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● **THE SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT  
AND  
THE MAYOR'S OFFICE OF SMALL BUSINESS ASSISTANCE**

**LOS ANGELES  
METRO RAIL PROJECT CONFERENCE  
FOR  
DISADVANTAGED BUSINESS ENTERPRISE/  
WOMEN-OWNED BUSINESS ENTERPRISE**

**SEPTEMBER 27, 1985**

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THE SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

LOS ANGELES METRO RAIL CONFERENCE  
FOR  
DISADVANTAGED BUSINESS ENTERPRISE/WOMEN-OWNED  
BUSINESS ENTERPRISE (DBE/WBE) COMMUNITY

AGENDA

September 27, 1985  
8:00 A.M.

Moderator: E. V. Martinez, Equal Opportunity Administrator, PDCD

8:00 - 8:45	Registration/Coffee	
8:45 - 9:00	Welcome	M. L. Polacek Construction Manager PDCD
9:00 - 9:15	Relationship between PDCD and SCRTD, Prime Contractor, Subcontractor	H. C. Scott Deputy CM/Operations PDCD
9:15 - 9:45	DBE/WBE Program and Bidding Requirements	A. Martinez DBE/WBE Manager SCRTD
9:45 - 10:15	Bonding Program and Technical Assistance for Subcontractors	M. Williams Assistant General Manager SCRTD
10:15 - 10:45	Contract Compliance	K. Rascoe Compliance Manager SCRTD
10:45 - 11:00	Coffee Break	
11:00 - 11:30	Affirmative Action	R. Gonzales EEO Manager SCRTD
11:30 - 12:00 p.m.	Safety Standards	J. R. York Safety/Security Manager PDCD
12:00 - 12:30	Community Relations	M. M. Morton Community Relations Manager PDCD
12:30 - 1:00	Work Opportunities	W. H. George Deputy CM/Engr. Services PDCD
1:00 - 1:05	Closing Remarks	M. L. Polacek

# GETTING THERE



A publication for minority and women-owned businesses

...with your help

Vol. 1 No. 2 Feb/Mar 1985

## FROM RTD TO YOU

We want our readers to have a good understanding of our procurement process. Therefore, this issue will focus on buyer contacts, purchasing of goods and services, and provide an introduction to our Office of Contacts, Purchasing and Materiel (OCPM).

Equal Opportunity appreciates your favorable response to date and welcomes more comments in the future. Our aim is to continue to inform the minority business community.



(l to r) George Pla, Nancy Kilmurray, Kenneth Cross and Doll Ligon.

ors to locate immediately the appropriate staffperson when necessary.

Other items identified included encouraging broker practices which are favorable to DBE/WBE truckers, creating literature instructing them how to bid successfully on contracts and certification assistance. Mr. Pla acknowledged that there was "a good response from the survey and that it addressed 'individual' questions."

Nancy Kilmurray, Transportation Analyst for the Public Utilities Commission, was on hand to refresh the minority truckers on rules and regulations set by PUC as they would apply to SCRTD's projects. Ms. Kilmurray, who was known by all from her site visits and PUC "baseball" cap, informed enthused trucking representatives of a new measure which allows existing highway contract permit holders to pick-up a state-wide dump truck carrier permit by March 15 for a fee of \$50.00.

Senior Equal Opportunity Representative at SCRTD, Kenneth Cross, gave a talk on "Doing Business with RTD,"

and afterwards opened up a question and answer period where good feedback was received. Cross stressed the value of networking and of keeping information current as a key factor. "We draw from our certified directory," he added. "We can't commend an award to the board otherwise. This cuts down a lot of confusion."

While Doll Ligon, for-  
(Continued page 2)

## TRUCKERS ON THE ROAD TO HELP

by Pat Jordan

The Southern California Rapid Transit District's Equal Opportunity Department recently sponsored a forum to share results from a survey conducted by Cordoba Corporation on minority trucking firms.

Cordoba Corporation, a hispanic consulting firm certified with the District in its Disadvantaged Business Enterprise and Women's Business Enterprise (DBE/WBE) program, was retained to meet with the trucking companies and assess ways in which they can realistically participate in METRO RAIL and other SCRTD projects.

Held at Ramada Inn in Carson, the forum was the result of the truckers' expressed interest in the results. The study focused on the special problems of the truckers' industry, what opportunities are available at RTD for them, and how we can best assist them.

After a welcome by Angelica Chatham, SCRTD's DBE/WBE program manager, George Pla, President of Cordoba, gave an overview of the results from input given by the participants.

Respondents felt the RTD should identify a primary contact for DBE / WBE truckers. This individual would provide information and referral services to current and potential RTD trucker sub-contractors. Also, the District making available a list identifying Equal Opportunity eligibility, and a contact number would, in effect, enable contract-



Truckers Ben Johnson (2nd from l) and E. Whittington (hand raised), offer feedback, while Angelica Chatham (2nd from r) and Evelyn Martinez (PDCD) look on.

## EXECUTIVE NOTES

by John A. Dyer,  
General Manager



Mr. Ray Judson, President of the Ralph M. Parsons Corporation, was the culmination of a year of increased activity for the Black Business Association and all of its members. The numerous public and private supporters of this Association are indicators of its long standing role as a promoter of increased opportunity for minority businessmen and women throughout the Los Angeles area. The theme of the dinner, "Americans Working Together," is one we share at the District. The District will continue to make every effort to increase the participation of disadvantaged and women owned firms in all District contracting opportunities and to work with organizations such as the Black Business Association.

I wish to congratulate those who received various awards from the Association during the dinner. This includes Marvin Williams, SCRTD Assistant General Manager for Equal Opportunity, who received the President's Award for outstanding contributions to the black business community.

The organization of the minority and female business community into industry associations is an important step in strengthening the minority business community. These associations provide varying degrees of support and information to the many minority businesses in our community. They also provide leadership to us all in the movement toward greater participation by these firms in public and private contracting opportunities.

We wish to salute the California Association of Minority American Contractors, the National Association of Minority Contractors, the Urban Indian Development Association, the Latin Business Association, the Asian Business Association, the Women Business Association, Women in Construction, and other local/national minority and women professional associations for the great job they are doing.

### TRUCKERS (Continued from page 1)

mer SCRTD bus operator and now partner in Mother & Sons Trucking in Gardena, offered good remarks on the prospects of "dirt-hauling" contracts with Metro Rail, she emphasized, "We are not only dirt-haulers, but also steel and gravel haulers, plus demolition contractors."

All involved felt the forum was a good link in developing ties between SCRTD and the minority trucking industry.

### HOLDEN: A MAN COMMITTED TO HELPING

by Pat Jordan

Former State Senator Nate Holden currently serves on the Board of Directors for the Southern California Rapid Transit District. Holden, who has been a Director since July 1983, was appointed by County Supervisor Kenneth Hahn. He is a choice selection, having served as chairman of the Select Committee on Rapid Transit for Southern California during his term as Senator and has held an interest in transit matters for many years.

Director Holden, who is known for his eloquence, was an aerospace engineer for seventeen years and Deputy to County Supervisor Hahn for four years prior to being elected President of the California Democratic Council. As a State Senator, he was involved in consumer-oriented legislation and responsible for seventy bills being enacted into law.

"I see myself as an executive and administrator of the whole District and its policies (administrative and business)," says Holden. "I have a part in setting salaries, hiring general managers, making final decisions on major purchases and on who develops and constructs capital projects."

Since the Board is a legislative body as well, he also has a hand in adopting ordinances affecting the whole District and setting rates for fares. In addition, he votes on and makes sure major policies are implemented.

Being a Director at RTD takes a lot of time and effort. "Almost like having a full time job," stressed Holden. But he manages to give his all and function just as capably as Assistant Chief Deputy to Kenneth Hahn, doing everything from lobbying in Sacramento and Washington D.C. to solving constituent problems.

Holden, a big supporter of the District's Disadvantaged Business Enterprise and Women's Business Enterprise (DBE/WBE) program, believes "it is essential and long overdue, because for too long minorities have been shut out of their fair share." He is glad the Board is supportive as a whole, since minorities have contributed to the Transit District by way of taxes and monies, and certainly they should get a lot of this back, especially if they can do the work (if they are qualified individuals).

"Minority businesses can work themselves up to the position where they are no longer classified as such," commented Holden. "I visualize them 'melting' right into the whole process and the goal that is established for them becoming an automatic. They should be negotiating for the top item . . . 'Do it all,' just like any other business person."

Looking at the Metro Rail Project, he remarks it is a good vehicle, but not the only vehicle. "The District spends a lot of money in this community, buying everything from buses to paper goods . . . there is no



NATE HOLDEN

(Continued next page)

## HOLDEN (Continued from previous page)

reason why we can't spend it with minorities as well as the business public at large. Minorities have given a lot to the community. It is only right that they should be given a chance to benefit through business opportunities in that community."

Holden monitors the Equal Opportunity Department, in charge of administering the DBE/WBE program. "They are doing what is needed," he says, "assisting companies with certification, staying informed about procurement matters and doing all they can to ensure contract compliance."

## PROFILES

### JAYKIM ENGINEERS, INC.

by Pat Jordan

One of the first companies certified with the Southern California Rapid Transit District minority business program, JayKim Engineers, Inc., hails an impressive background in consulting engineering, providing services to government agencies and the private sector.

Formed in 1977 by Jay C. Kim, the company was certified in 1982. Their first job for the District, that same year, was as a prime contractor in conducting construction surveying for the Chatsworth Bus Maintenance Yard.

Mr. Kim, who generates 90% of his contracts through government agencies, views SCRTD's certification process as an "excellent system." He comments, "It is respected by the LACTC and commended by a lot of other transit agencies. It's good the process is strict, because it weeds out frauds. The District doesn't just have a program for 'window-dressing,' but implements it as well by using DBE's and monitoring contract compliance. SCRTD has the best minority business program I can think of."

Hand in hand with certification is qualification. Mr. Kim holds a M.S. in Civil Engineering, and before founding JayKim Engineers, served as a city engineer for the City of Compton, managing federally-funded capital improvement projects, acting City Engineer for the City of Ontario, and also worked for private engineering firms. JayKim Engineering has a CLASS A General Contractor's license and is an active member of the Associated General Contractors of Southern California. They've completed over 200 engineering projects, varying in complexity, within the specified budget and time frame. Along with two Engineering Excellence Awards, they herald published articles in technical journals. In addition to engineering, the company offers expertise in structural works, surveying and construction management.

As a participant in the preliminary Metro Rail alignment study, JayKim was contracted to determine the best route for the rail system, provide alternate routes and investigate tunneling methods.

Currently, they are subconsultants for the Metro Rail Transit Consultants (MRTC), doing utility and right-of-way research in addition to offering support engineering services. Kim is quick to point



Jay Kim, President of JayKim Engineers, and Carmen Suarez, his Director of Business Development. (Photo—Roger F. Rose)

out . . . "Although Metro Rail has been a good source of opportunity for them, it is not the only business RTD has to offer." There's business to be found in upgrading bus maintenance facilities and supplies." He believes in being there to get the business and goes after it. One system that works for Kim is the employing of a full-time Director of Business Development whose duties include contacting agencies to generate business and acting as liaison with the community and public officials.

### SELLING TO RTD (Questions and Answers)

- Q. How does the District buy Goods and Services?  
A. RTD buys goods and services through either informal or formal solicitation.
- Q. What is Informal Solicitation?  
A. Informal solicitation is a method of purchasing goods and services where:  
o No formal public notice is required;  
o Quotations may be written or oral.
- Q. When is the Informal Solicitation method used?  
A. When purchasing goods of \$25,000 or less:  
o When goods can be obtained from only one source;  
o For purchases of an emergency nature;  
o For the procurement of goods for test or experimental purposes;  
o For procurement of services (e.g., utilities and certain professional and consulting services).
- Q. What is Formal Solicitation?  
A. Formal solicitation is when SCRTD invites public bids (IFB's) or proposals (RFP's) to provide specified goods or services:  
o Purchasing goods or services over \$25,000;  
o When the procurement involves complex requirements and specifications.
- Q. When is the "Invitation for Bid" (IFB) used?  
A. The IFB is used:  
o When work scope and requirements are well defined;  
o usually for construction projects.
- Q. When is the "Request for Proposal" (RFP) method used?  
A. RFP's are solicited:  
o When no concise statement of work exists;  
o When complex scope of work or requirements are involved;  
o Usually for procurement services.
- Q. How are formal bids and proposals solicited?  
A. RTD publishes a Notice Inviting Bids or Proposals in newspapers of general circulation (L. A. Times and L. A. Herald Examiner, interchange-

(Continued on page 6)

# PROCUREMENT INFO

## MATERIALS, SUPPLIES AND EQUIPMENT

Firms who wish to be considered for yearly orders covering the following products and services for Fiscal Year 1986 should contact Richard Bachman at (213) 972-6162 no later than March 29, 1985

Air Compressors	Drafting	Plumbing
Air Conditioning and Refrigeration	Electric Motors	Plunger/Busing Exchange and Fuel Pumps
Asphalt and Paving	Electrical	Printing
Automobiles	Electronics	Radiators
Backflow Valves	Film	Saws and Bits
Bearing Seals and Gears	Flex Hose, Gears and Belts	Springs
Blocks, Heads and Crankshafts	Forklifts	Stationery
Calibration	Fuel Nozzles and Hoists	Steamers and Washers
Carpets	Generators and Starters	Time Clocks
Chain Coupling Pulleys	GMC Truck Parts	Tools (small)
Chrome Plating	Grease Meter Guns	Tow Trucks
Concrete	Hydraulic Jacks	Trophies
Crankshafts and Camshafts	Keys and Locks	Washer Pumps (high pressure)
Cylinder Blocks	Laser Printers (IBM)	Welding Equipment
Cylinder Heads	Photos	Word Processors
	Pionjar Equipment	

## UPCOMING CONSTRUCTION CONTRACTS (Scheduled to be Advertised between February 15 and May 15, 1986

(Please note that these dates are tentative — Please check your newspaper for actual advertising dates)

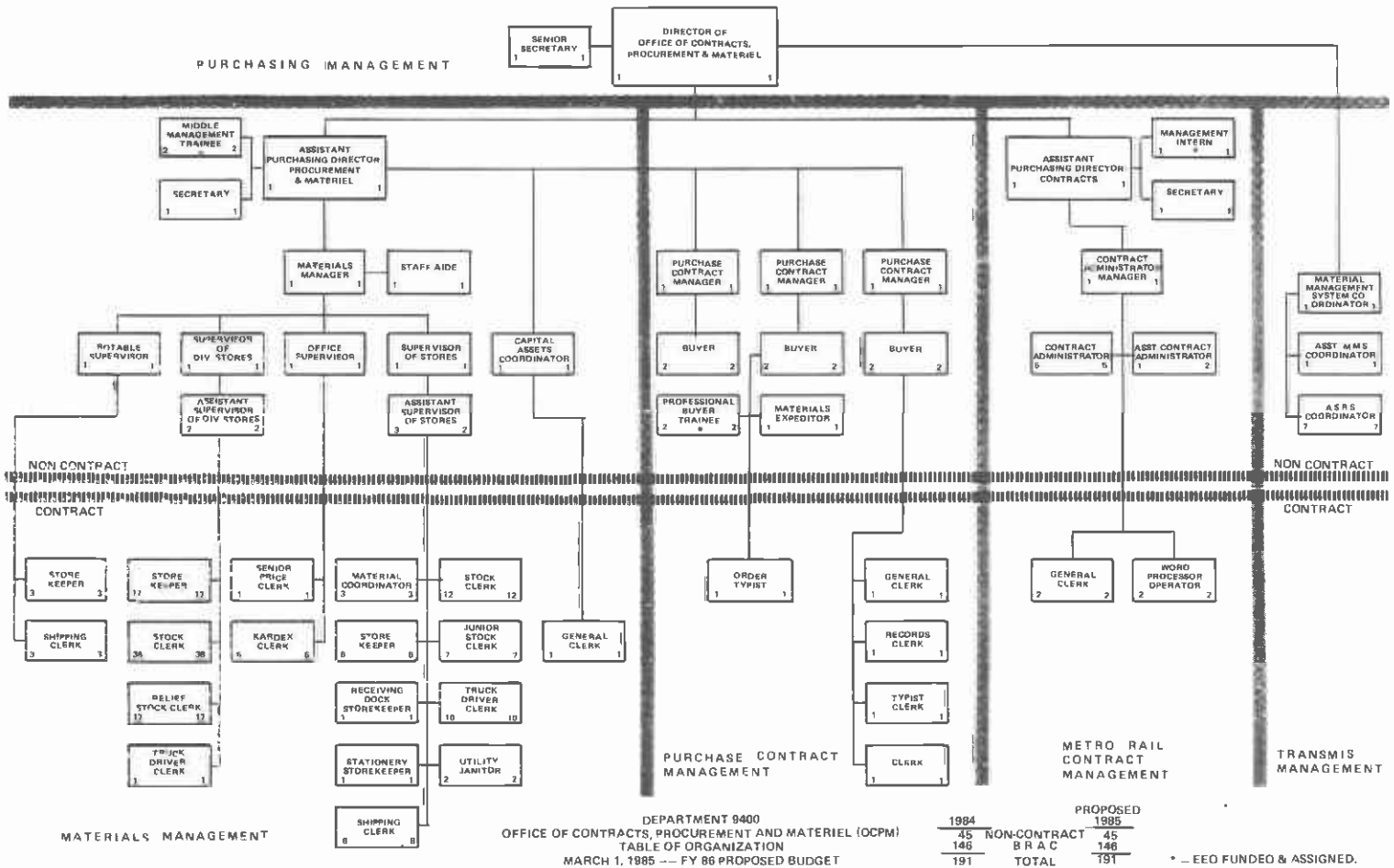
CONSTRUCTION CONTACT PERSON — Shaker Sawires, (213) 972-6591

<u>PROJECT</u>	<u>POSSIBLE SUBCONTRACTING OPPORTUNITIES</u>	<u>SCHEDULED ADVERTISING DATES</u>
Central Maint. Facility — Main Pkg.	All buildings and Site Trades	February 28, 1985
Ticket Office — Hollywood	Specialty and Cabinet	March 22, 1985
Ticket Office — Downtown	Specialty and Cabinet	March 22, 1985
Div. 5 — Pkg. Structure/Screen	Specialty and Masonry	March 28, 1985
Div. 6 — Roll-up Doors	Specialty	April 3, 1985
Div. 9 — Roll-up Doors	Specialty	April 3, 1985
Div. 6 — Outdoor Painting	Sandblasting	April 22, 1985
Div. 9 — Re-Roofing	Specialty	April 30, 1985

## PROFESSIONAL SERVICES

<u>SERVICES</u>	<u>CONTACT PERSON</u>	<u>SERVICES</u>	<u>CONTACT PERSON</u>
Consulting Services for Review and Evaluation of the Bus Operator Training Program . . . . .	Cathleen Johnson, 972-3694	Consulting Services for Inspection and Valuation of Buses . . . . .	Robert Sechler, 972-3525
Development and Production of a Customer Relations Audio Visual Slide Tape Program . . . . .	Cathleen Johnson, 972-3694	All Risk Property Insurance . . . . .	Robert Sechler, 972-3525
Legal Assistance in Condemnation Actions and Relocation Matters Incidental to the Metro Rail Project . . . . .	Cathleen Johnson, 972-3694	Clinical Laboratory to Analyze Blood and Urine Specimen . . . . .	Robert Sechler, 972-3525
Pest Control . . . . .	Robert Sechler, 972-3525	Telecommunications Consulting Services . . . . .	Robert Sechler, 972-3525
Construction Management Oversight (Audit) . . . . .	Don Heida, 972-6147	A Preferred Provider Organization . . . . .	Robert Sechler, 972-3525
To Conduct District Audit (Financial) . . . . .	Robert Sechler, 972-3525	To Conduct Utilization Review of Medical Benefits . . . . .	Robert Sechler, 972-3525
Graphic Design Services for the Production of a District System Map . . . . .	Diane Montini, 972-3695	Development of Interactive Video Training Program for Stock Shop Clerks . . . . .	Cathleen Johnson, 972-3694
Records Retention System . . . . .	Diane Montini, 972-3695	To Design and Test a Behavioral Modification Accident Prevention Program for RTD Bus Operators . . . . .	Cathleen Johnson, 972-3594
		Manpower Planning for LACTC Light Rail . . . . .	Rick Carron, 972-3527

# OCPM ORGANIZATION CHART



SCRTD BUYS MATERIALS, SUPPLIES AND EQUIPMENT WHICH ARE TOO NUMEROUS TO LIST HERE. FOLLOWING IS A LIST OF RTD BUYERS, COMMODITIES AND TELEPHONE NUMBERS. READERS ARE ENCOURAGED TO CALL THE CONTACT PERSON LISTED OR THE DBE/WBE OFFICE (213)972-6079, FOR MORE INFORMATION.

