment Opportunity Officer

The Contractor shall officially designate and make known to the Engineer during the preconstruction conference and discussions the firm's Equal Employment Opportunity Officer (hereinafter referred to as the EEO Officer). The EEO Officer will also be responsible for making him/herself known to each of the Contractor's employees. The EEO Officer must possess the responsibility, authority, and capability for administering and promoting an active and effective Contractor program of equal employment opportunity.

1-07.11(4) Dissemination of Policy

1-07.11(4)A Supervisory Personnel

All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, shall be made fully cognizant of, and shall implement the Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions shall be taken as a minimum:

1. **EEO Meetings** – Periodic meetings of supervisory and personnel office employees shall be conducted before the start of Work and then not less often than once every 6 months, at which time the Contractor's equal employment opportunity policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or other knowledgeable company official.
2. **EEO Indoctrination** – All new supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Contractor's equal employment opportunity obligations within 30 days following their reporting for duty with the Contractor.
3. **Internal EEO Procedures** – All personnel who are engaged in direct recruitment for the project shall be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group and female employees.

1-07.11(4)B Employees, Applicants, and Potential Employees

In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees, and potential sources of employees, e.g., schools, employment agencies, labor unions (where appropriate), college placement officers, and community organizations, the Contractor shall take the following actions:

1. **Notices and Posters** – Notices and posters setting forth the Contractor's equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.
2. **EEO Indoctrination** – The Contractor's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

1-07.11(5) Sanctions

In the event of the Contractor is found in noncompliance with the provisions of Section 1-07.11, the Contracting Agency may impose such Contract sanctions as it or the Federal Highway Administration may determine necessary to gain compliance including, but not limited to:

1. Progress payment requests may not be honored until the noncompliance is remedied to the satisfaction of the Contracting Agency.
2. The Contract may be suspended, in whole or in part, until such time as the Contractor is determined to be in compliance by the Contracting Agency.
3. The Contractor's pre-qualification may be suspended or revoked pursuant to WAC 468-16. The Contracting Agency may refer the matter to the Federal Highway Administration (FHWA) for possible federal sanctions.
4. The Contract may be terminated.

Immediately upon the Engineer's request, the Contractor shall remove from the Work site any employee engaging in behaviors that promote harassment, humiliation, fear or intimidation including but not limited to those described in these specifications.

1-07.11(6) Incorporation of Provisions

The Contractor shall include the provisions of Section 1-07.11(2) Contractual Requirements (1) through (5) and the Section 1-07.11(5) Sanctions in every subcontract including procurement of materials and leases of equipment. The Contractor shall take such action or enforce sanctions with respect to a Subcontractor or supplier as the Contracting Agency or the FHWA may direct as a means of enforcing such provisions. In the event a Contractor becomes involved in litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the Contracting Agency enter into such litigation to protect their interests and the Contracting Agency may request the federal government to enter into such litigation to protect the interests of the United States.

1-07.11(7) Vacant

1-07.11(8) Vacant

1-07.11(9) Subcontracting, Procurement of Materials, and Leasing of Equipment

Nondiscrimination – The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment.

Solicitation and Utilization – The Contractor shall use their best effort to solicit bids from, and to utilize, disadvantaged, minority, and women Subcontractors, or Subcontractors with meaningful minority and women representation among their employees.

Subcontractor EEO Obligations – The Contractor shall notify all potential Subcontractors and suppliers of the EEO obligations required by the Contract. The Contractor shall use their efforts to ensure Subcontractors compliance with their equal employment opportunity obligations.

1-07.11(10) Records and Reports

1-07.11(10)A General

The Contractor shall keep such records as are necessary to determine compliance with the Contractor's equal employment opportunity obligations. The records kept by the Contractor shall be designated to indicate:

1. **Work Force Data** – The number of minority and nonminority group members and women employed in each work classification on the project.
2. **Good Faith Efforts – Unions** – The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
3. **Good Faith Efforts – Recruitment** – The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
4. **Subcontracting** – The progress and efforts being made in securing the services of disadvantaged, minority, and women Subcontractors or Subcontractors with meaningful minority and female representation among their employees.

1-07.11(10)B Required Records and Retention

All records must be retained by the Contractor for a period of three years following acceptance of the Contract Work. All records shall be available at reasonable times and places for inspection by authorized representatives of either the Washington State Department of Transportation or the Federal Highway Administration.

Federal-Aid Highway Construction Contractors Annual EEO Report

FHWA #1391 – This form is required for all federally assisted projects provided the Contract is equal to or greater than \$10,000 and for every associated subcontract equal to or greater than \$10,000. Each Contract requires separate reports filed for the Contractor and each Subcontractor

(subject to the above noted criteria). These forms are due by August 25th in every year during which Work was performed in July. The payroll period to be reflected in the report is the last payroll period in July in which Work was performed. This report is required of each Contractor and Subcontractor for each federally assisted Contract on which the Contractor or Subcontractor performs Work during the month of July.

Monthly Employment Utilization Reports

WSDOT Form 820-010 – This form (or substitute form as approved by the Contracting Agency) is required for all federally assisted projects if the Contract is equal to or greater than \$10,000 and for every associated subcontract equal to or greater than \$10,000. These monthly reports are to be maintained in the respective Contractor or Subcontractor's records.

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