## BUYER'S INFORMATION

BUYER	COMMODITIES	CONTACT NUMBER
John King	Steel, glass, hyradulic equipment Construction, supplies, equipment	972-6253
Julie Ellis	Hardware, tools, tires	972-6152
Carol Sachs	Furniture, office supplies MRO, janitorial supplies	972-6747
Art Monarrez	Telecommunication, word processors, personal computers, lubricants, printing	972-6659
Al Mitchell	Paper products, electrical	237-2104
Jan Miller	Automotive	972-6220
Joe Grabowski	Automotive	972-6153
Suzanne Berger	Automotive	237-2105

**SELLING TO RTD (Questions and Answers)**  
*Continued from page 3)*

ably); trade publications (e.g., Dodge Green Sheet); and when DBE/WBE goals are a requirement, in minority-focused media (Rafu Shimpo, La Opinion, L. A. Sentinel).

- Q. If a business is interested in bidding as a subcontractor, how can they find out who intends to bid as a prime?
- A. The Purchasing Department maintains lists of firms who have requested the bid or proposal specifications. These lists identify those firms who intend to bid/propose as a prime contractor vs. those who intend to bid/propose as a subcontractor. For information about firms who are on these lists, readers may call the following numbers in the Purchasing Department:

TYPE OF SOLICITATION	TEL. NO.
Request for Proposals for Services	972-6147
Bid Solicitation for Construction	972-3695
Bid Solicitation for Material, Supplies and Equipment	972-6160

Q. Are there any other basic differences between RFP and the IFB solicitation method?

- A. Yes:
- o An overriding criteria for awarding of a contract in the IFB method is low price;
  - o In the RFP process, price is one of several factors considered in selecting a contractor/consultant. Other factors considered may include: qualifications of the proposer and its key staff to be assigned to the project; understanding of the work involved; project plan; ability to meet deadlines; resources available to perform the work; previous comparable jobs completed and completeness of proposer's response to RFP requirements.

Q. How important are the DBE/WBE requirements?

- A. RTD will not award a contract to a firm bidding or proposing on a job that has DBE/WBE goals if:
- o The bidder/proposer has not met the goal; and
  - o The bidder/proposer cannot present clear and convincing evidence that it made good faith efforts to meet the goals.

**TECHNICAL ASSISTANCE**

**TIPS ON BIDDING**

Perhaps the most anxiety-producing aspect of operating a business is bidding and job pricing. So, an owner or manager of a business would do well to prepare for that challenge. The following is a list of hints and suggestions which will facilitate bid preparation for contracts with the SCRTD. Review it carefully and adapt that which is useful for your own method of preparing bids.

**TIPS**

1. Read carefully all printed information supplied with "Invitation for Bid" (IFB)
2. Don't be afraid to bid or initiate contact with the Office of Contracts, Procurement & Materiel (OCPM) personnel to seek assistance.
3. Any question is legitimate; don't be afraid to ask!
4. Make certain all figures and information in a bid are accurate and on the correct forms. A bidder will be expected to live with any mistakes.
5. If a bid bond or performance bond is required, seek the assistance of a financial advisor in the preparation of financial statements. These are likely to be requested by an insurance company. Consider alternatives if a bond is not available. Another well-known reputable firm may agree to guarantee your work. Other options may exist. Don't give up!
6. Bid only if you are capable of fulfilling the terms of the bid in a timely, competent manner.
7. HAVE YOUR BID IN ON TIME.
8. SIGN YOUR BID.
9. If you are given the opportunity to make a presentation, BE PREPARED. It may be your only opportunity to influence the decision.
10. FOLLOW-UP. If you don't get the award, find out what the winning bid was and compare it with your bid. With each experience a company will be better able to assess what it takes to bid successfully.

**Southern California Rapid Transit District  
 BOARD OF DIRECTORS**

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"GETTING THERE" is published by the Southern California Rapid Transit District, Equal Opportunity Department, 425 South Main Street, Los Angeles, CA 90013, to inform minority and women businesses about our program and upcoming contract opportunities.

**PAT JORDAN -- Editor**

**NOTICE**

A conference to discuss the Central Maintenance Facility General Building Contract (estd. \$28 million dollars) and DBE/WBE certification will be held on March 23, 1985, at L.A. City Hall Public Works Room, 3rd floor, from 9:00 a.m. to 12 noon. For more information, call (213) 972-3223.



# GETTING THERE

A publication for minority and women-owned businesses

...with your help

Vol 1 No. 4 July/Aug. 1985

## SCR TD CO-SPONSORS INFO LUNCHEON

Southern California Rapid Transit District, the State Department of Transportation and the Century Freeway Affirmative Action Committee, Inc. recently sponsored a business luncheon.

The luncheon, at the Design Center Boardroom Restaurant, focused on opportunities for entrepreneurs to fully participate in the transportation industry. SCR TD plans to coordinate similar outreach efforts in the future.



Officials at Luncheon, left to right, Top: Stella M. Ornelas, CALTRANS, Doc Maloney, CALTRANS, Roger Williams, Airspace, Helen Ortiz, Environmental Planning and Angelica Chatham, SCR TD. Bottom: Heinz Heckeroth, CALTRANS, Gaddi Vasquez, Governors Office and Staajabu Heshimu of CFFAC.

Photo - P. Jordan



Stella M. Ornelas and Heinz Heckeroth, Both of CALTRANS, listen to inquiries from luncheon attendees.

Photo - P. Jordan



C. Michael Ofenstein of Delon Hampton & Associates muses his favorite publication, while Administrative Assistant Nancee Gregori looks on.

Photo - P. Jordan

## DISTRICT SETTING GOALS

The District is in the process of establishing its annual Disadvantaged and Women's Business Enterprise (DBE/WBE) participation goals for fiscal year 1986. At the same time that these goals are submitted to the U.S. Department of Transportation (approximately August 1st), public notices announcing the proposed goals and a description of how these were developed will be

placed in local major and minority-focused newspapers. The public will be invited to review and comment on these goals.

DBE/WBE goals set for fiscal year 1985 were 16%/5%. To date, the DBE goal is being exceeded and there is a slight shortfall in the WBE goal attainment.



Southern California Rapid Transit District

# PROFILE

## SCHIMPELER-CORRODINO - LIVING PROOF

Schimpeler-Corrodino Associates is living proof that prime contractors and DBE/WBE subcontractors can have a mutually beneficial working relationship.

Since their first contract with Southern California Rapid Transit District in early 1982 (Pomona Valley Transit Needs Study), the urban and transportation planning firm has utilized DBE/WBE subconsultants. "On that contract we found an excellent match in Gene Grigsby's company, The Planning Group (profiled in issue 1 of "Getting There"). He is an urban planner who is highly credentialed. A person we would have used whether goals were set or not." These comments were made by Charles Schimpeler, co-owner of Louisville, Kentucky based Schimpeler-Corrodino Associates, who believes in finding senior level tasks for DBE/WBEs. For the Pomona Valley contract, the Planning Group was responsible for conducting a survey on attitudes and transit improvements. Another sub-consultant used on that contract was WBE Myra L. Frank and Associates - a top-notch public involvement and environmental planning firm. Frank's firm is nationally known and Schimpeler, who was familiar with her work wanted her for the job. Schimpeler also noted the transit industry is like a "small fraternity" and most of the skills needed are right here.

Manuel Padron, who has an extensive background in transit planning and headed Atlanta's MARTA transit planning, has worked on SCRTD projects for Schimpeler-Corrodino, too. Notes Schimpeler, "He can do it all." With economic planning and benefit assessment two of his strongest areas.



Schimpeler-Corrodino group from left to right: Peter Stopher, Dr. Charles Schimpeler, Alva Acosta, Myra Frank and George Pla.

The list goes on and on. Top DBE/WBE subconsultants performing top-level jobs. According to Schimpeler, they all would have been selected because of their qualifications. Since having a working relationship with minority entrepreneurs he says, he has "truly gained" respect and considers it not only "workable" but advantageous. "It saves us a lot of money not having to go out and draw from another city. Plus advantageous for DBE/WBEs. I've seen where they've had the opportunity to expand their staff capabilities and therefore be more competitive in their future endeavors."

When asked were there any pitfalls, Schimpeler commented he has had a couple of rotten subconsultants but none were minorities. Also, he added, distributing hours can sometimes be a problem. Occasionally a sub-consultant will complain of not enough hours assigned to work but that's not a problem isolated to dealing with DBE/WBEs.

Vice President for Schimpeler-Corrodino, Steve Beard, sees size one consideration when viewing improvement in writing DBE/WBE goals on SCRTD and other agency contracts. "If you have a \$5,000 contract and you have to meet goals for both DBE and WBEs, it's not cost effective for any involved."

Meeting contract compliance regulations has never been a problem for Schimpeler, who is always project manager for their large jobs. At present, he is project manager on the general planning consultant contract for the Light Rail Project. "We just do what is required, get our reports in on time and all runs smoothly."

## PATSAORAS - - A MAN OF VISION

Nikolas Patsaouras has vision . . . vision for Southern California Rapid Transit, for Metro Rail and vision for the District's Disadvantaged Business and Women's Business Enterprise (DBE/WBE) program.

Patsaouras, a 20 year California resident, appointed to the board by Los Angeles County Supervisor Mike Antonovich in February of 1981, views himself as an integral part of this vision. As president of the SCRTD board since March, 1984, he has to be a quick decision maker, have ability to delegate, keep members challenged and as spokesperson his interpretation of matters is most essential. He sees his involvement with the community in civic and political affairs as giving him "instant credibility" to act as "guardian of their rights." In yet another role, he has to have the interest and good of the District employees at heart. Patsaouras demonstrated this in reaching, for the first time in 15 years (since 1969), contract agreements without a strike.

# PATSAORAS (con't)



"I'm very pleased with employment practices here. We've made tremendous progress but we are still lacking representation on upper management level as far as Hispanics and women are concerned." Patsaouras is working hard with fellow board member Carmen A. Estrada to combat this problem. "I'm proud as one member of the board that SCR TD is the leader in minority business programs as compared to any other public agency in the state. We've always met our goal of 18% and more often surpassed this goal by making it closer to 25%." He adds, "The DBE/WBE program is necessary and warranted because individuals have been deprived of opportunities because of color, sex and ethnic origin. They should be given equal footing with all of us." As an immigrant from Greece, Patsaouras has felt the impact of prejudice, himself. Proud of his heritage, he is happy

to have had Athens, Greece proclaimed a sister city of Los Angeles through Los Angeles Mayor Tom Bradley.

Patsaouras' vision for the future is comprised of seeing Metro Rail become a reality, continuing to improve employee/management relations, working to put women and Hispanics in upper management positions and making sure the District continues its "open discussion policy" with minority and women owned businesses thus benefiting from their knowledge and expertise and allowing them to benefit from District opportunities.

The SCR TD board president comes to the District with an impressive background. An electrical engineer by profession, he is owner/president of Nikolas Patsaouras & Associates, Inc. consulting electrical engineering firm. He is also Chairman of the Board for Marathon Bank, in West Los Angeles, which he co-founded. Patsaouras became involved with transit on a national level when he was appointed to serve on the rapid transit-construction-engineering subcommittee for the American Public Transit Association (APTA), which represents 700 transit agencies nationwide. As far as remaining president for another term, he's not sure. But he is sure of continuing to work for transit improvements in years to come.

## PROCUREMENT INFO

FOLLOWING ARE SOME UPCOMING CONTRACTING OPPORTUNITIES IN CONSTRUCTION, MATERIALS AND PROFESSIONAL SERVICES:

<b>CONSTRUCTION CONTACT PERSON - SHAKER SAWIRES (213) 972-6591</b>		<b>MATERIALS, SUPPLIES AND EQUIPMENT</b>	<b>PROFESSIONAL SERVICES</b>	
<b>PROJECT</b>	<b>SCHEDULED ADVERTISE- MENT DATE</b>	<b>These are expected out in the next 2 months</b>	<b>SERVICES</b>	<b>CONTACT PERSON</b>
Central Maintenance Facility	8/85	Richard Bachman (213) 972-6162	IFB Supply of Diesel Fuel	Bob Sechler 972-3525
Tenant Improvement - Alterations on the 2nd floor of RTD's HQ Bldg.	3/86	ITEM — Training Vans	Delivery Services	Diane Montini 972-3695
Division 5 - Screen Wall Construction	8/85	3/4 Ton Service Vans (Cargo)	Data Processing & Packaging Fulfillment Services to Control the Issuance of Student Identification Cards	Diane Montini
Division 1 Construction of Bus Maintenance Facility	9/85	25 Ton Cab and Chassis	Sale of Advertising Space on District Bus Transfers	Diane Montini
Division 2 - Skylight replacement	8/85	Three Axle Tractor with Rear Winch	Production of Printing Plates	Diane Montini
Division 7 - Pits Ventilation	7/85	35 Foot Dump Trailer	Accident Investigation & Re-const Svc. for Street Investigations, Mechanical Failures and Fire Investigations	Cathleen Johnson 972-3694
Division 7 - Dynamometer Bldg.	12/85	Aerial Lift Truck Cab and Chassis	Procurement of Telephone Systems for CMF, HQ Complex and Metro Rail	Don Heida 972-6147
Division 8 - Service Pits Light	7/85	Utility Truck Body with Aerial		
Division 9 - Trans. Bldg. Expansion	7/85	One Ton Cab and Chassis (FM)		
Division 9 - Dynamometer Bldg.	3/86	One Tone Utility Bodies (FM)		
El Monte Parking Structure	5/86	3/4 Pick-Up Truck		
Division 15 Tire Shop Expansion	10/85	One Ton Crew Cab and Chassis		
Division 15 Service Pits Lights	9/85	One Ton Utility Body (Painters)		
HQ Bldg.	9/85	Two Color Perfecting Press with Infrared Drying Unit		
Various Loops & Layover Facility	4/86	Supply Paper Stock for Printing		

# NAME AND FACES

## CONTRACT COMPLIANCE

With every contract awarded by the District that has DBE/WBE set goals, it becomes necessary to monitor contract compliance. According to Kirk C. Rascoe, Manager Contract Compliance, Equal Opportunity, this is a monumental task but a needed function to ensure all federal and state laws are enforced and minority business participation goals are being met.

Contract Compliance is responsible for maintaining a review and monitor system to ensure all contractors, subcontractors, consultants, vendors, suppliers and District departments comply with DBE/WBE utilization requirements and other contract specifications.

This is primarily done through a report system. Contractors are required to submit a progress report at set intervals, which includes: name of each DBE/WBE contractor; general work assignment of each DBE/WBE subcontractor; the specific portion of work executed by each DBE/WBE subcontractor during the reporting period; the dollars committed to each DBE/WBE subcontractor during the reporting period; the dollars committed to each DBE/WBE subcontractor; the dollars paid to date for each DBE/WBE subcontractor; affirmative action plans and the dollars paid to date as a percentage of the total commitment.

Usually, after a contract is awarded, contract compliance representatives meet with the department head where the contract originated (user department) to discuss the needs of the contract. A letter is then forwarded to the contractor detailing the goals established and outlining the report procedure and schedule.

Report forms for construction projects must be submitted in on a required schedule and are checked for such items as prevailing wage, fringe benefits and



**Sr. Contract Compliance Officer Alvin Rivera holds discussion with Jerry Borsco and Emily Matias. Photo - Roger F. Rose**

apprentice scales. Jerry Borsco, Equal Opportunity Representative for Contract Compliance, stressed the importance of getting report forms in on time. If not, penalties can be imposed. Borsco also said the contractors are monitored by site visits where contract compliance representatives check work, cancelled payroll checks, overtime pay, and conduct interviews. He believes most contractors are cooperative with these procedures because it is written in the contract and necessary. His experience is that they readily make records available and make time for appointments "because they have a lot more to lose than the District."

When a contractor is not complying, contract compliance representatives sit down and try to reason and explain .... if still no compliance, they compile evidence and meet with the threat of action. Rascoe affirms the District's position in that their objective is to "see that they comply .... every effort is made before any threat of sanction."

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### Southern California Rapid Transit District BOARD OF DIRECTORS

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**Women Business Program**  
**KIRK RASCOE, Manager, Contract Compliance**

**"GETTING THERE" IS published by the Southern California Rapid Transit District, Equal Opportunity Department, 425 South Main Street, Los Angeles, CA 90013, to inform minority and women businesses about our program and upcoming contract opportunities.**

**PAT JORDAN - Editor**



## The Southern California Rapid Transit District Los Angeles Metro Rail Project

### GENERAL PROJECT INFORMATION

The Southern California Rapid Transit District (SCRTD), in cooperation with Federal, State, and local agencies, has planned and designed the Los Angeles Metro Rail Project over the past several years. Currently, the SCRTD is preparing for the construction phase of the Metro Rail Project implementation program to build the tunnels, stations, and associated facilities of the proposed subway system. The overall goal is to successfully complete the Project within cost and schedule parameters, in accordance with approved plans and specifications and with an absolute minimum of claims and safety violations.

The Southern California region generally consists of the six counties in the Southern California Association of Governments (SCAG) -- Los Angeles, Orange, Riverside, San Bernardino, Ventura, and Imperial which covers over 38,500 square miles. Most of the region's population lives in less than one-tenth of the land area, in the Los Angeles Basin, between the San Gabriel Mountains and the Pacific Ocean. The Basin is divided in an east-west direction by the Santa Monica Mountains, which separate the San Fernando Valley from the rest of Los Angeles. Only a few mountain passes, like the Cahuenga Pass, connect the two parts of the City.

### Project Description

The project is the design and construction of the initial segment, or Starter Line, of the ultimate rapid transit network for the Los Angeles urbanized area. The initial segment is a conventional heavy rail system 18.6 miles in length with 18 stations serving the Central Business District, Wilshire Boulevard, Fairfax, Hollywood, and North Hollywood areas. The general alignment of the Project is shown in Figure 1. The entire 18.6-mile main line route is in subway configuration. The yard and shop area is an at-grade facility located between 1st and 6th Street and between the Los Angeles River and Santa Fe Avenue in an area currently occupied by the Santa Fe Railway. Access tracks from the yard and shop will enter a tunnel in the vicinity of the Santa Ana Freeway and will connect the yard and shop to the southernmost station on the line at Union Station. Within this Starter Line, the stations and line segments from Union Station to and including the Wilshire/Alvarado Station (about 4.4 miles) and the at-grade yards and shops are defined as the minimal operable segment (MOS-1) for UMTA funds.

The system's storage yard and maintenance facilities are located along the west bank of the Los Angeles River just south of Union Station. The north end of the line will be extended 500 feet in subway for operating storage of up to three 6-car trains so that the system can start in the morning service from both ends. Primary access to the rail line will be by bus. Bus terminals will be provided at eight stations and on-street bus turnouts at ten stations. Provisions for auto access include park-and-ride facilities at

five stations, and passenger dropoff (kiss-and-ride) areas at five stations. The park-and-ride facilities are planned to be surface lots initially, with parking structures constructed later at these same locations when alternative funding sources are identified.

All but a few portions of the Project will be tunnelled, thus involving little or no surface disruption except at station locations. Station structures (and, in some locations, adjacent crossovers, pocket tracks, vent shafts, or ancillary structures) will be constructed by the cut-and-cover method. Temporary decking will be erected to maintain traffic. Excavation and station construction will then continue beneath this decking. Regular service can be provided on cross streets, while streets under which the system runs will have limited service. After station construction, backfill will be placed and the street surface replaced.

### Rail Project Features

The proposed rail line will use proven two-track, steel wheel, and steel rail components. The vehicles, approximately 75 feet long and 10 feet wide, are designed to comfortably accommodate 170 passengers, but they can hold 231 passengers during heavy peak periods. Six vehicles will be linked to form a train. Each train would have passenger capacity between 1,000 and 1,400. Average daily rail transit ridership in the year 2000 is forecast to be 364,000 boardings. A ride from North Hollywood to Union Station will take about 35 minutes.

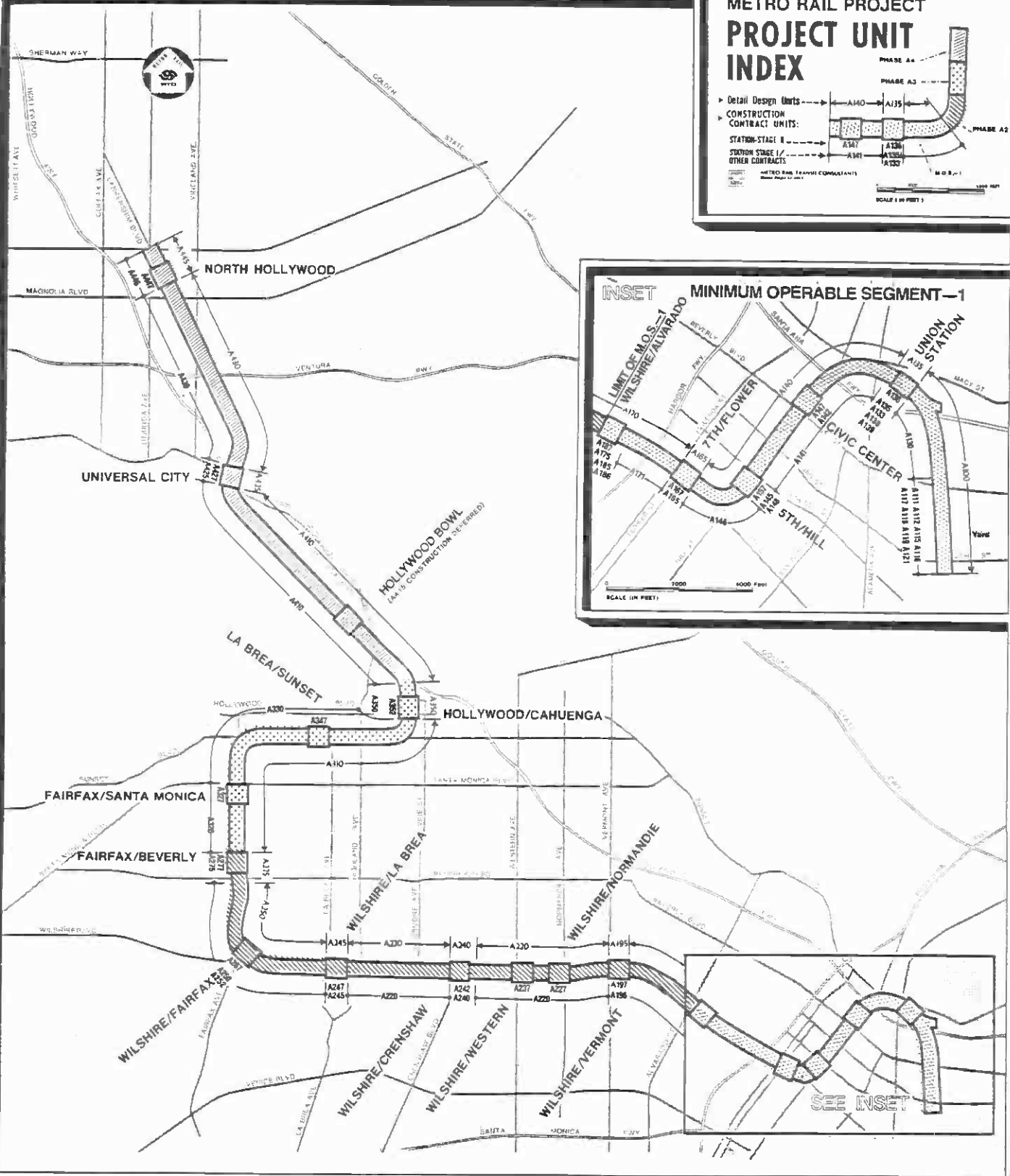
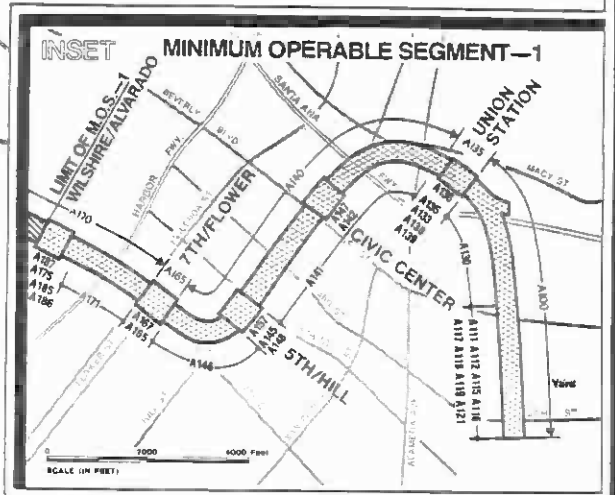
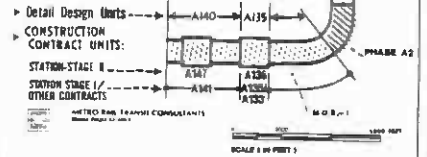
# SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

MAY 1985

FIGURE 1



## METRO RAIL PROJECT PROJECT UNIT INDEX



SEE INSET





**The Southern California Rapid Transit District  
Los Angeles Metro Rail Project**

**MAJOR AGENCY RELATIONSHIPS**

The Southern California Rapid Transit District has assembled an integrated Project Team to manage and direct the Metro Rail Project. In general, the responsibilities of and interrelationships among the major participants are as follows:

**Southern California Rapid Transit District**

The Southern California Rapid Transit District has overall responsibility for all aspects of the Metro Rail Project. In that connection the SCRTD will provide overall project management and supervision, and has final approval of all construction drawings and specifications, change orders, procurements, acceptance of construction and equipment installation, and contractor payments.

**General Consultant**

The General Consultant (GC) is a Joint Venture of Daniel, Mann, Johnson and Mendenhall/Parsons, Brinckerhoff, Quade and Douglas/Kaiser Engineers/Harry Weese and Associates, operating under the name Metro Rail Transit Consultants (MRTC), is under direct contract with the SCRTD and has overall design responsibility for Metro Rail.

**Construction Manager**

PDCD, the CM, is a Joint Venture of The Ralph M. Parsons Company, Dillingham Construction, Inc. and De Leuw, Cather & Company. Under contract to the SCRTD, the CM is responsible for constructibility review of designs, schedules, cost estimates, and bid documents; assistance in procurement of long-lead materials and equipment; assistance in evaluation of bids for selection of construction contractors; supervision and inspection of construction; and the scheduling and cost control of construction. The CM is also responsible for certain systems aspects of the Project, including systems integration, supervision of systems installation, startup, testing, and systems certification.

**General Construction Contractors and Equipment Suppliers**

Construction contractors and equipment suppliers selected for the Construction Phase will be under contract to the SCRTD. The CM, acting as agent for the District, will manage and supervise the construction contractors. The CM assists in the selection of construction contractors; performs onsite supervision, quality control, and safety inspection of all construction; reviews detailed schedules prepared by the contractors; reviews and evaluates shop drawings and change order requests; certifies contractor payments; verifies contractor compliance with Equal Employment Opportunity

requirements; establishes a community relations program; and exercises cost and scheduling control. Final approval of changes or revisions recommended by the CM and the authority to direct their implementation rests with the SCRTD. The CM will oversee the work performed by equipment suppliers, performing expediting and shop inspection services and coordinating and scheduling delivery, checkout and acceptance testing.

### The District Insurance Administrator (DIA)

The DIA provides valuable expertise to the SCRTD in the administration of the Owners Controlled Insurance Program (OCIP). The DIA's organization is structured for comprehensive functional coverage of the essential elements of the Insurance Program. It not only administers the program, but it also provides services to monitor the high risk areas and recommend preventive measures for potential problem areas.

The Managing Director has staff support for Preconstruction Surveys and Minority Bonding activities. On-line managers for safety, claims bonding, and clerical interface with all the functional elements of the implementation program. Primary attention is directed to assuring that approved procedures and specifications are followed stringently to minimize the potential for loss, safety violations, and claims.

### Consultant Support

Special consultants support the SCRTD in various fields of expertise by providing services related to the resolution of unique problems. These include foundation engineers, soils engineers, financial analysts, tunneling consultants, and others.

The Construction Management Oversight Consultant (CMO), yet to be selected, serves the program in a special advisory role to the Urban Mass Transportation Administration (UMTA) to assure that the Project is completed in accordance with established procedures, specifications, and principles.



## STATEMENT OF POLICY

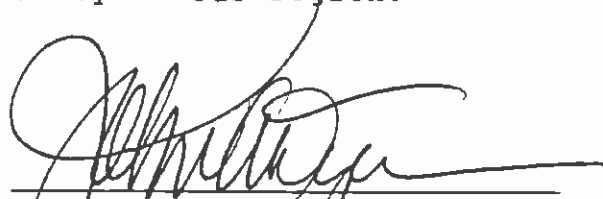
It is the policy of the Southern California Rapid Transit District (hereinafter referred to as the District) to ensure that:

- A. Disadvantaged and Women-owned Business Enterprises have the maximum opportunity to participate in all of the District's business activities through contracts, subcontracts, purchase orders, leases, banking arrangements and other agreements.
- B. The District's contractors and suppliers take affirmative action to do the same.

Pursuant to Title 49, Part 23 of the Code of Federal Regulations (49 CFR 23), the District is committed to supporting the fullest possible participation by firms owned and controlled by the disadvantaged and women in all of its contracting opportunities. This policy shall be implemented by the District's Disadvantaged/Women Business Enterprise (DBE/WBE) Program. It is the District's intent, through the implementation of its DBE/WBE policy, to recruit and maintain DBE/WBE contractors for all phases of its contract activities. The resultant program shall be clear and concise. It shall be a part of all appropriate District public relations and advertising efforts.

As evidence of the District's intent to pursue its objectives in this area, the Board of Directors has adopted the DBE/WBE Program and the General Manager has designated the Assistant General Manager for Equal Opportunity as the DBE/WBE liaison officer. He/she shall be responsible for the development, implementation, and monitoring of the program which implements this policy. He/she shall report periodically to the General Manager and quarterly to the Board of Directors on its progress. The DBE/WBE policy and program shall be distributed to all District departments and public and private community and trade groups and associations.

The District's achievement of equal opportunity in contract activity will significantly contribute to the economic and social progress of every community in our region.



John A. Dyer  
General Manager

LACMTA LIBRARY

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT  
 LIST OF DBE/WBE SUBCONTRACTORS OR SUPPLIERS

DBE/WBE firms will participate in this contract as follows (check all options applicable to this bid):

- The Bidder is a DBE or WBE firm. (Attach a statement in accordance with Section 20.3, para. 1., c.); and/or
- The Bidder is a joint venture. One or more of the joint venture partners is a DBE or WBE. (Submit "Schedule B" certification application form in accordance with Section 20.7 of the General Provisions.); and/or,
- The Bidder intends to meet the DBE/WBE goals by sub-contracting to the DBE/WBE firms listed below:

NAME OF DBE/WBE SUB-CONTRACTOR OR SUPPLIER	ADDRESS	WORK TO BE PERFORMED MATERIAL SUPPLIED	% PARTICIPATION	CHECK ONE	
				DBE	WBE

List all DBE/WBE subcontractors and suppliers, regardless of percentage of participation. Refer to Section 20.6 of the General Provisions for instructions on calculation of goal. Information disclosed on this form must be legible and complete in order to make a determination of bid responsiveness.

## DBE/WBE METRO RAIL PROGRAM

### GOOD FAITH EFFORTS

- o Advertisements in newspapers of general circulation, trade association publications and minority focus media.
- o Selection of portions of the work for which interest from DBE/WBE potential Joint Venture partners, subcontractors, or suppliers will be solicited in a manner to increase the likelihood of achieving the stated goal. Where appropriate, breaking down subcontracts into economically feasible units to facilitate DBE/WBE participation.
- o Extension of written invitations to DBE/WBE firms for at least the number of trades, subcontractors, or material quotations identified in the Special Conditions of this solicitation.
- o Oral or written follow-up of initial solicitation to DBE/WBE firms by contacting them to determine with certainty whether they were interested in submitting a quotation or participating as a Joint Venture partner.
- o Assistance to DBE/WBEs contacted by the prime contractor who request assistance in obtaining bonding, lines of credit or insurance, if required by the bidder.
- o Notification of minority and women contractor, trade and professional associations and other DBE/WBE sources, at least 20 calendar days prior to bid opening and effective utilization of services offered to the bidder by these organizations and other sources.
- o Verifying with the District, the current DBE/WBE certification status of prospective subcontractors.

DBE/WBE METRO RAIL PROGRAM

BID EVALUATION FOR COMPLIANCE  
WITH DBE/WBE PROVISIONS

SITUATION	<u>RECOMMEND CONTRACT AWARD</u>	
	<u>YES</u>	<u>NO</u>
I. Goal met and DBE/WBEs certified . . . . .	X	
II. Numerical goal met but DBE/WBEs <b>not</b> certified		
A. DBE/WBEs subsequently certified . . . . .	X	
B. DBE/WBEs <b>denied</b> certification		
1. Bidder makes good faith efforts . . . . .	X	
2. Bidder <b>did not</b> make good faith efforts . . . . .		X
III. Goal <b>not</b> met		
A. Bidder made good faith efforts . . . . .	X	
B. Bidder <b>did not</b> make good faith efforts . . . . .		X





## HOW TO BE CERTIFIED

Since the District's policy is to provide aggressive, hands-on, pre-bid support for DBE/WBEs with legally restricted resources, establishing eligibility for participants is a basic requirement. To be eligible as a disadvantaged and woman-owned firm, you must be certified through procedures established by SCRTD's Department of Equal Opportunity. Even though you may have been certified by UMTA, CalTrans, or some other agency's DBE/WBE certification program, you must be certified by SCRTD independently.

To be certified, you must do the following.

A. Complete Schedule A.

A sample copy is provided in this notebook for your convenience. Be sure to sign the document and have it notarized. It is not acceptable otherwise.

B. Submit the following items:

1. License to do business and/or fictitious name statement for sole proprietorship.
2. Most recent federal tax return.
3. Resumes of principals and key personnel.
4. Third party agreements such as rentals, lease agreements and professional service agreements.

C. If you are a partnership as legally defined by the State of California and, therefore, subject to its partnership codes, submit the following items:

1. Partnership agreements and any amendments thereto
2. Profit sharing agreements
3. Buy-out rights

D. If you are a corporation as legally defined by the State of California's codes, you must submit the following items:

1. Articles of Incorporation
2. By-Laws
3. Stockholder options
4. Stockholder agreements

To sum up what is required of you, (1) everybody must do A and B as outlined above and (2) if you are either a partnership or corporation, you must, in addition, complete C or D.

Prior certification can be taken into consideration but you must provide documented evidence to support your case. Business references to be used as part of your file must be complete: contact person(s) and full addresses are required.

Action to certify you and/or your firm will not be taken on your application until all the items requested have been **received**. All information should be forwarded to:

Southern California Rapid Transit District  
Department of Equal Opportunity  
425 South Main Street  
Los Angeles, California 90013



Dear Applicant:

All firms seeking DBE/WBE certification are required to submit copies of the following items in addition to a signed and notarized Southern California Rapid Transit District Schedule A (no copies of Schedule A will be accepted):

- A. All disadvantaged and/or women-owned businesses must submit the following items:
  1. License to do business and/or fictitious name statement for sole proprietorship.
  2. Most recent federal tax return.
  3. Resumes of principals and key personnel.
  4. Third party agreements such as rentals, lease agreements and professional services agreements.
  5. Proof of ethnicity/gender (birth certificate, passport, etc.).
  6. Company profile including a description of the firm's product or services.
- B. Partnerships: Must submit the following items in addition to those items required in A (1-6) above:
  1. Partnership agreements and any other amendments thereto.
  2. Profit sharing agreements.
  3. Buy-out rights.

C. Corporations: Must submit the following items in addition to those required in A (1-6) above:

1. Articles of Incorporation.
2. By-Laws.
3. Stockholders options.
4. Stockholder agreements.
5. Stock certificates of each holder.
6. Stock transfer ledger.
7. Stock voting rights.
8. Record of first organization meeting.

Your company must support any claims of prior certification with documentary evidence. Where banks or business references are required to be identified, you must provide the full address and name of contact person. No action will be taken on your application until all items have been submitted. The above information should be forwarded to:

Southern California Rapid Transit District  
Equal Opportunity - Contract Compliance Section  
425 South Main Street  
Los Angeles, CA 90013

Sincerely,



SCHEDULE A

APPLICATION FOR  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
AND  
WOMEN'S BUSINESS ENTERPRISE (WBE)  
CERTIFICATION  
(Individual Business Concern)

Are you bidding/proposing on a current RTD Contract at this time?

Yes   
No

If yes, please complete the following.

Project Name: \_\_\_\_\_

RTD Bid/Proposal Number: \_\_\_\_\_

EEO:7



5. The business is 51 percent owned and controlled by one or more socially and economically disadvantaged individuals who are:

White     Hispanic     Black     Native American  
 Asian-Pacific American     Asian-Indian American  
 Other (specify) \_\_\_\_\_

6. The business is 51 percent owned and controlled by one or more women.

Yes     No

7. The business is a small business concern as defined by the Small Business Administration in 13 CFR Part 21.

Yes     No

If Firm is SBA Section 8(a) certified, attach copy.

7a. Total Number of employees for the business and its affiliates

\_\_\_\_\_

7b. Average annual gross receipts for the past three years

\_\_\_\_\_

**i. Ownership**

Identify below those who possess ownership of 5% or more of the firm

<u>Name</u>	<u>U.S. Citizen Yes / No</u>	<u>Ethnicity</u>	<u>Sex</u>	<u>% Owned</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

IF OWNER LISTED ABOVE IS NOT A U. S. CITIZEN, PROOF OF LEGAL RESIDENCE MUST BE SUBMITTED.



8a. Identify below all corporate officers or key personnel of the firm.

<u>Name</u>	<u>Ethnicity</u>	<u>Sex</u>	<u>Title</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9. Are there any:

a. Outstanding stock purchase options, warrants or agreements for the issuance of such options for warrants? If yes, explain fully.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Shares pledged, subject to lien or agreement or beneficially owned by anyone other than the person in whose name it stands? If yes, explain fully.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. State Contractor License or Professional Registration Number:

\_\_\_\_\_

11. Local business License Number:

\_\_\_\_\_

12. Federal Employer Tax Identification Number:

\_\_\_\_\_

13. Does the firm own its offices?

\_\_\_\_\_ Yes \_\_\_\_\_ No

a. If the firm rents its offices, identify by name and address the owner of the premises and provide a copy of the rental agreement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Identify any firms with whom you share office space.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. State the total number of employees and the number of minority persons now employed by the firm in each of the following categories:

	<u>Total Employees</u>	<u>Minority Employees</u>
Management	_____	_____
Professional & Technical	_____	_____
Administrative	_____	_____
Supervisory	_____	_____
Clerical	_____	_____
Craftsmen & Laborer	_____	_____

15. Identify by name, address and employer, all persons who provided management or financial consulting services to the firm during the past 12 months.

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16. Identify the individuals responsible for day to day management and policy decision making:

a. Financial Decisions

<u>Name</u>	<u>Title</u>	<u>Ethnicity</u>	<u>Sex</u>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

b. Management Decisions

<u>Name</u>	<u>Title</u>	<u>Ethnicity</u>	<u>Sex</u>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

c. Hiring and Firing of Management Personnel

<u>Name</u>	<u>Title</u>	<u>Ethnicity</u>	<u>Sex</u>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

d. Marketing and Sales

<u>Name</u>	<u>Title</u>	<u>Ethnicity</u>	<u>Sex</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

e. Purchase of Major Items or Supplies

<u>Name</u>	<u>Title</u>	<u>Ethnicity</u>	<u>Sex</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

f. Supervision of Field Operations

<u>Name</u>	<u>Title</u>	<u>Ethnicity</u>	<u>Sex</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

17. Identify any outstanding loans greater than \$10,000:

<u>Amount</u>	<u>Lender</u>	<u>Guarantor(s)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

18. List Major equipment owned or leased by the firm:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



22. If any owner of the firm is a business entity please provide the following:

Business Name	Address	Owner(s)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

23. Has the firm been previously certified as a DBE/WBE/MBE or SBA Section 8(a)?

Certifying Authority \_\_\_\_\_

Date Certified \_\_\_\_\_

ATTACH EVIDENCE OF PREVIOUS CERTIFICATION.

a. Has the firm ever been denied certification?

\_\_\_\_\_ Yes    \_\_\_\_\_ No

ATTACH EVIDENCE OF DENIAL OF CERTIFICATION.

24. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners, or between owners and third parties which restrict ownership or control of minority owners.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

25. Identify any owner, or management official, of firm who is or has been an employee of another firm that has an ownership interest in, or a present business relationship with the named firm:

a. Owner/Management Official

\_\_\_\_\_

b. Describe the nature of the ownership interest or present business relationship with the named firm.

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c. Name of the firm which has an ownership interest or present business relationship with named firm.

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AFFIDAVIT

I/We, the undersigned swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of \_\_\_\_\_

\_\_\_\_\_  
(Name of Firm)

as the ownership thereof.

Further, I/We the undersigned agree to provide through the prime contractor or, if no prime directly to the Southern California Rapid Transit District current, complete and accurate information regarding actual work performance on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangement and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State Laws concerning false statements.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Corporate Seal (where appropriate)

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me appeared \_\_\_\_\_

\_\_\_\_\_, proved to me on the basis of satisfactory evidence who being

duly sworn, did execute the foregoing affidavit, and did state that he/she was properly authorized by

\_\_\_\_\_ (Name of Firm) to execute the

affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission Expires \_\_\_\_\_



SUMMARY OF LABOR COMPLIANCE FORMS  
for SCRTD CONSTRUCTION COMPLIANCE FILES

FORMS	DESCRIPTION	SUBMITTED BY	FREQUENCY	DUE	DISTRIBUTION
CC-257	Equal Opportunity Man- power Utilization Report	Prime Contractor - all Subcontractors for pro- jects over \$10,000	Monthly	5th of month	OFCCP Office Project Site - Contract Compliance
WH-347	Certified Payrolls	Prime Contractors and all Subcontractors	Weekly	Weekly	Project Site Contract Compliance
HC-50	Fringe Benefit Statement	Prime Contractor and all Subcontractors	With 1st pay- roll or when fringes change	With 1st Payroll or when fringes change	Project Site Contract Compliance
WH-348	Statement of Compliance	Prime Contractor and all Subcontractors	Submit only if Payrolls are computer- ized	Weekly with every Payroll	Project Site Contract Compliance
Proof of Trainee	Apprenticeship Agreement or Union Referral Slip	Prime Contractor and Subcontractors who have Trainees	Submit when new Trainee is hired		Project Site Contract Compliance
Affirmative Action Plan	Company AA Plan and Statement of who is AA/EE Officer	Prime Contractor only with 50 or more employees and for contracts of \$50,000 or more	Submit Once	Beginning of job	Contract Compliance

**U. S. DEPARTMENT OF LABOR**  
Employment Standards Administration, OFCCP

**MONTHLY EMPLOYMENT  
UTILIZATION REPORT**

1. COVERED AREA (MSA OR EA)  
**LOS ANGELES COUNTY**

2. CURRENT GOALS 3. REPORTING PERIOD

This report is required by Executive Order 11246, Sec. 203. Failure to report can result in contracts being cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts of federally assisted construction contracts.

2. EMPLOYERS I.D. NO.

MINORITY: FROM:

FEMALE: TO:

SUBMIT TO:

Contract # (s)

NAME AND ADDRESS OF REPORTING CONTRACTOR

FEDERAL  
FUNDING  
AGENCY

5. CONSTRUCTION TRADE	Classifications	6. WORK HOURS OF EMPLOYMENT (Federal & Non-Federal)										9. TOTAL NUMBER OF EMPLOYEES		10. TOTAL NUMBER OF MINORITY EMPLOYEES			
		6a. TOTAL ALL EMPLOYEES BY TRADE		6b. BLACK (Not of Hispanic Origin)		6c. HISPANIC		6d. ASIAN OR PACIFIC ISLANDERS		6e. AMERICAN INDIAN OR ALASKAN NATIVE		7. MINORITY PERCENTAGE	8. FEMALE PERCENTAGE	M	F	M	F
		M	F	M	F	M	F	M	F	M	F						
	Journey worker																
	APPRENTICE																
	TRAINEE																
	SUB-TOTAL																
	Journey worker																
	APPRENTICE																
	TRAINEE																
	SUB-TOTAL																
	Journey worker																
	APPRENTICE																
	TRAINEE																
	SUB-TOTAL																
	Journey worker																
	APPRENTICE																
	TRAINEE																
	SUB-TOTAL																
EXPLANATION:		FEMALE															
FAILURE TO		MINORITY															
ATTAIN																	
GOALS																	

11. COMPANY OFFICIAL'S SIGNATURE AND TITLE

12. TELEPHONE NUMBER (include area code)

13. DATE SIGNED

PAGE

OF

## INSTRUCTIONS FOR FILING MONTHLY EMPLOYMENT UTILIZATION REPORT (CC-257)

The Monthly Utilization Report is to be completed by each subject contractor (both prime and sub) and signed by a responsible official of the company. The reports are to be filed by the 1st day of each month during the term of the contract, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor shall submit a report for its aggregate work force and collect and submit reports for each subcontractor's aggregate work force to the Federal compliance agency that has Executive Order 11246 responsibility.

- |  |   |
|--|---|
| Compliance Agency .....                      | .U.S. Government agency assigned responsibility for equal employment opportunity. (Secure this information from the contracting officer.)   |
| Federal Funding Agency .....                 | .U.S. Government agency funding project (in whole or in part). If more than one agency, list all.   |
| Contractor .....                             | .Any contractor who has a construction contract with the U.S. Government or a contract funded in whole or in part with Federal funds.   |
| Minority .....                               | .Includes Blacks, Hispanics, American Indians, Alaskan Natives, and Asian and Pacific Islanders—both men and women.   |
| 1. Covered Area .....                        | .Geographic area identified in Notice required under 41 CFR 80-4.2.   |
| 2. Employer's Identification Number .....    | .Federal Social Security Number used on Employer's Quarterly Federal Tax Return (U.S. Treasury Department Form 941).  |
| 3. Current Goals (Minority & Female) .....   | .See contract Notification.   |
| 4. Reporting Period .....                    | .Monthly, or as directed by the compliance agency, beginning with the effective date of the contract.   |
| 5. Construction Trade .....                  | .Only those construction crafts which contractor employs in the covered area.   |
| 6. Work-Hours of Employment (a-e) .....      | .a. The total number of male hours and the total number of female hours worked by employees in each classification.<br><br>b.-e. The total number of male hours and the total number of female hours worked by each specified group of minority employees in each classification. |
| Classification .....                         | .The level of accomplishment or status of the worker in the trade (Journey Worker, Apprentice, Trainee)   |
| 7. Minority Percentage .....                 | .The percentage of total minority work-hours of all work-hours (the sum of columns 6b, 6c, 6d, and 6e divided by column 6a; just one figure for each construction trade).   |
| 8. Female Percentage .....                   | .For each trade the number reported in 6a, F divided by the sum of the numbers reported in 6a, M and F.   |
| 9. Total Number of Employees .....           | .Total number of male and total number of female employees working in each classification of each trade in the contractor's aggregate work force during reporting period.   |
| 10. Total Number of Minority Employees ..... | .Total number of male minority employees and total number of female minority employees working in each classification in each trade in the contractor's aggregate work force during reporting period.   |

## INSTRUCTIONS FOR COMPLETING PAYROLL FORM HC-347 (VIII-347)

**General:** The use of HC-347, payroll form, is not mandatory. This form has been made available for the convenience of contractors and subcontractors required by their construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the state and federal requirements of regulations as to payrolls submitted in connection with contracts.

This form meets need of state and federal payroll requirements of paying fringe benefits in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds or programs or by making these payments to the employees as cash in lieu of fringes.

This payroll provides for the contractor's showing on the face of the payroll all monies paid to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the statement of compliance on the reverse of the payroll that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

**Contractor or Subcontractor:** Fill in your firm's name and check appropriate box.  
**Address:** Fill in your firm's address.

**Column 1—Name, Address, and Social Security Number of Employee:** The employee's full name must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless his or her address changes.

**Column 2—Withholding Exemptions:** This column is merely inserted for the employer's convenience and is not a requirement.

**Column 3—Work Classification:** List classification descriptive of work actually performed by employees. Consult classifications and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. Employee may be shown as having worked in more than one classification provided accurate breakdown of hours so worked is maintained and shown on submitted payroll by use of separate line entries.

**Column 4—Hours Worked:** On all contracts enter as overtime hours all hours worked in excess of 8 hours per day and 40 hours a week.

**Column 5—Totals:** Self-explanatory.

**Column 6—Rate of Pay, Including Fringe Benefits:** In straight time box list actual hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus \$3.25/.40. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. In overtime box show overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See "Fringe Benefits" below. Payment of not less than time and one-half the contract base rate paid is required for overtime on State funded projects. On Federally aided projects, not less than time and one-half the contract base rate or the actual rate paid, whichever is higher, is required for overtime. (The base rate is defined as the general prevailing wage rate less the identifiable fringe benefits.) In addition to paying not less than the predetermined rate for the classification in which the employee works, the contractor shall pay to approved plans, funds, or programs or shall pay as cash in lieu of fringes amounts predetermined as fringe benefits in the wage decision made part of the contract. See "Fringe Benefits" below.

**Fringe Benefits—Contractors who pay all required fringe benefits:** A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage determinations shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such a contractor shall check paragraph 4(a) of the statement on the reverse of the payroll to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in Section 4(e).

**Contractors who pay no fringe benefits:** A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(e).

**Use of Section 4(e), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination required is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay, and shall show that he is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked an amount not less than the prevailing rate plus cash in lieu of fringes as shown in Section 4(e). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

**Column 7—Gross Amount Earned:** Enter gross amount earned on this project. If part of the employee's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the project and then the gross amount earned during the week on all projects, thus \$83.00/120.00.

**Column 8—Deductions:** Five columns are provided for showing deductions made. If more than five deductions should be involved, use first 4 columns; show the balance of deductions under "Other" column. If the employee worked on other jobs in addition to this project, show actual deductions from his or her weekly gross wage, but indicate that deductions are based on his or her gross wages.

**Column 9—Net Wages Paid for Week:** Self-explanatory.

**Totals:** Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll". See paragraph entitled "Fringe Benefits" above for instructions concerning filling out paragraph 4 of the statement.

**NOTE:** On Federally-funded projects:

Statement required by Regulations, Parts 3 and 4: While this form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USC 1031, namely, possible imprisonment for 5 years or \$10,000.00 fine or both. Accordingly, the party signing this required statement should have knowledge of the facts represented as true.



# STATEMENT OF COMPLIANCE

Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of signatory party) \_\_\_\_\_ (Title) do hereby state:

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ (Contractor or subcontractor) on the \_\_\_\_\_ (Building or work), that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ (Contractor or subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions, as described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below:

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

Remarks:

NAME AND TITLE

SIGNATURE

On federally-funded projects, permissible deductions are defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c).

Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).



## INSTRUCTIONS FOR PREPARATION OF STATEMENT OF COMPLIANCE

This statement of compliance meets needs of state and federal payroll requirements to pay fringe benefits in addition to payment of the minimum rates. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should *show on the face of his payroll all monies paid to the employees* whether as basic rates or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that *he is paying to others* fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions follow:

### *Contractors who pay all required fringe benefits:*

A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decisions shall continue to show on the face of his payroll the basic cash hourly rate and overtime rate paid to his employees, just as he has always done. Such a contractor shall check paragraph 4(a) of the statement to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in Section 4(c).

### *Contractors who pay no fringe benefits:*

A contractor who pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of his payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on the basic or regular rate plus the required cash in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus \$3.25/.40. In addition, the contractor shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

### *Use of Section 4(c), Exceptions:*

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employees as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.



# STATEMENT OF COMPLIANCE

Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of signatory party) \_\_\_\_\_ (Title) do hereby state:

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ (Contractor or subcontractor) on the \_\_\_\_\_ (Building or work), that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ (Contractor or subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions, as described below:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below:

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

Remarks:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

NAME AND TITLE	SIGNATURE
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On federally-funded projects, permissible deductions are defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948 63 Stat. 108, 72 Stat. 967, 76 Stat. 357 40 U.S.C. 276c). Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

District	County	DAS No. & S	DOT Code	Class.	Cor.	Type	Start	Complete	Months	Age	Vet.	Stat.
2	2	5	9	3	1	1	1 2	1 2	2	2	1	1



5/10 COPY

# APPRENTICE AGREEMENT

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Apprenticeship Standards

Apprentice name		Social Security Number	
Address (number and street, city and zip code)		County of residence	
Occupation			
Term of apprenticeship		Straight time	
hours within	years	Hours per day	Hours per week
			In agreement with (S)

### AGREEMENT:

The undersigned parties mutually agree that they will use their best endeavors to secure employment and training for the apprentice. The apprentice agrees to perform satisfactorily all work and learning assignments. The provisions of the Apprenticeship Standards for the above occupation adopted by the employer and/or the union and/or the apprenticeship committee and approved by the Administrator of Apprenticeship, are hereby made a part of this agreement. An official copy of said standards is on file at the headquarters of the Division of Apprenticeship Standards. This apprentice agreement will continue in effect until the training completed or otherwise terminated in accordance with the standards.

### EVALUATION:

The apprentice commenced training under these standards on \_\_\_\_\_, 19\_\_\_\_. The signatory apprentice credited with having \_\_\_\_\_ months toward completion of the term of apprenticeship prior to the above date. The apprentice expected to complete training on or about \_\_\_\_\_, 19\_\_\_\_, upon satisfactory completion of the total remaining hours of on-the-job training and hours and/or units of related and supplemental instruction.

### SIGNATURES:

\_\_\_\_\_  
Apprentice

\_\_\_\_\_  
Birthday

Veteran: Yes \_\_\_\_\_ No \_\_\_\_\_

C No \_\_\_\_\_

\_\_\_\_\_  
Parent or Guardian

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Address

By \_\_\_\_\_

\_\_\_\_\_  
Title

### AGREED AND APPROVED

\_\_\_\_\_  
Apprenticeship Committee

\_\_\_\_\_  
Secretary/Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Apprenticeship Consultant

# OWNER-OPERATOR LISTING STATEMENT OF COMPLIANCE

\_\_\_\_\_  
(Name of signatory party)

\_\_\_\_\_  
(Title)

do hereby state:

(1) That I pay or supervise the payment of the persons reported on this Form as Owner-operators by \_\_\_\_\_  
(Contractor or subcontractor)  
 at the \_\_\_\_\_, that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_,  
(Month or week)  
 \_\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, all persons working on said project have been paid the  
 full weekly sums earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said  
 \_\_\_\_\_ from the full weekly sums earned by any person and that no deductions have  
(Contractor or subcontractor)  
 been made either directly or indirectly from the full sums earned by any person, other than permissible deductions, as described  
 below:

(2) That any payrolls or listings otherwise under this contract required to be submitted for the above period are correct and complete;  
 that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage  
 determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the  
 work to be performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a  
 state apprenticeship agency.

(4) That

**(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS**

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll or listings  
 payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of  
 such employees, except as noted in Section 4(c) below.

**(b) WHERE FRINGE BENEFITS ARE PAID IN CASH**

Each Laborer or mechanic listed in the above referenced payroll or listings has been paid as indicated on the payroll or  
 listings an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe  
 benefits as listed in the contract, except as noted in Section 4(c) below:

**(c) EXCEPTIONS**

EXCEPTION (CRAFT)	EXPLANATION

Remarks:

NAME AND TITLE	SIGNATURE
----------------	-----------

On federally-funded projects, permissible deductions are defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary  
 of Labor under the Copeland Act, as amended (48 Stat. 948 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c).

Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal

NAME OF CONTRACTOR EMPLOYING OWNER OPERATOR(S)				ADDRESS												
PAYROLL NO.	FOR WEEK ENDING		PROJECT AND LOCATION							CONTRACT NO.						
NAME, ADDRESS, SOCIAL SECURITY NO. AND CONTRACTOR'S LICENSE NO. OF OWNER-OPERATOR (IF ANY)	WORK CLASSIFICATION	DESCRIPTION OF EQUIPMENT	TRUCK CAL T NO AND/OR EQUIP LICENSE NO.	OT OR ST	DAY AND DATE							TOTAL WEEKLY HOURS	HOURLY RATE OF PAY	GROSS PAYMENT EARNED	CHECK NO.	
				O												
				S												
				O												
				S												
				O												
				S												
				O												
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NOTE: CERTIFICATION WILL BE ACCEPTED ONLY FROM THE CONTRACTOR EMPLOYING THE OWNER OPERATOR IT WILL NOT BE ACCEPTED FROM THE OWNER OPERATOR HIMSELF



# Equal Employment Opportunity Executive Order 11246,

As Amended By Executive Orders 11375, 12086

Under and by virtue of the authority vested in me as President of the United States, it is ordered as follows:

## PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT<sup>1</sup>

## PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

### Subpart A—Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this order.

### Subpart B—Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with section 204 of this order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

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, 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, 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.<sup>2</sup>

(2) The contractor will, in all solicitations or advertisements 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, or national origin.<sup>2</sup>

(3) 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.

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

<sup>1</sup> Secs. 101 through 105 of pt. I of Executive Order 11246 dealing with discrimination in Federal employment were superseded by Executive Order 11478. Executive Order 11478, which is concerned exclusively with Government employment, expanded considerably the obligation of the Government itself to undertake equal employment opportunity within its own organization. Executive Order 11478 was signed by President Richard Nixon on Aug. 8, 1969.

<sup>2</sup> Sec. 202, paragraphs (1) and (2) and sec. 203, subsec. (d) were amended by Executive Order 11375 to encompass sex discrimination. Executive Order 11375 was signed by President Lyndon B. Johnson on Sept. 24, 1965.

<sup>3</sup> Ibid.

(5) 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.

(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 cancelled, 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, and such other sanctions may be imposed and remedies involved 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.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by 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 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.

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in section 202 shall file, and shall cause each of his subcontractors to file, compliance reports with the contracting agency or the Secretary of Labor as may be directed. Compliance reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this order, or any preceding similar executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, compliance reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the compliance report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its compliance report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his compliance report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or agency referring workers to providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discrimi-

nate on the grounds of race, color, religion, sex, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency, shall refuse to execute such a statement, the compliance report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.<sup>4</sup>

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of section 202 of this order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders: (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this order.

#### Subpart C—Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this order. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

<sup>4</sup>*Ibid.*



(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Titles VI or VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with subsection (a) of this section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this order. No order for debarment of any contractor from further Government contracts under section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

#### Subpart D—Sanctions and Penalties

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in section 202 of this order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to

the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

SEC. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

#### Subpart E—Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a U.S. Government certificate of merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this order.

SEC. 214. Any certificate of merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this order if such employer, labor union, or other agency has been awarded a certificate of merit which has not been suspended or revoked.

### **PART III — NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by section 202 of this order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree: (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary; (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance; (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to part II, Subpart D, of this Order; and (4) to refrain from entering into any contract subject to this order, or extension or other modification of such a contract with a contractor debarred from Government contracts under part II, subpart D, of this order.

SEC. 302. (a) "Construction contract" as used in this order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of part II of this order shall apply to such construction contracts, and for purposes of such application, the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303. (a) The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as the Secretary may require in the performance of functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings."

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in section 602 thereof and the regulations of the administering department or agency issued thereunder.

#### PART IV — MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans of Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (Jan. 18, 1955), 10722 (Aug. 5, 1957), 10925 (Mar. 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any executive order superseded by this order. All rules, regulations, orders, instructions, designa-

tions, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the executive orders superseded by this order, shall, to the extent that they are not inconsistent with this order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This order shall become effective 30 days after the date of this order.

LYNDON B. JOHNSON

THE WHITE HOUSE  
September 24, 1965

# DAVIS-BACON ACT

[Public—No. 403—74th Congress]

[S. 3303]

AN ACT

To amend the Act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors or subcontractors, and for other purposes," approved March 3, 1931, is amended to read as follows:

"That the advertised specifications for every contract in excess of \$2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there: and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which

may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

"Sec. 2. Every contract within the scope of this Act shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

"Sec. 3. (a) The Comptroller General of the United States is hereby authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to this Act: and the Comptroller General of the United States is further authorized and is directed to distribute

22 Labor and

a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

"(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall have the right of a action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

"Sec. 4. This Act shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

"Sec. 5. This Act shall take effect thirty days after its passage, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding at the time of the passage of this Act.

"Sec. 6. In the event of a national emergency the President is authorized to suspend the provisions of this Act.

"Sec. 7. The funds appropriated and made available by the Emergency Relief Appropriation Act of 1935 (Public Resolution Numbered 11, 74th Congress), are hereby made available for the fiscal year ending June 30, 1936, to the Department of Labor for expenses of the administration of this Act."

Approved, August 30, 1935.

## AMENDMENT

[Public—No. 633—76th Congress]

[Chapter 372—3d Session]

[S. 3650]

### AN ACT

To require the payment of prevailing rates of wages on Federal public works in Alaska and Hawaii.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1 of the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes," approved March 3, 1931 (46 Stat. 1494), as amended, is further amended by striking out the words "States of the Union or the District of Columbia" and inserting in lieu thereof "States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia"; and by striking out the words "or other civil subdivision of the State" and inserting in lieu thereof "or other civil subdivision of the State, or the Territory of Alaska or the Territory of Hawaii".

Sec. 2. The amendments made by this Act shall take effect on the thirtieth day after the date of enactment of this Act, but shall not affect any contract in existence on such effective date or made thereafter pursuant to invitations for bids outstanding on the date of enactment of this Act.

Approved, June 15, 1940.

[40 U. S. Code, sec. 276a-7]

The fact that any contract authorized by any Act is entered into without regard to section 5 of Title 41, or upon a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, shall not be construed to render inapplicable the provisions of sections 276a to 276a-5 of this title, if such Act would otherwise be applicable to such contract. March 22, 1941, 12 noon, ch. 26, 55 Stat. 53; Aug. 21, 1941, ch. 395, 55 Stat. 655.

AMENDMENT

[Public—No. 88-349—88th Congress]

July 2, 1964

[H.R. 6041]

AN ACT

To amend the prevailing wage section of the Davis-Bacon Act, as amended; and related sections of the Federal Airport Act, as amended; and the National Housing Act, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of March 2, 1931, as amended (46 Stat. 1484, as amended; 40 U.S.C. 276a), is hereby amended by designating the language of the present section as subsection (a) and by adding at the end thereof the following new subsection (b):

Federal construction laborers fringe benefits.  
49 Stat. 1011.

"(b) As used in this Act the term 'wages', 'scale of wages', 'wage rates', 'minimum wages', and 'prevailing wages' shall include—

78 STAT. 225.  
78 STAT. 229.

- "(1) the basic hourly rate of pay; and
- "(2) the amount of—

"(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

Trustee contribution.

"(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

Benefit costs.

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any such benefits:

Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as this Act and other Acts incorporating this Act by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2) (A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in paragraph (2) (B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2).

Payor obligations, method of payment.

"In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under this Act, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater."

Overtime pay computation, exclusion of benefit costs.

Sec. 2. Section 15(b) of the Federal Airport Act, as amended (60 Stat. 178, as amended; 49 U.S.C. 1114(b)), is hereby amended by inserting the words "in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5)" after the words "Secretary of Labor."

Airport projects.  
63 Stat. 450.  
49 Stat. 1011.

Sec. 3. Section 212(a) of the National Housing Act, as amended (53 Stat. 208, as amended; 12 U.S.C. 1715(c)), is hereby amended by inserting the words "in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5)," after the words "Secretary of Labor."

Housing projects.  
53 Stat. 507;  
73 Stat. 667.  
12 USC 1715c.

Sec. 4. The amendments made by this Act shall take effect on the ninetieth day after the date of enactment of this Act, but shall not affect any contract in existence on such effective date or made thereafter pursuant to invitations for bids outstanding on such effective date and the rate of payments specified by section 1(b)(2) of the Act of March 2, 1931, as amended by this Act, shall, during a period of two hundred and seventy days after such effective date, become effective only in those cases and reasonable classes of cases as the Secretary of Labor, acting as rapidly as practicable to make such rates of payments fully effective, shall by rule or regulation provide.

Effective date.  
78 STAT. 229.  
78 STAT. 240.



EMPLOYMENT OF APPRENTICES AND TRAINEES  
IN COMPLIANCE WITH 29 C.F.R.

A. APPRENTICES

Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (b) of this subparagraph or is not registered as above shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work.

B. TRAINEES

Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and, where subdivision (iii) of Part 5 (a) of this subparagraph is applicable, in accordance with the provisions of subdivision (d), (said subdivision is also known and herein referred to as "Part 5 (a)") of this subtitle.\*

C. The phrase "laborer or mechanic" shall include for Federal Labor Standards Provisions purposes the categories of apprentices and trainees.

D. \*If the contract amount exceeds \$10,000 the following conditions shall apply:

§5a.3 APPRENTICE AND TRAINEE EMPLOYMENT REQUIREMENTS

(a) (1) In compliance with 29 C.F.R. §52.3, as amended, the contractor agrees:

(i) That he will make a diligent effort to hire for the performance of the contract a number of apprentices or trainees or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the contract the applicable ratio as determined by the Secretary of Labor:

(ii) That he will assure that 25 percent of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (a) the availability of training opportunities for first year apprentices, (b) the hazardous nature of the work for beginning worker, (c) excessive unemployment of apprentices in their second and subsequent years of training.

(iii) That during the performance of the contract he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirement of subdivisions (i) and (ii) of this subparagraph.

\* This subdivision is also known and herein referred to as "Part 5 (a)".

(2) The contractor agrees to maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and wages paid and hours worked of such apprentices, trainees and journeymen. The contractor agrees to make these records available for inspection upon request of the Department of Labor and Federal agency concerned.

(3) The contractor who claims compliance based on the criterion stated in §5(a). 4(b) attached hereto, agrees to maintain records of employment, as described in §5(a). 3(a) (2), attached hereto on non-federal and non-federally assisted construction work done during the performance of this contract in the same labor market area. The contractor agrees to make these records available for inspection upon request of the Department of Labor and Federal agency concerned.

(4) The contractor agrees to supply one copy of the written notices required in accordance with §5 (a). 4(c) attached hereto at the request of Federal agency compliance officers. The contractor also agrees to supply at 3-month intervals during performance of the contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees and journeymen. One copy of the statement will be sent to the agency concerned, and one to the Secretary of Labor.

(5) (a) The contractor agrees to insert in any subcontract under this contract the requirements contained in subparagraphs (d) (1), (d) (2), (d) (3) and (d) (4) of this Section 208. Sections 5(a). 4, 5 (a). 5, and 5 (a). 7 are attached hereto and shall be attached to each subcontract for the information of the contractor. The term "contractor" as used in such clauses in any subcontract shall mean the subcontractor.

(b) The provisions of Paragraph (a) of this Section shall not apply with regard to any contract, if the head of the Federal Agency concerned finds it likely that making of the contract with the clauses contained in Paragraph (a) of this Section will prejudice the national security.

#### §5(a).4 CRITERIA FOR MEASURING DILIGENT REPORT

A contractor will be deemed to have made a "diligent effort" as required by §5(a).3 if during the performance of his contract he accomplishes at least one of the following three objectives:

(a) The contractor employs on this project a number of apprentices and trainees by craft as required by the contract clauses at least equal to the ratios established in accordance with §5(a).5.

(b) The contractor employs on all his public and private construction work combined in the labor market area of this project, an average number of apprentices and trainees by craft as required by the contract clauses, at least equal to the ratios established in accordance with §5(a).5.

(c) (1) Before commencement of work on the project, the contractor, if covered by a collective bargaining agreement, will give written notice to all joint apprenticeship committees: the local U.S. Employment Security Office; local chapter of the Urban League, Workers Defense League, or other local organization concerned with minority employment, and the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor, for the locality. The contractor, if not covered by a collective bargaining agreement, will give written notice to all the groups stated above except joint apprenticeship committees; this contractor also will notify all non-joint apprenticeship censors in the labor market area.

(2) The notice will include at least the contractor's name and address, the job site address, value of contract, expected starting and completion dates, the estimated average number of employees in each occupation to be employed over the duration of the contract, and a statement of his willingness to employ a number of apprentices and trainees at least equal to the ratios established in accordance with §5(a).5.

(3) The contractor must employ all qualified applicants referred to him through normal channels (such as the Employment Service, the Joint Apprenticeship Committees and, where applicable, minority organizations and apprentice outreach programs who have been delegated this functions) at least up to the number of such apprentices and trainees required by the applicable provision of §5(a).5.

#### §5(a).5 DETERMINATION OF RATIOS OF APPRENTICES OR TRAINEES TO JOURNEYMEN

The Secretary of Labor has determined that the applicable ratios of apprentices and trainees to journeymen in any occupation shall be as follows:

(a) In any occupation, the applicable ratio of apprentices and trainees to journeymen shall be equal to the predominant ratio for the occupation in the area where the construction is to be undertaken, set forth in collective bargaining agreements or other employment agreements, and available through the Regional Manager for the Bureau of Apprenticeship and Training for the applicable area.

(b) For any occupation for which no such ratio is found, the ratio of apprentices and trainees to journeymen shall be determined by the contractor in accordance with the recommendations set forth in the standards of the National Joint Apprentice Committee for the Occupation, which are filed with the U.S. Department of Labor's Bureau of Apprenticeship and Training.

(c) For any occupation for which no such recommendations are found, the ratio of apprentices and trainees to journeymen shall be at least one apprentice or trainee for each five journeymen.

#### §5(a).6 VARIATIONS, TOLERANCES, AND EXEMPTIONS

Variations, tolerances, and exemptions from any requirement of this part with respect to any contract or subcontract may be granted when such action is necessary and proper in the public interest, or to prevent injustice, or undue hardship. A request for a variation, tolerance, or exemption may be made in writing by any interested person to the Secretary, U.S. Department of Labor, Washington, D.C. 20210.

§5(a).7 ENFORCEMENT

(a) Each Federal agency concerned shall insure that the contract clauses required by §5(a). 3(a) are inserted in every Federal or Federally-assisted construction contract subject thereto. Federal agencies administering assistance programs for construction work for which they do not contract directly shall promulgate regulations and procedures necessary to insure that contracts for the construction work subject to §5(a). 3(a) will contain the clauses required thereby.

(b) Enforcement activities, including the investigation of complaints of violations, to assure compliance with the requirements of this part, shall be the primary duty of the Federal agency awaiting the contract or providing the Federal assistance. The Department of Labor will coordinate its efforts with the Federal agencies, as may be necessary, to assure consistent enforcement of the requirements of this part. Enforcement of these provisions shall be in accordance with the procedures outlined in §5.6 of Part 5 of this subtitle.

**EFFECTIVE DATE.** The provisions of this part shall be applicable to every Invitation for Bids, and to every negotiation, request for proposals, or request for quotations, for a Federal or Federally-assisted construction contract, issued after January, 30, 1972, and to every such contract entered into on the basis of such invitation or negotiation.

projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) *Urban Mass Transportation Administration.* (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency or service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) *Obligations of the airport operator—*  
(1) *Tenants, contractors, and concessionaires.* Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) *Notification of beneficiaries.* The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) *Reports.* Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

## PART 23—PARTICIPATION BY MINORITY BUSINESS ENTERPRISE IN DEPARTMENT OF TRANSPORTATION PROGRAMS

### Subpart A—General

Sec.

- 23.1 Purpose.
- 23.3 Applicability.
- 23.5 Definitions.
- 23.7 Discrimination prohibited.

### Subpart B—[Reserved]

### Subpart C—Department of Transportation Financial Assistance Programs

- 23.41 General.
- 23.43 General requirements for recipients.
- 23.45 Required MBE program components.
- 23.47 Counting MBE participation toward meeting MBE goals.
- 23.49 Maintenance of records and reports.
- 23.51 Certification of the eligibility of minority business enterprises.
- 23.53 Eligibility standards.
- 23.55 Appeals of denials of certification as an MBE.

### Subpart D—Implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982

- 23.61 Purpose.
- 23.62 Definitions.
- 23.63 Applicability.
- 23.64 Submission of overall goals.
- 23.65 Content of justification.
- 23.66 Approval and disapproval of overall goals.
- 23.67 Special provision for transit vehicle manufacturers.
- 23.68 Compliance.

Sec.

23.69 Challenge procedure.

APPENDIX A—SECTION-BY-SECTION ANALYSIS  
APPENDIX B—DETERMINATIONS OF BUSINESS  
SIZE

APPENDIX C—GUIDANCE FOR MAKING DETER-  
MINATIONS OF SOCIAL AND ECONOMIC DIS-  
ADVANTAGE

APPENDIX D—JUSTIFICATIONS FOR REQUESTS  
FOR APPROVAL OF OVERALL GOALS OF LESS  
THAN TEN PERCENT

#### Subpart E—Compliance and enforcement

23.73 Complaints.

23.75 Compliance reviews.

23.81 Conciliation procedures for financial  
assistance programs.

23.83 Enforcement proceedings for finan-  
cial assistance programs.

23.85 Emergency enforcement procedure.

23.87 Willful provision of incorrect infor-  
mation.

SCHEDULE A—INFORMATION FOR DETERMINING  
MINORITY BUSINESS ENTERPRISE ELIGI-  
BILITY

SCHEDULE B—INFORMATION FOR DETERMINING  
JOINT VENTURE ELIGIBILITY

AUTHORITY: Sec. 905 of the Railroad Revi-  
talization and Regulatory Reform Act of  
1978 (45 U.S.C. 803); sec. 30 of the Airport  
and Airway Development Act of 1970, as  
amended (49 U.S.C. 1730); sec. 19 of the  
Urban Mass Transportation Act 1964, as  
amended (Pub. L. 95-599); Title 23 of the  
U.S. Code (relating to highways and high-  
way safety); Title VI of the Civil Rights Act  
of 1964 (42 U.S.C. 2000d *et seq.*); The Feder-  
al Property and Administrative Services Act  
of 1949 (49 U.S.C. 471 *et seq.*); Executive  
Order 11625; Executive Order 12138, unless  
otherwise noted.

SOURCE: 45 FR 21184, Mar. 31, 1980, unless  
otherwise noted.

#### Subpart A—General

##### § 23.1 Purpose.

(a) The purpose of this part is to carry out the Department of Transportation's policy of supporting the fullest possible participation of firms owned and controlled by minorities and women, (MBEs) in Department of Transportation programs. This includes assisting MBEs throughout the life of contracts in which they participate.

(b) This part implements in part section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); section 30 of the Airport and Airway Development Act of

1970, as amended (49 U.S.C. 1730); section 19 of the Urban Mass Transportation Act of 1964, as amended (Pub. L. 95-599); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*); and Title 23 of the U.S. Code (relating to highways and highway safety). This regulation supersedes all DOT regulations issued previously under these authorities, insofar as such regulations affect minority business enterprise matters in DOT financial assistance programs.

##### § 23.2 Applicability.

This part applies to any DOT program through which funds are made available to members of the public for accomplishing DOT's purposes. Contracts and subcontracts which are to be performed entirely outside the United States, its possessions, Puerto Rico, and the North Mariana Islands, are exempted from this part.

##### § 23.5 Definitions.

"Affirmative action" means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve minority business enterprises fully in contracts and programs funded by the Department.

"Applicant" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for DOT financial assistance; and "application" means such an application, request, or plan.

"Compliance" means the condition existing when a recipient or contractor has met and implemented the requirements of this part.

"Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is a contract.

"Contractor" means one who participates, through a contract or subcontract, in any program covered by this part, and includes lessees.

“Department” or “DOT” means the Department of Transportation, including its operating elements.

“DOT-assisted contract” means any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee.

“DOT financial assistance” means financial aid provided by the Department or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

“Departmental element” means the following parts of DOT:

- (a) The Office of the Secretary (OST);
- (b) The Federal Aviation Administration (FAA);
- (c) The United States Coast Guard (USCG);
- (d) The Federal Highway Administration (FHWA);
- (e) The Federal Railroad Administration (FRA);
- (f) The National Highway Traffic Safety Administration (NHTSA);
- (g) The Urban Mass Transportation Administration (UMTA);
- (h) The St. Lawrence Seaway Development Corporation (SLSDC); and
- (i) The Research and Special Programs Administration (RSPA).

“Joint venture” means an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

“Lessee” means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient’s or Department’s facility for the purpose of operating a transportation-related activity

or for the provision of goods or services to the facility or to the public on the facility.

“Minority” means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(e) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

“Minority business enterprise” or “MBE” means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least 51 per centum owned by one or more minorities or women or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more minorities or women; and

(b) Whose management and daily business operations are controlled by one or more such individuals.

“MBE coordinator” means the official designated by the head of the Department element to have overall responsibility for promotion of minority business enterprise in his/her Departmental element.

“Noncompliance” means the condition existing when a recipient or con-

tractor has failed to implement the requirements of this part.

“Primary recipient” is a recipient who receives DOT financial assistance and passes some or all of this assistance on to another recipient.

“Program” means any undertaking by a recipient to use DOT financial assistance, and includes the entire activity any part of which receives DOT financial assistance.

“Recipient” means any entity, public or private, to whom DOT financial assistance is extended, directly or through another recipient for any program.

“Secretary” means the Secretary of transportation or any person whom he/she has designated to act for him/her.

“Set-aside” means a technique which limits consideration of bids or proposals to those submitted by MBEs.

[45 FR 21184, Mar. 31, 1980, as amended at 46 FR 60459, Dec. 10, 1981]

#### § 23.7 Discrimination prohibited.

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this part, on the grounds of race, color, national origin, or sex.

#### Subpart B—[Reserved]

#### Subpart C—Department of Transportation Financial Assistance Programs

##### § 23.41 General.

(a) *Responsibilities of applicants and recipients.* (1) All applicants and recipients shall follow the requirements of section 23.43.

(2) Applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing the elements set forth in § 23.45(e) through (i). This program shall be submitted for approval to the DOT element concerned with the application for financial assistance or project approval.

(i) Applicants for funds in excess of \$250,000, exclusive of transit vehicle purchases, under sections, 3, 5, 9, 9A,

17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems.

(ii) Applicants for planning funds in excess of \$100,000 under section 6, 8, 9 or 9A of the Urban Mass Transportation Act of 1964, as amended.

(iii) Applicants for Section 402 program funds of the National Highway Traffic Safety Administration;

(iv) Applicants for funds in excess of \$250,000 awarded by the Federal Aviation Administration to general aviation airports;

(v) Applicants for funds in excess of \$400,000 awarded by the Federal Aviation Administration to non-hub airports; and

(vi) Applicants for planning funds in excess of \$75,000 awarded by the Federal Aviation Administration.

(vii) Licensees or applicants for a license under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*).

(3) All applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing all the elements set forth in § 23.45. The program shall be submitted for approval to the DOT element concerned with the application for assistance or project approval.

(i) Applicants for Federal-aid highway program funds;

(ii) Applicants for funds in excess of \$500,000, exclusive of transit vehicle purchases, under sections 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems;

(iii) Applicants for planning funds in excess of \$200,000 under section 6, 8, 9 and 9A of the Urban Mass Transportation Act of 1964, as amended.

(iv) Applicants for funds in excess of \$500,000 awarded by the Federal Aviation Administration to large, medium and small hub airports; and

(v) Applicants for financial assistance programs, including loan guarantees, by the Federal Railroad Administration and the United States Railway Association.

(b) *Approval requirement.* Applications and funding agreements are signed and authorizations to proceed are approved only after the applicant's MBE program has been approved by



the Departmental element. This requirement applies to applications, authorizations to proceed requested by Federal-aid highway program recipients, and requests for draw downs from the U.S. Railway Association submitted 90 days or more following the effective date of this part.

(c) *Effect of agreement.* The MBE program prepared by the applicant and the commitment made by the applicant to carry out the MBE program is incorporated into and becomes part of this agreement and subsequent financial assistance agreements. The agreement between the Department and the recipient shall contractually bind the recipient to the commitments made in the MBE program, as approved by the Department. Failure to keep these commitments shall be deemed noncompliance with this part. Once submitted and approved, an MBE program is applicable to all DOT-assisted contracts solicited and let by the applicant after the approval date of the MBE program regardless of the approval date of the grant or project under which the contracts are let.

(d) *Other MBE programs.* (1) Applicants meeting the criteria set forth in paragraphs (a)(2) and (3) of this section who have formulated MBE programs under previous requirements of DOT or other agencies shall revise these programs to conform to the requirements of this part prior to the approval of their next application.

(2) An MBE program approved by one Departmental element is acceptable to all Departmental elements. Applicants having an approved MBE program are not required to resubmit the program or to produce a new program for future applications, as long as all requirements for approval continue to be met and implementation of the program is achieving compliance. The Departmental element reassesses its approval of the MBE program of continuing recipients at least annually.

(e) *Transit vehicle manufacturers.* Transit vehicle manufacturers who wish to bid on UMTA-assisted transit vehicle procurement contracts shall have a UMTA-approved MBE program. Each UMTA recipient shall require these manufacturers to certify

that they have such a program as a condition for bidding on UMTA-assisted contracts.

(f) *Exemptions.* The head of the Departmental element may, under appropriate circumstances, and with the concurrence of the Secretary, grant deviations or exemptions from this subpart. A request for deviation or exemption from this subpart shall be in writing and shall include a showing as to how the particular situation is exceptional and how the modified program complies substantially with this part. If the applicant asserts that State or local law prohibits it from including a particular provision in its program, the applicant shall provide copies of all legal citations supporting the claim.

[45 FR 21184, Mar. 31, 1980, as amended at 48 FR 33444, July 21, 1983]

§ 23.43 General requirements for recipients.

(a) Each recipient shall agree to abide by the statements in paragraphs (a)(1) and (2) of this section. These statements shall be included in the recipient's DOT financial assistance agreement and in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor.

(1) "*Policy.* It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently the MBE requirements of 49 CFR Part 23 apply to this agreement."

(2) "*MBE Obligation.* (i) The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to

ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.”

(b) Each DOT financial assistance agreement shall include the following: “If as a condition of assistance the recipient has submitted and the Department has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program the Department shall impose such sanctions as noted in 49 CFR Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance.”

(c) The recipient shall advise each subrecipient, contractor, or subcontractor that failure to carry out the requirements set forth in § 23.43(a) shall constitute a breach of contract and, after the notification of the Department, may result in termination of the agreement or contract by the recipient or such remedy as the recipient deems appropriate.

(d) Recipients shall take action concerning lessees as follows:

(1) Recipients shall not exclude MBEs from participation in business opportunities by entering into long-term, exclusive agreements with non-MBEs for the operation of major transportation-related activities or major activities for the provision of goods and services to the facility or to the public on the facility.

(2) Recipients required to submit affirmative action programs under § 23.41 (a)(2) or (a)(3) that have business opportunities for lessees shall submit to the Department for approval with their programs overall goals for the participation as lessees of

firms owned and controlled by minorities and firms owned and controlled by women. These goals shall be for a specified period of time and shall be based on the factors listed in § 23.45(g)(5). Recipients shall review these goals at least annually, and whenever the goals expire. The review shall analyze projected versus actual MBE participation during the period covered by the review and any changes in factual circumstances affecting the selection of goals. Following each review, the recipient shall submit new overall goals to the Department for approval. Recipients that fail to meet their goals for MBE lessees shall demonstrate to the Department in writing that they made reasonable efforts to meet the goals.

(3) Except as provided in this section, recipients are not required to include lessees in their affirmative action programs. Lessees themselves are not subject to the requirements of this part, except for the obligation of § 23.7 to avoid discrimination against MBEs.

#### § 23.45 Required MBE program components.

(a) *A policy statement, expressing a commitment to use MBEs in all aspects of contracting to the maximum extent feasible.* (1) The applicant’s policymaking body (Board, Council, etc.) shall issue a policy statement, signed by the chairperson, which expresses its commitment to the program, outlines the various levels of responsibility and states the objectives of the program. The policy statement shall be circulated throughout the applicant’s organization and to minority, female, and nonminority community and business organizations.

(b) *The designation of liaison officer, as well as such support staff as may be necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the liaison officer and support staff.* (1) The Chief Executive Officer of the recipient shall designate an MBE liaison officer and adequate staff to administer the MBE program. The MBE liaison officer shall report

directly to the Chief Executive Officer.

(2) The MBE liaison officer shall be responsible for developing, managing, and implementing the MBE program on a day-to-day basis; for carrying out technical assistance activities for MBEs; and for disseminating information on available business opportunities so that MBEs are provided an equitable opportunity to bid on the applicant's contracts.

(c) *Procedures to ensure that MBEs have an equitable opportunity to compete for contracts and subcontracts.* The recipient shall develop and use affirmative action techniques to facilitate MBE participation in contracting activities. These techniques include:

(1) Arranging solicitations, time for the presentation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation MBEs.

(2) Providing assistance to MBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

(3) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) *Opportunities for the use of banks owned and controlled by minorities or women.* (1) The recipient shall thoroughly investigate the full extent of services offered by banks owned and controlled by minorities or women in its community and make the greatest feasible use of these banks.

(2) Recipients shall also encourage prime contractors to use the services of banks owned and controlled by minorities or women.

(e) *MBE directory.* (1) The recipient shall have available a directory or source list to facilitate identifying MBEs with capabilities relevant to general contracting requirements and to particular solicitations. The recipient shall make the directory available to bidders and proposers in their efforts to meet the MBE requirements. It shall specify which firms the Department, recipient, or the Small Business Administration has determined to

be eligible MBEs in accordance with procedures set forth in this subpart.

(f) *Procedures to ascertain the eligibility of MBEs and joint ventures involving MBEs.* (1) To ensure that its MBE program benefits only firms owned and controlled by minorities or women, the recipient shall certify the eligibility of MBEs and joint ventures involving MBEs that are named by the competitors in accordance with this subpart. Recipients may, at their own discretion, accept certifications made by other DOT recipients.

(2) Recipients shall require their prime contractors to make good faith efforts to replace an MBE subcontractor that is unable to perform successfully with another MBE. The recipient shall approve all substitutions of subcontractors before bid opening and during contract performance, in order to ensure that the substitute firms are eligible MBEs.

(g) *Percentage goals for the dollar value of work to be awarded to MBEs.*

(1) Once the recipient has reviewed proposed contracting to identify those contracting activities which have the greatest potential for MBE participation, the recipient shall set goals that are practical and related to the potential availability of MBEs in desired areas of expertise.

(2) The applicant/recipient shall establish two types of MBE goals:

(i) Overall goals for its entire MBE program, for a specified period of time (e.g. one year), or for a specific project, (e.g. the construction of a facility); and

(ii) Contract goals on each specific prime contract with subcontracting possibilities, which the bidder or proposer must meet or exceed or demonstrate that it could not meet despite its best efforts.

(3)(i) Recipients shall submit their overall goals and a description of the methodology used in establishing them with their MBE program. When the overall goals expire, new overall goals shall be set and submitted to the Department for approval. Contract goals need not be submitted in the applicant's MBE program, but the program shall contain a description of the methodology to be used in establishing them. Contract goals may require ap-

proval by the Department prior to contract solicitation.

(ii) At the time the recipient submits its overall goals to the Department for approval, the recipient shall publish a notice announcing these goals, informing the public that the goals and a description of how they were selected are available for inspection during normal business hours at the principal office of the recipient for 30 days following the date of the notice, and informing the public that the Department and the recipient will accept comments on the goals for 45 days from the date of the notice. The notice shall include addresses to which comments may be sent, and shall be published in general circulation media and available minority-focus media and trade association publications, and shall state that the comments are for informational purposes only.

(4) Recipients shall set separate overall and contract goals for firms owned and controlled by minorities and firms owned and controlled by women.

(5) The applicant shall consider the following factors in setting overall goals:

(i) Overall goals shall be based on projection of the number and types of contracts to be awarded by the applicant and a projection of the number and types of MBEs likely to be available to compete for contracts from the recipient over the period during which the goals will be in effect.

(ii) Overall goals shall also be based on past results of the applicant's/recipient's efforts to contract with MBEs and the reasons for the high or low level of those results.

(6) The applicant/recipient shall review the overall goals at least annually. The review process shall analyze projected versus actual MBE participation during the previous year. The necessary revisions shall be made based on the analysis and submitted to the Department for approval.

(7) Goals shall be set for specific contracts based on the known availability of qualified MBEs.

(8) Recipients and contractors shall, at a minimum, seek MBEs in the same geographic area in which they seek contractors or subcontractors general-

ly for a given solicitation. If the recipient or contractor cannot meet the goals using MBEs from this geographic area, the recipient or contractor, as part of its efforts to meet the goal, shall expand its search to a reasonable wider geographic area.

(h) *A means to ensure that competitors make good faith efforts to meet MBE contract goals:*

(1) For all contracts for which contract goals have been established, the recipient shall, in the solicitation, inform competitors that the apparent successful competitor will be required to submit MBE participation information to the recipient and that the award of the contract will be conditioned upon satisfaction of the requirements established by the recipient pursuant to this subsection.

(i) The apparent successful competitor's submission shall include the following information:

(A) The names and addresses of MBE firms that will participate in the contract;

(B) A description of the work each named MBE firm will perform;

(C) The dollar amount of participation by each named MBE firm.

(ii) The recipient may select the time at which it requires MBE information to be submitted. *Provided*, that the time of submission shall be before the recipient commits itself to the performance of the contract by the apparent successful competitor.

(2) If the MBE participation submitted in response to paragraph (h)(1) of this section does not meet the MBE contract goals, the apparent successful competitor shall satisfy the recipient that the competitor has made good faith efforts to meet the goals.

(i) The recipient may prescribe other requirements of equal or greater effectiveness in lieu of good faith efforts. Any recipient choosing alternative requirements shall inform the DOT office concerned by letter of the content of the requirements it has prescribed within 30 days of the effective date of this subsection. The recipient may put these alternative requirements into effect immediately and prior DOT approval of alternative requirements is not necessary.

(ii) If the Department determines that the alternative requirements are not as or more effective than the good faith efforts provisions of this subsection, the Department may require the recipient to use the good faith efforts requirements of this subsection instead of the requirements it has prescribed.

(3) Meeting MBE contract goals, making good faith efforts as provided in paragraph (h)(2) of this section, or meeting requirements established by recipients in lieu of good faith efforts, is a condition of receiving a DOT-assisted contract for which contract goals have been established.

(i) [Reserved]

(j) *A description of the methods by which the recipient will require subrecipients, contractors, and subcontractors to comply with applicable MBE requirements.* (1) The recipient shall include in its MBE program a description and the specific language of any preconditions to subgrants or contracts pertaining to the use of MBEs, including subcontracting programs, it awards with DOT funds in addition to those required by this section. It shall specify on what size and/or type of contracts and subgrants it includes such preconditions. The description shall contain a summary of the ways the recipient provides help to its subrecipients, contractors, and subcontractors in drafting and implementing their programs for using MBEs. The description shall also include the means by which the recipient enforces the requirements placed on subrecipients, contractors and subcontractors.

(2) Any MBE subcontracting programs required by the recipient in addition to those required by this section shall be submitted to the recipient by the apparent successful bidder/proposer. The bidders/proposers shall be advised in the solicitation that failure to submit the additional MBE subcontracting program shall make the bidder/proposer ineligible for award.

(k) *Procedures by which the applicant/recipient will implement MBE set-asides.* Where not prohibited by state or local law and determined by the recipient to be necessary to meet MBE goals, procedures to implement MBE set-asides shall be established.

MBE set-asides shall be used only in cases where at least three MBEs with capabilities consistent with contract requirements exist so as to permit competition.

#### APPENDIX A—GUIDANCE CONCERNING GOOD FAITH EFFORTS

To determine whether a competitor that has failed to meet MBE contract goals may receive the contract, the recipient must decide whether the efforts the competitor made to obtain MBE participation were "good faith efforts" to meet the goals. Efforts that are merely *pro forma* are not good faith efforts to meet the goals. Efforts to obtain MBE participation are not good faith efforts to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of MBE participation sufficient to meet the goals. In order to award a contract to a competitor that has failed to meet MBE contract goals, the recipient must determine that the competitor's efforts were those that, given all relevant circumstances, a competitor actively and aggressively seeking to meet the goals would make.

To assist recipients in making the required judgment, the Department has prepared a list of the kinds of efforts that contractors may make in obtaining MBE participation. It is not intended to be a mandatory checklist; the Department does not require recipients to insist that a contractor do any one, or any particular combination, of the things on the list. Nor is the list intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a contractor has made good faith efforts, it will usually be important for a recipient to look not only at the different kinds of efforts that the contractor has made, but also the quantity and intensity of these efforts.

The Department offers the following list of kinds of efforts that recipients may consider:

(1) Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform MBEs of contracting and subcontracting opportunities;

(2) Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;

(3) Whether the contractor provided written notice to a reasonable number of specific MBEs that their interest in the contract was being solicited, in sufficient time to allow the MBEs to participate effectively;

(4) Whether the contractor followed up initial solicitations of interest by contacting MBEs to determine with certainty whether the MBEs were interested;

(5) Whether the contractor selected portions of the work to be performed by MBEs in order to increase the likelihood of meeting the MBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation);

(6) Whether the contractor provided interested MBEs with adequate information about the plans, specifications and requirements of the contract;

(7) Whether the contractor negotiated in good faith with interested MBEs, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;

(8) Whether the contractor made efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and

(9) Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, state and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs.

(Title VI of the Civil Rights Act of 1964; sec. 30 of the Airport and Airway Development Act of 1970, as amended; sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1976; sec. 19 of the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C. 324; Executive Order 11625; Executive Order 12138)

[45 FR 21184, Mar. 31, 1980, as amended at 46 FR 23461, Apr. 27, 1981]

#### § 23.47 Counting MBE participation toward meeting MBE goals.

MBE participation shall be counted toward meeting MBE goals set in accordance with this subpart as follows:

(a) Once a firm is determined to be an eligible MBE in accordance with this subpart, the total dollar value of the contract awarded to the MBE is counted toward the applicable MBE goals.

(b) The total dollar value of a contract to an MBE owned and controlled by both minority males and non-minority females is counted toward the goals for minorities and women, respectively, in proportion to the percentage of ownership and control of each group in the business. The total dollar value of a contract with an MBE owned and controlled by minori-

ty women is counted toward either the minority goal or the goal for women, but not to both. The contractor or recipient employing the firm may choose the goal to which the contract value is applied.

(c) A recipient or contractor may count toward its MBE goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this subpart equal to the percentage of the ownership and controls of the MBE partner in the joint venture.

(d)(1) A recipient or contractor may count toward its MBE goals only expenditures to MBEs that perform a commercially useful function in the work of a contract. An MBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE is performing a commercially useful function, the recipient or contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(2) Consistent with normal industry practices, an MBE may enter into subcontracts. If an MBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE shall be presumed not to be performing a commercially useful function. The MBE may present evidence to rebut this presumption to the recipient. The recipient's decision on the rebuttal of this presumption is subject to review by the Department.

(e) A recipient or contractor may count toward its MBE goals expenditures for materials and supplies obtained from MBE suppliers and manufacturers, provided that the MBEs assume the actual and contractual responsibility for the provision of the materials and supplies.

(1) The recipient or contractor may count its entire expenditure to an MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

(2) The recipient may count 20 percent of its expenditures to MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.

§ 23.49 Maintenance of records and reports.

(a) In order to monitor the progress of its MBE program the applicant/recipient shall develop a recordkeeping system which will identify and assess MBE contract awards, prime contractors' progress in achieving MBE sub-contract goals, and other MBE affirmative action efforts.

(b) Specifically, the applicant/recipient shall maintain records showing:

(1) Procedures which have been adopted to comply with the requirements of this part.

(2) Awards to MBEs. These awards shall be measured against projected MBE awards and/or MBE goals. To assist in this effort, the applicant shall obtain regular reports from prime contractors on their progress in meeting contractual MBE obligations.

(3) Specific efforts to identify and award contracts to MBEs.

(c) Records shall be available upon the request of an authorized officer or employee of the government.

(d)(1) The recipient shall submit reports conforming in frequency and format to existing contract reporting requirements of the applicable Departmental element. Where no such contract reporting requirements exist, MBE reports shall be submitted quarterly.

(2) These reports shall include as a minimum:

(i) The number of contracts awarded to MBEs;

(ii) A description of the general categories of contracts awarded to MBEs;

(iii) The dollar value of contracts awarded to MBEs;

(iv) The percentage of the dollar value of all contracts awarded during this period which were awarded to MBEs; and

(v) An indication of whether and the extent of which the percentage met or exceeded the goal specified in the application.

(3) The records and reports required by this section shall provide information relating to firms owned and controlled by minorities separately from information relating to firms owned and controlled by women. If the records and reports include any section 8(a) contractors that are not minorities or women, information concerning these contractors shall also be recorded and reported separately.

§ 23.51 Certification of the eligibility of minority business enterprises.

(a) To ensure that this part benefits only MBEs which are owned and controlled in both form and substance by one or more minorities or women, DOT recipients shall use Schedules A and B (reproduced at the end of this Part) to certify firms who wish to participate as MBEs in DOT under this part.

(b) Except as provided in paragraph (c) of this section, each business, including the MBE partner in a joint venture, wishing to participate as a MBE under this part in a DOT-assisted contract shall complete and submit Schedule A. Each entity wishing to participate as a joint venture MBE under this part in DOT-assisted contracts shall in addition complete and submit Schedule B. The schedule(s) shall be signed and notarized by the authorized representative of the business entity. A business seeking certification as an MBE shall submit the required schedules with its bid or proposal for transmission to the contracting agency involved.

(c) Under the following circumstances, a business seeking to participate as an MBE under this subpart need not submit schedule A or B:

(1) If a DOT recipient has established a different certification process that DOT has determined to be as or more effective than the process provided for by this section. Where such a process exists, potential MBE contractors shall submit the information required by the recipient's process.

(2) If the potential MBE contractor states in writing that it has submitted the same information to or has been certified by the DOT recipient involved, any DOT element, or another



Federal agency that uses essentially the same definition and ownership and control criteria as DOT. The potential MBE contractor shall obtain the information and certification (if any) from the other agency and submit it to the recipient or cause the other agency to submit it. The recipient may rely upon such a certification. Where another agency has collected information but not made a determination concerning eligibility, the DOT recipient shall make its own determination based on the information it has obtained from the other agency.

(3) If the potential MBE contractor has been determined by the Small Business Administration to be owned and controlled by socially and economically disadvantaged individuals under section 8(a) of the Small Business Act, as amended.

#### § 23.53 Eligibility standards.

(a) The following standards shall be used by recipients in determining whether a firm is owned and controlled by one or more minorities or women is and shall therefore be eligible to be certified as an MBE. Businesses aggrieved by the determination may appeal in accordance with procedures set forth in § 23.55.

(1) Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community. However, the recipient is not required to accept this claim if it determines the claim to be invalid.

(2) An eligible minority business enterprise under this part shall be an independent business. The ownership and control by minorities or women shall be real, substantial, and continuing and shall go beyond the *pro forma* ownership of the firm as reflected in its ownership documents. The minority or women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not neces-

sarily sufficient for recognition as an MBE. In determining whether a potential MBE is an independent business, DOT recipients shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing, and other relationships with nonminority firms vary from industry practice.

(3) The minority or women owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owners. There shall be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of any owner who is not a minority or woman, from making a business decision of the firm.

(4) If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities or women and shall not be considered an MBE within the meaning of this part. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purposes of this part, be considered as controlling the business.

(5) All securities which constitute ownership and/or control of a corporation for purposes of establishing it as an MBE under this part shall be held directly by minorities or women. No securities held in trust, or by any guardian for a minor, shall be considered as held by minority or women in determining the ownership or control of a corporation.

(6) The contributions of capital or expertise by the minority or women owners to acquire their interests in the firm shall be real and substantial. Ex-



amples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee, rather than as a manager.

(b) In addition to the above standards, DOT recipients shall give special consideration to the following circumstances in determining eligibility under this part.

(1) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

(2) A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.

(3) Any relationship between an MBE and a business which is not an MBE which has an interest in the MBE is carefully reviewed to determine if the interest of the non-MBE conflicts with the ownership and control requirements of this section.

(c) A joint venture is eligible under this part if the MBE partner of the joint venture meets the standards for an eligible MBE set forth above and the MBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture.

(d) A joint venture is eligible to compete in an MBE set-aside under this part if the MBE partner of the joint venture meets the standards of an eligible MBE set forth above, and the MBE partner's share in the ownership, control, and management responsibilities, risks, and profits of the joint venture is at least 51 percent and the MBE partner is responsible for a clearly defined portion of the work to be performed.

(e) A business wishing to be certified as an MBE or joint venture MBE by a DOT recipient shall cooperate with the recipient in supplying additional

information which may be requested in order to make a determination.

(f) Once certified, an MBE shall update its submission annually by submitting a new Schedule A or certifying that the Schedule A on file is still accurate. At any time there is a change in ownership or control of the firm, the MBE shall submit a new schedule A.

(g) Except as provided in § 23.55, the denial of a certification by the Department or a recipient shall be final, for that contract and other contracts being let by the recipient at the time of the denial of certification. MBEs and joint ventures denied certification may correct deficiencies in their ownership and control and apply for certification only for future contracts.

(h) Recipients shall safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information, consistent with Federal, state and local law.

§ 23.55 Appeals of denials of certification as an MBE.

(a) *Filing.* Any firm which believes that it has been wrongly denied certification as an MBE or joint venture under §§ 23.51 and 23.53 by the Department or a recipient of DOT financial assistance may file an appeal in writing, signed and dated, with the Department. The appeal shall be filed no later than 180 days after the date of denial of certification. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing. Third parties who have reason to believe that another firm has been wrongly denied or granted certification as an MBE or joint venture may advise the Secretary. This information is not considered an appeal pursuant to this section.

(b) *Decision to investigate.* The Secretary ensures that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures.

(c) *Status of certification during the investigation.* The Secretary may at his/her discretion, deny the MBE or

joint venture in question eligibility to participate as an MBE DOT-assisted contracts let during the pendency of the investigation, after providing the MBE or joint venture in question an opportunity to show cause by written statement to the Secretary why this should not occur.

(d) *Cooperation in investigation.* All parties shall cooperate fully with the investigation. Failure or refusal to furnish requested information or other failure to cooperate is a violation of this part.

(e) *Determinations.* The Secretary makes one of the following determinations and informs the MBE or joint venture in writing of the reasons for the determination:

(1) The MBE or joint venture is certified; or

(2) The MBE or joint venture is not eligible to be certified and is denied eligibility to participate as an MBE in any direct or DOT-assisted contract until a new application for certification is approved by the recipient.

#### **Subpart D—Implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982**

**AUTHORITY:** Sec. 105(f) of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424).

**SOURCE:** 48 FR 33442, July 21, 1983, unless otherwise noted.

#### **§ 23.61 Purpose.**

(a) The purpose of this subpart is to implement section 105(f) of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424) so that, except to the extent the Secretary determines otherwise, not less than ten percent of the funds authorized by the Act for the programs listed in § 23.63 of this subpart is expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The ten percent level of participation for disadvantaged businesses established by section 105(f) will be achieved if recipients under the programs covered by this subpart set and meet overall disadvantaged business goals of at least ten percent.

#### **§ 23.62 Definitions.**

The following definitions apply to this subpart. Where these definitions are inconsistent with the definitions of § 23.5 of this part, these definitions control for all other purposes under this part.

“Act” means the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424).

“Disadvantaged business” means a small business concern: (a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Small business concern” means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged.

(a) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(b) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

§ 23.63 Applicability.

This subpart applies to all DOT financial assistance in the following categories that recipients expend in DOT-assisted contracts:

(a) Federal-aid highway funds authorized by Title I and section 202 of Title II of the Act; and

(b) Urban mass transportation funds authorized by Title I or III of the Act or the Urban Mass Transportation Act of 1964, as amended.

§ 23.64 Submission of overall goals.

(a) Each recipient of funds to which this subpart applies that is required to have an MBE program under § 23.41 of this part shall establish an overall goal for the use of disadvantaged businesses.

(b) Each recipient required to establish an overall goal shall calculate it in terms of a percentage of one of the following bases, as applicable:

(1) For recipients of Federal-aid highway funds, all such funds that the recipient will expend in DOT-assisted contracts in the forthcoming fiscal year; or

(2) For recipients of urban mass transportation funds, all such funds (exclusive of funds to be expended for purchases of transit vehicles) that the recipient will expend in DOT-assisted contracts in the forthcoming fiscal year. In appropriate cases, the UMTA Administrator may permit recipients to express overall goals as a percentage of funds for a particular grant, project, or group of grants and/or projects.

(c) Each recipient of Federal-aid highway funds or urban mass transportation funds shall submit its over-

all goal to FHWA or UMTA, as appropriate, for approval 60 days before the beginning of the Federal fiscal year to which the goal applies. An UMTA recipient calculating its overall goal as a percentage of funds for a particular grant, project, or group of grants or projects shall submit its overall goal to UMTA at a time determined by the UMTA Administrator.

(d) Recipients submitting a goal of ten percent or more shall submit the goal under the procedures set forth in § 23.45(g) of this part.

(e) If an FHWA or UMTA recipient requests approval of an overall goal of less than ten percent, the recipient shall take the following steps in addition to those set forth in § 23.45(g) of this part:

(1) Submit with its request a justification including the elements set forth in § 23.65;

(2) Ensure that the request is signed, or concurred in, by the Governor of the state (in the case of a state transportation agency) or the Mayor or other elected official(s) responsible for the operation of a mass transit agency; and

(3) Consult with minority and general contractors' associations, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses and the adequacy of the recipient's efforts to increase the participation of such businesses. If it appears to the Administrator that the recipient has failed to consult with a relevant person or organization, the Administrator may direct the recipient to consult with that person or organization.

§ 23.65 Content of justification.

An FHWA or UMTA recipient requesting approval of an overall goal of less than ten percent shall include information on the following points in its justification. Guidance concerning this information is found in Appendix D.

(a) The recipient's efforts to locate disadvantaged businesses;

(b) The recipient's efforts to make disadvantaged businesses aware of contracting opportunities;

(c) The recipient's initiatives to encourage and develop disadvantaged businesses;

(d) Legal or other barriers impeding the participation of disadvantaged businesses at at least a ten percent level in the recipient's DOT-assisted contracts, and the recipient's efforts to overcome or mitigate the effects of these barriers;

(e) The availability of disadvantaged businesses to work on the recipient's DOT-assisted contracts;

(f) The size and other characteristics of the minority population of the recipient's jurisdiction, and the relevance of these factors to the availability or potential availability of disadvantaged businesses to work on the recipient's DOT-assisted contracts; and

(g) A summary of the views and information concerning the availability of disadvantaged businesses and the adequacy of the recipient's efforts to increase the participation of such businesses provided by the persons and organizations consulted by the recipient under § 23.64(f)(3).

#### § 23.66 Approval and disapproval of overall goals.

(a) The Administrator reviews and approves any overall goal of ten percent or more submitted by a recipient as provided in § 23.45(g) of this part.

(b) The Administrator of the concerned Departmental element approves a requested goal of less than ten percent if he or she determines, on the basis of the recipient's justification and any other information available to the Administrator, that

(1) The recipient is making all appropriate efforts to increase disadvantaged business participation in its DOT-assisted contracts to a ten percent level; and

(2) Despite the recipient's efforts, the recipient's requested goal represents a reasonable expectation for the participation of disadvantaged businesses in its DOT-assisted contracts, given the availability of disadvantaged businesses to work on these contracts.

(c) Before approving or disapproving a requested goal of less than ten percent, the Administrator provides the Director of the DOT Office of Small

and Disadvantaged Business Utilization with an opportunity to review and comment on the request.

(d) If the Administrator does not approve the goal the recipient has requested, the Administrator, after consulting with the recipient, establishes an adjusted overall goal. The adjusted overall goal represents the Administrator's determination of a reasonable expectation for the participation of disadvantaged businesses in the recipients DOT-assisted contracts, and is based on the information provided by the recipient and/or other information available to the Administrator.

(e) The Administrator may condition the approval or establishment of any overall goal on any reasonable future action by the recipient.

#### § 23.67 Special provision for transit vehicle manufacturers.

(a) Each UMTA recipient shall require that each transit vehicle manufacturer, as a condition of being authorized to bid on transit vehicle procurements in which UMTA funds participate, certify that it has complied with the requirements of this section. This requirement shall go into effect on October 1, 1983.

(b) Each manufacturer shall establish and submit for the UMTA Administrator's approval an annual percentage overall goal. The base from which the goal is calculated shall be the amount of UMTA financial assistance participating in transit vehicle contracts to be performed by the manufacturer during the fiscal year in question. Funds attributable to work performed outside the United States and its territories, possessions, and commonwealths shall be excluded from this base. The requirements and procedures of § 23.64 (d) and (e)(1) and §§ 23.65-23.66 of this subpart shall apply to transit vehicle manufacturers as they apply to recipients.

(c) The manufacturer may make the certification called for in paragraph (a) if it has submitted the goal required by paragraph (b) and the UMTA Administrator has either approved it or not disapproved it.

§ 23.68 Compliance.

(a) Compliance with the requirements of this subpart is enforced through the provisions of this section, not through the provisions of Subpart E of this part.

(b) Failure of a recipient to have an approved MBE program, including an approved overall goal, as required by § 23.64 of this subpart, is noncompliance with this subpart.

(c) If a recipient fails to meet an approved overall goal, it shall have the opportunity to explain to the Administrator of the concerned Department element why the goal could not be achieved and why meeting the goal was beyond the recipient's control.

(d)(1) If the recipient does not make such an explanation, or if the Administrator determines that the recipient's explanation does not justify the failure to meet the approved overall goal, the Administrator may direct the recipient to take appropriate remedial action. Failure to take remedial action directed by the Administrator is noncompliance with this subpart.

(2) Before the Administrator determines whether a recipient's explanation justifies its failure to meet the approved overall goal, the Administrator gives the Director, Office of Small and Disadvantaged Business Utilization, an opportunity to review and comment on the recipient's explanation.

(e)(1) In the event of noncompliance with this subpart by a recipient of Federal-aid highway funds, the FHWA Administrator may take any action provided for in 23 CFR 1.36.

(2) In the event of noncompliance with this subpart by a recipient of funds administered by UMTA, the UMTA Administrator may take appropriate enforcement action. Such action may include the suspension or termination of Federal funds or the refusal to approve projects, grants, or contracts until deficiencies are remedied.

[48 FR 33442, July 21, 1983; 48 FR 41163, Sept. 14, 1983]

§ 23.69 Challenge procedure.

(a) Each recipient required to establish an overall goal under § 23.64 shall establish a challenge procedure con-

sistent with this section to determine whether an individual presumed to be socially and economically disadvantaged as provided in § 23.62 is in fact socially and economically disadvantaged.

(b) The recipient's challenge procedure shall provide as follows:

(1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the recipient as a disadvantaged business. The challenge shall be made in writing to the recipient.

(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and disadvantaged.

(i) If the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.

(ii) If the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b) (4), (5), and (6) of this paragraph.

(4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as

a socially and economically disadvantaged individual.

(5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

(6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

(7) In making the determinations called for in paragraphs (b) (3), (5), and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C to this subpart.

(8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(c) The final determination of the recipient under subparagraphs (b)(3)(i) and (b)(6) may be appealed to the Department by the adversely affected party to the proceeding under the procedures of § 23.55 of this part.

#### APPENDIX A—SECTION-BY-SECTION ANALYSIS

This section-by-section analysis describes the provisions of the final rule. This material is normally published in the preamble to the final rule. However, the Department believes that it may be useful to recipients, contractors, and the public to publish this information in an appendix to the final regulation. As a result, this information will be available to users of the Code of Federal Regulations as well as to persons who have access to the FEDERAL REGISTER print of the regulation.

##### *Section 23.61 Purpose.*

This section states that the purpose of Subpart D is to implement section 105 (f) of the Surface Transportation Assistance Act of 1982. The rest of the section restates the text of the statute and states that the ten

percent level of disadvantaged business participation established by the statute will be achieved if recipients set and meet goals of at least ten percent. The Department of Transportation is committed to carrying out section 105(f) and achieving its objectives, and intends to enforce the obligations of the recipients and contractors under section 105(f) and 49 CFR Part 23.

##### *Section 23.62 Definitions.*

As used in Subpart D, the word "Act" means the Surface Transportation Assistance Act of 1982. The definition of the term "disadvantaged business" in Subpart D is very similar to the definition of the term "minority business enterprise" used for other purposes in 49 CFR Part 23. A different term is employed in recognition of the fact that a slightly different set of individuals is eligible to own and control a disadvantaged business than is eligible to own and control a minority business enterprise. In either case, at least 51 percent of the business must be owned by one or more of the eligible individuals, and the firm's management and daily business operations must be controlled by one or more of the eligible individuals who own it. It is important to note that the business owners themselves must control the operations of the business. Absentee ownership, or titular ownership by an individual who does not take an active role in controlling the business, is not consistent with eligibility as a disadvantaged business under this regulation. In order to be an eligible disadvantaged business, a firm must meet the criteria of § 23.53 of this regulation and must be certified as 49 CFR Part 23 provides.

"Small business concern" is defined as a small business meeting the standards of section 3 of the Small Business Act and relevant regulations that implement it. These regulations are summarized in Appendix B to the subpart. It should be emphasized that any business which fails to qualify under the standards as a small concern, including a firm certified by SBA under the 8(a) program, cannot be certified as a disadvantaged business, even though it is owned and controlled by socially and economically disadvantaged individuals. Since the small business status of a firm can change over the years, we recommend that recipients make a point of reviewing periodically the small business status of firms with existing certifications periodically to make sure that they still qualify.

"Socially and economically disadvantaged individuals" is the term that defines the persons eligible to own and control a disadvantaged business. The term includes the following people: First, anyone found to be socially and economically disadvantaged by SBA under the 8(a) program is regarded as

socially and economically disadvantaged for the purpose of DOT-assisted programs. Second, any individual who is a member of one of the designated groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian Indian-Americans) is rebuttably presumed to be socially and economically disadvantaged. By "rebuttably presumed," we mean that the socially and economically disadvantaged status of any individual who is a member of one of the groups is normally assumed by the recipient. With the exception of persons whose origins are from Burma, Thailand, and Portugal, the members of these presumed groups are exactly the same persons who are considered to be minorities for purposes of the § 23.5 definition of "minority."

Individuals whose origins are from Burma, Thailand, and Portugal are not presumed to be socially and economically disadvantaged individuals for purposes of Subpart D. This means that firms owned and controlled by such individuals are eligible to be considered as MBEs for purposes of FRA, FAA, NHTSA and other DOT financial assistance programs but not as disadvantaged businesses for purposes of FHWA and UMTA programs (unless their owners are determined to be socially and economically disadvantaged on an individual basis). If SBA determines any additional groups to be presumptively socially and economically disadvantaged, these groups will become eligible for consideration as owners of disadvantaged businesses on the same basis as Black Americans, Hispanic Americans, and members of the other presumptive groups.

A recipient may, through its certification program, determine that individuals who are not members of any of the presumptive groups are socially and economically disadvantaged. On this basis, for example, non-minority women, disabled Vietnam veterans, Appalachian white males, Hasidic Jews, or any other individuals who are able to demonstrate to the recipient that they are socially and economically disadvantaged may be treated as eligible to own and control a disadvantaged business, on the same basis as a member of one of the presumptive groups. It must be emphasized that these individuals are not determined to be socially and economically disadvantaged on the basis of their group membership. Rather, the social and economic disadvantage of each must be determined on an individual, case-by-case basis. Guidance for making these determinations is found in Appendix C.

#### *Section 23.63 Applicability.*

This section provides that Subpart D applies to all DOT financial assistance in two categories that recipients expend "in DOT-assisted contracts." This last phrase is very

important. The base from which goals are calculated is not the total amount of money which each recipient receives from FHWA or UMTA. It is the amount of money that the recipient expends in DOT-assisted contracts. Funds that the recipient does not expend in contracts (i.e., funds spent by an FHWA recipient to acquire right-of-way or pay its own employees to supervise construction; funds used by an UMTA recipient to pay salaries of bus drivers) not part of the base from which the overall goal is calculated. Only those funds to be expended by the recipient in contracts are available to create contracting opportunities for disadvantaged businesses, so only these funds comprise the base from which goals for the use of disadvantaged businesses are calculated.

The first category of program funds to which Subpart D applies is Federal-aid highway funds authorized by Title I of the Act and highway safety program funds authorized by section 202 of Title II of the Act. The second category is Urban Mass Transportation funds authorized by Title I or Title III of the Act or the Urban Mass Transportation Act of 1964, as amended. Non-STAA funds authorized by the Urban Mass Transportation Act of 1964, as amended, should be counted as part of the base for calculating UMTA goals on the same basis as funds authorized by the STAA. The Urban Mass Transportation Administration is including these funds in the base in order to minimize administrative inconvenience resulting from the joint use of funds authorized by different statutes. Otherwise, two different procedures would have to be used, often with respect to the same grant or project. UMTA takes this action under the authority of section 19 of the Urban Mass Transportation Act 1964, as amended.

#### *Section 23.64 Submission of Overall Goals.*

This section concerns the procedures for submission of overall goals to be used by recipients of funds covered by this subpart. Paragraph (a) is intended to avoid the imposition of new administrative burdens on recipients of relatively low amounts of DOT financial assistance. This paragraph provides that only those recipients who are required to have MBE programs under 49 CFR Part 23 must comply with the goal setting requirements of Subpart D. This includes all state transportation agencies who receive FHWA funds and UMTA recipients who receive at least \$250,000 in UMTA capital and operating funds, exclusive of funds for transit vehicle purchases, or \$100,000 in UMTA planning funds. UMTA recipients who are not required to have an MBE program by § 23.41 need not comply with the goal setting provisions of Subpart D.



Paragraph (b) describes how recipients calculate their overall goals. Recipients of FHWA funds use as the base for calculating their percentage goal all Federal-aid funds that the recipient will expend in DOT-assisted contracts in the forthcoming fiscal year. Funds authorized by section 202 of the STAA are considered to be Federal-aid highway funds for this purpose. For UMTA funds, the base is all Federal funds (exclusive of funds to be expended for transit vehicle purchases) that the recipient will expend in DOT-assisted contracts in the forthcoming fiscal year. The UMTA Administrator may, however, allow recipients to base their goals on Federal funds received for a particular grant, project, or group of grants or projects.

The Department is aware that recipients may not be aware of the exact amount of Federal funds to be received or to be used in Federally-assisted contracts in the forthcoming fiscal year. However, it is reasonable to expect that recipients will have a close enough projection so that they can determine a reasonable expectation for disadvantaged business participation expressed in percentage terms.

Paragraph (c) provides that, with the exception of UMTA recipients calculating their goals on a grant or project basis, each UMTA and FHWA recipient which must submit an overall goal is required to do so by the August 1 preceding the beginning of the fiscal year to which the goals apply. For example, goal submissions pertaining to fiscal year 1985 are due August 1, 1984. In the case of Fiscal Year 1984, DOT expects recipients to submit their overall goals for approval as close to August 1 as possible.

Paragraph (d) provides that, if the recipient is submitting a goal of ten percent or more, the recipient simply submits the goal under the procedures of § 23.45(g) of this part, exactly in the manner that goals have been required to be submitted under the existing regulation.

Paragraph (e) concerns the situation in which a recipient is requesting approval of an overall goal of less than ten percent. Such a recipient is required to comply with the steps set forth in § 23.45(g). However, it is required to take three additional steps. First, it must submit a justification for its request containing the information listed in § 23.65.

Second, it must ensure that the request is signed or concurred in by the Governor of the state (in the case of a state transportation agency) or the Mayor or other elected official responsible for the operation of a mass transit agency. If the official responsible for the operation of a mass transit agency is not a Mayor, another appropriate elected official or officials should provide the signature or concurrence (e.g., a County Executive, the Chairman of a Board of Di-

rectors for a transit authority consisting of elected officials, etc.). The reason for this requirement is to ensure that a request for a goal of less than ten percent has the backing of the responsible elected official. This should help to prevent frivolous requests or requests based solely on the views of the non-elected staff of a state or local agency. It is also intended to protect the Department from becoming involved in a disagreement between, for example, a state transportation agency and a governor over disadvantaged business policy. It will also signal to the Department that a request for a lower goal has the backing of the highest responsible elected official involved with the jurisdiction.

The third requirement is that, before making a request for a goal of less than ten percent, the recipient must consult with minority and general contracting associations, community organizations (particularly minority community organizations) and other officials or organizations which can be expected to have information concerning the availability of disadvantaged businesses and the adequacy of recipients' efforts to increase the participation of such businesses. This consultation need not involve a formal public comment period. However, it should involve contact between responsible official(s) of the recipient and representatives of the organizations consulted, which should also have the opportunity to provide written information.

The provision is based on the belief that the organizations consulted are likely to be in a position to give the recipient useful information concerning the availability of disadvantaged businesses and the effectiveness of and problems with the recipient's efforts to increase disadvantaged business participation. The information sought in the consultation is intended to include the views of the consulted parties on the points listed in paragraph (a)—(f) of § 23.65. Such information is important to the recipient in formulating a request for a goal of less than ten percent, the Department in evaluating such a request, and to both the recipient and the Department in attempting to determine what additional steps would be appropriate to increase disadvantaged business participation in the future.

There may be some circumstances in which a recipient will have failed to consult with a party whose information could be very useful to the formulation and evaluation of a request for a goal less than ten percent. If the Administrator becomes aware of such a case, the Administrator has the discretion to tell the recipient to go back and consult with that party. Pending this further consultation, the Administrator would not approve the request for a goal of less than ten percent.



*Section 23.65 Content of Justification.*

Section 23.65 lists the types of information that a recipient seeking a goal of less than ten percent must provide to the Administrator. The purpose of this information is to enable the Department to make an informed determination of what the reasonable expectation for the recipient's disadvantaged business participation level is for the forthcoming fiscal year. These items of information are discussed in greater detail in Appendix D. In the absence of a justification, the FHWA and UMTA Administrators will not be able to consider a request for a goal of less than ten percent.

*Section 23.66 Approval and Disapproval of Overall Goals.*

Paragraph (a) of this section concerns the situation in which a recipient submits for approval an overall goal of ten percent or more. In response to such a request, the Administrator follows the review and approval procedure provided in § 23.45(g) of the existing rule. The FHWA and UMTA Administrators will review and approve goals submitted under this paragraph in the same manner and in accordance with the same policies as they have reviewed and approved overall goals under the existing 49 CFR Part 23.

Paragraph (b) concerns a situation in which a recipient has requested approval of a goal of less than ten percent. In order to approve the goal the recipient has requested, the Administrator must make two determinations. First, the Administrator must determine that the recipient is making all appropriate efforts to increase disadvantaged participation on its DOT-assisted contracts to at least a ten percent level. Second, the Administrator must determine that, despite the recipient's efforts, the goal requested by the recipient is the reasonable expectation, short of ten percent, for the participation of disadvantaged businesses in its DOT-assisted contracts, given the availability of disadvantaged businesses to work on these contracts.

Both of these determinations are very important. The concept of a goal as the reasonable expectation for the recipient's performance recognizes the possibility that there may be limits, related to the availability of disadvantaged businesses, that prevent the attainment of a ten percent goal. Before granting a request for a goal below ten percent, the Administrator must determine that such a limit does in fact exist. However, the idea of a reasonable expectation also assumes that the recipient is doing everything it can to increase disadvantaged business participation, both by seeking to increase the availability of disadvantaged businesses and seeking to increase the ability of available disadvantaged businesses to

work on its contracts. If the recipient is not taking all appropriate steps to increase disadvantaged business participation, then the goal it has requested is not its reasonable expectation for disadvantaged business participation.

If the Administrator does not approve the goal the recipient has requested, the Administrator, after consulting with the recipient, establishes an adjusted overall goal, which represents his or her determination of the reasonable expectation for recipient's disadvantaged business participation. This adjusted overall goal is on information provided by the recipient or any other information available to the Administrator from other sources, including input from interested groups and the past performance of the recipient or other recipients whose situation is analogous to that of the recipient in question. In approving either the goal requested by the recipient or in establishing an adjusted overall goal, the Administrator may always condition the approval or establishment of an overall goal on any reasonable future action by the recipient.

*Section 23.67 Special Provision for Transit Vehicle Manufacturers.*

This section addresses the special situation of the purchase of transit vehicles by UMTA recipients. The intent of this section is to provide a simplified method by which transit vehicle manufacturers and UMTA recipients can meet disadvantaged business obligations. The Department does not directly regulate transit vehicle manufacturers, since they are not the recipients of Federal financial assistance from UMTA. Rather, they are contractors to UMTA recipients. Consequently, paragraph (a) imposes the basic obligation of this section on UMTA recipients themselves.

Paragraph (a) is a requirement that UMTA recipients condition the authority of manufacturers to bid on UMTA-assisted transit vehicle procurements on a certification by the manufacturer that it has complied with the other provisions of this section. In order to permit manufacturers reasonable start-up time, and to avoid disruption of the whole procurement process, this requirement does not go into effect until October 1, 1983.

Paragraph (b) requires that, in order to make this certification, manufacturers have UMTA-approved overall goal. The base for calculating these goals is the amount of UMTA financial assistance participating in transit vehicle contracts to be performed by the manufacturer during the fiscal year in question. The Department is aware that UMTA recipients order some vehicles from foreign manufacturers and that the vehicles produced by domestic manufacturers use foreign components in some cases. The De-

partment's regulation does not, of course, have extraterritorial application. Consequently, the manufacturer may exclude from the base from which the goal is calculated the value of the work performed abroad. For example, suppose an UMTA recipient buys a bus from a Canadian manufacturer for \$100,000. Fifty percent of the work on the bus is performed in Canada. In this case, the amount of funds contributing toward the base from which the manufacturer's goal is calculated is \$40,000 (i.e., eighty percent of the \$50,000 of the value of the bus attributable to work performed in the United States).

In submitting an overall goal for the UMTA Administrator's approval, the manufacturer is required to follow the same procedures as recipients with respect to timing, justification of goals, etc. The Administrator follows the same criteria and has the same authority with respect to approval and conditioning of recipient's overall goals as he or she does with respect to recipient's goals. The UMTA Administrator may issue additional guidance with respect to procedures for the submission of overall goals and the content or justification of overall goals that take into account special circumstances of transit vehicle manufacturers, if this appears appropriate.

Paragraph (c) provides that the manufacturer may make the certification to recipients required by paragraph (a) if it has submitted the goals provided for by this section and the UMTA Administrator has either approved them or not disapproved them. This provision is intended to prevent delays in transit vehicle procurements.

#### *Section 23.68 Compliance.*

Paragraph (a) points out that compliance with Subpart D, as distinguished from compliance with other portions of the regulation, is enforced through § 23.68 rather than through Subpart E of the regulation. For example, a recipient's failure to have an approved overall goal as required by Subpart D would be treated under § 23.68. A complaint of discrimination against a recipient by a particular disadvantaged business would be handled under the procedures of Subpart E. Paragraphs (b) and (d)(1) list the three circumstances in which a recipient may find itself in noncompliance with Subpart D. These are the only three circumstances in which a recipient may be found in noncompliance with Subpart D. While a recipient may be in noncompliance with 49 CFR Part 23 for other reasons, these other types of noncompliance are handled through the procedures of Subpart E.

Paragraph (b) names the first two situations in which a recipient may be found in noncompliance with Subpart D. First, the recipient can be in noncompliance by failing to have an approved overall goal as required

by § 23.64. This includes not only the situation in which the recipient does not submit a goal to the Department for approval, but also situations in which a recipient does not accept an adjusted overall goal established by the Administrator or fails or refuses to carry out conditions established by the Administrator under § 23.66(e).

Second, a recipient may be in noncompliance if it does not have an approved disadvantaged business program. Subpart D does not, in itself, require the creation of such a program. However, such a program, as prescribed by other provisions of 49 CFR Part 23, is essential if a recipient is to comply with the disadvantaged business participation requirements of Subpart D. Consequently, the failure to have a program, or failure to have a program which fully meets the requirements of 49 CFR Part 23, is noncompliance with Subpart D.

For example, 49 CFR Part 23 requires that, before a recipient awards a contract, it ensure that the apparent successful bidder has met the contract goal or has demonstrated good faith efforts to do so. If a recipient's program does not provide for making this determination before the award of contract, but instead provides for checking the disadvantaged business participation efforts of the contractor only after the award of the contract, the recipient has a program that does not conform to 49 CFR Part 23. The recipient may therefore be found in noncompliance with Subpart D.

Paragraphs (c) and (d)(1) concern the procedure that recipients and the Department must follow when a recipient is falling or has fallen short of its approved overall goal. The goal-setting process is intended to determine, in advance, the reasonable expectation for the recipient's disadvantaged business participation. These paragraphs are intended to provide for the situation in which the recipient's performance does not meet this expectation. At any time the Administrator requests it, or at the recipient's own initiative, the recipient would make an explanation to the Administrator concerning why the goal could not be achieved. This explanation, if it is to be satisfactory to the Administrator, must demonstrate that recipient's failure to meet the goal is for reasons beyond the recipient's control.

For example, if the recipient expected substantial disadvantaged business participation in a major project, and the project was postponed by litigation or a natural disaster, the recipient could make a case that its failure to meet the goal was attributable to factors beyond its control. A situation that might arise more frequently concerns the failure of contractors to meet contract goals. Under the Department's regulation, recipients may award contracts to contractors who do not meet contract goals if these

contractors demonstrate to the recipient that they have made good faith efforts to do so. It is conceivable that a recipient would have set contract goals commensurate with its overall goal, would have given appropriate scrutiny to the claims of contractors that they made unsuccessful but good faith efforts to meet these contract goals, and awarded contracts to contractors who did not meet contract goals in a number of instances. Collectively, these contract awards would cause the recipient to fall below its overall goal.

The Administrator may take circumstances of this kind into account in determining whether a recipient's failure to meet its overall goal was because of factors beyond the recipient's control. In doing so, however, the Administrator also would consider the degree of scrutiny by the recipients of contractors' claims of unsuccessful good faith efforts and the efforts the recipient made in order to make up for shortfalls in particular contracts and prevent such shortfalls in other contracts.

If the recipient's explanation that factors beyond its control prevented achievement of the overall goal is determined by the Administrator to justify the failure to reach the goal, the matter is closed. If the recipient does not provide an explanation or if the Administrator determines that the recipient's explanation is not adequate, the Administrator may take the additional step of directing the recipient to take appropriate remedial action. Remedial action includes prospective steps to improve disadvantaged business participation, such as additional outreach, assistance to disadvantaged businesses or, where not inconsistent with state or local law, the use of set-asides. In order to take the remedial steps which the Administrator prescribes, the recipient may have to devote additional resources to the task.

Failure or refusal by the recipient to take these remedial steps is the third form of noncompliance with Subpart D. The Department wants to make it very clear that failure to meet an overall goal, as such, does not constitute noncompliance with Subpart D. However, if the recipient fails to meet the goal, does not satisfactorily explain its failure to meet the goal as being beyond its control, and then fails or refuses to take remedial steps prescribed by the Administrator, it would be in noncompliance.

Paragraph (e) sets forth the sources of sanctions for recipient noncompliance under Subpart D. These sanctions are the same measures that are available to the UMTA or FHWA Administrator with respect to the failure of a recipient to carry out any condition of receiving Federal financial assistance.

#### *Section 23.69 Challenge Procedure.*

The proposal in the NPRM to make the presumption of social and economic disadvantage rebuttable caused some confusion among recipients who commented. They asked whether this meant that they had to investigate the social and economic status of each business owner that sought certification for programs covered by Subpart D. They also asked by what criteria, and through what procedure, the rebuttable presumption would be applied.

This section is intended to answer these questions. First, the basic meaning of a presumption of social and economic disadvantage is that the recipient *assumes* that a member of the designated groups is socially and economically disadvantaged. In making certification decisions, the recipient relies on this presumption, and does not investigate the social and economic status of individuals who fall into one of the presumptive groups.

However, saying that the presumption is rebuttable means that a third party may challenge the actual social and/or economic disadvantage of a business owner who has received or is seeking certification for his firm from the recipient. The procedures for making such a challenge are spelled out in this section. They are set forth in detail in § 23.69 and are basically self-explanatory. Two points deserve emphasis. First, the procedures are intended to be informal. Recipients are not required to establish elaborate court-like tribunals, use strict rules of evidence, etc. Second, while a challenge is in progress, the presumption of social and economic disadvantage remains in effect. Therefore, if a firm has been certified, and the social and economic disadvantage of its owner is under challenge, the firm continues to be certified and eligible to be considered a disadvantaged business for purposes of the recipient's DOT-assisted contracting activities.

#### *Amendments to § 23.41(a)*

The NPRM proposed to make technical amendments to § 23.41(a)(2)(i) and § 23.41(a)(3)(ii). These amendments added additional UMTA funding sources (e.g. Section 9A) to the list of sources from which funds would contribute toward the threshold amounts for determining whether UMTA recipients had to have MBE programs. There were no comments on these proposed changes. These amendments are adopted unchanged from the NPRM. The final rule makes similar amendments to § 23.41 (a)(2)(ii) and (a)(3)(iii).

*Relationship Between Subpart D and the  
Remainder of 49 CFR Part 23*

In order to prevent uncertainty, the Department wishes to restate the relationship between Subpart D and the remainder of 49 CFR Part 23. Under 49 CFR Part 23, certain recipients are required to have MBE programs. It is only these recipients who are required to follow the provisions of Subpart D. Recipients who must implement Subpart D do so only with respect to their FHWA and UMTA programs cited in Subpart D. For example, a state department of transportation receiving funds from FHWA, UMTA, NHTSA, FRA, and FAA would be required to follow the Subpart D goal procedures with respect only to its FHWA and UMTA funds. It would not be required to do so for its FAA, NHTSA, and FRA funds. The recipient would continue to follow all applicable procedures of 49 CFR Part 23 with respect to the FAA, FRA, and the NHTSA funds.

With respect to its FHWA and UMTA-assisted programs, the recipient continues to set two separate goals, both at the overall goal and contract goal level: one is for disadvantaged businesses (this *replaces* the existing rule's goal for MBEs) and the other is for women-owned businesses. In the event that a business owned and controlled by a nonminority woman is found to be disadvantaged on an individual basis, the amount of contracts to that firm could not be double-counted, any more than a contract to a firm owned by a minority woman could be double-counted under the other provisions of 49 CFR Part 23.

The contract award procedures of 49 CFR Part 23 apply to contracts under Subpart D just as they do to contracts under other provisions of 49 CFR Part 23. Recipients may award contracts to those successful bidders who meet contract goals or demonstrate that they made good faith efforts to do so.

Recipients must certify the eligibility of firms to participate under Subpart D programs just as they do with respect to programs covered by other provisions of 49 CFR Part 23. For businesses owned and controlled by members of the presumptive groups listed in the definition of socially and economically disadvantaged individuals in Subpart D, the certification process is, with one exception, exactly the same as the certification process that has existed all along under 49 CFR Part 23. The exception is that individuals with origins in Burma, Thailand, and Portugal are presumed to be socially and economically disadvantaged. They can be eligible under Subpart D only if they successfully demonstrate to the recipient that they are socially and economically disadvantaged as individuals.

However, businesses owned and controlled by individuals with origins in these coun-

tries continue to be eligible minority businesses under other provisions of 49 CFR Part 23. The result is that these firms may be certified for participation in FAA, FRA, NHTSA, or other DOT-assisted programs as before, but must make an individual showing of social and economic disadvantage in order to be regarded as eligible to participate in FHWA and UMTA programs as disadvantaged businesses. The same requirement for an individual determination of social and economic disadvantage applies to any individual who is not a member of one of the presumptive groups, such as a non-minority woman, a handicapped person, etc.

*Decertification Procedures*

Substantial concern has been expressed about the infiltration of DOT-assisted programs by "fronts"—businesses that claim to be owned and controlled by minorities, women, or other disadvantaged individuals, but which, in fact are ineligible for participation in DOT-assisted programs as MBEs, WBEs or disadvantaged businesses.

The Department wants to take this opportunity to reemphasize the importance of scrutiny of all firms seeking to participate in DOT-assisted programs. We believe strongly that recipients should take prompt action to ensure that only firms meeting the eligibility criteria of 49 CFR Part 23 participate as MBEs, WBEs, or disadvantaged businesses in DOT-assisted programs. This means not only that recipients should carefully check the eligibility of firms applying for certification for the first time, but also that they should review the eligibility of firms with existing certifications in order to ensure that they are still eligible. A firm's circumstances, organization, ownership or control can change over time, resulting in a once-eligible firm becoming ineligible. A second look at a firm previously found to be eligible may reveal factors leading, on renewed consideration, to a determination that it is ineligible.

49 CFR Part 23 does not, as presently drafted, prescribe any particular procedures for actions by recipients to remove the eligibility of firms that they have previously treated as eligible. When a recipient comes to believe that a firm with a current certification is not eligible, the Department recommends that the recipients take certain steps before removing the firm's eligibility. The recipient should inform the firm in writing of its concerns about the firm's eligibility, give the firm an opportunity to respond to these concerns in person and in writing, and provide the firm a written explanation of the reasons for the recipient's final decision. This process may be brief and informal. For example, the firm's opportunity to respond to the recipient's concerns need not involve a formal court-type hear-

ing. However, in the interest of ensuring that eligibility removal decisions are made fairly, these steps should take place before a firm's eligibility is removed. The Department believes that such a procedure in so-called "decertification" cases will make the procedure fairer and better administratively, as well as help prevent unnecessary procedural litigation. Procedures of this kind are not a regulatory requirement, but the Department believes that, as a matter of policy, that they are advisable for recipients to use.

Once a recipient has made a final decision on certification, that determination goes into effect immediately with respect to the recipient's DOT-assisted contracts (see § 23.53(g)). If a firm that has been denied certification or has been decertified appeals the recipient's action to the Department under § 23.55, or if a third party challenges the recipient's decision to certify the firm under § 23.55, the recipient's action remains in effect until and unless the Department makes a determination under § 23.55 reversing the recipient's action. The recipient's action is not stayed during the pendency of a § 23.55 appeal.

For example, if a recipient has decertified a firm and the firm appeals the decertification to DOT, the firm remains ineligible for consideration as a disadvantaged business with respect to the recipient's DOT-assisted programs until and unless the Department finds that the firm is eligible. Likewise, if the recipient has certified the firm as eligible, the firm remains eligible while the Department's consideration of a third party's challenge to its eligibility is pending. The Department has followed this policy and interpretation of its regulations consistently under the existing rule, and we will continue to do so with respect to Subpart D.

There is only one exception to this rule. Section 23.55(c) provides that, in appropriate cases, the Secretary may deny the firm in question eligibility to participate as an MBE (or disadvantaged business) on DOT-assisted contracts let during the pendency of the investigation, after providing the firm an opportunity to show cause by written statement to the Secretary why this should not occur. This paragraph is intended, and has been consistently interpreted and applied by the Department, to cover only a situation in which the recipient has decided that a firm is eligible and a third party has challenged the correctness of the recipient's determination. As a matter of policy, the Department believes that the award of contracts to ineligible firms is a very serious blow to the integrity of the Department's program. Consequently, if it appears to the Department that a challenged firm's eligibility is in serious doubt, the Department, under § 23.55(c), can administratively "enjoin" the firm's participation pending a

final determination on the merits of the challenge to its certification. This provision does not, however, authorize the Department to maintain a firm's certification in effect pending the outcome of the § 23.55 Appeal, when the recipient has refused to certify or has decertified the firm.

#### APPENDIX B—DETERMINATIONS OF BUSINESS SIZE

In determining the eligibility of businesses for purposes of 49 CFR Part 23, recipients must determine whether or not a business is a small business concern as defined by section 3 of the Small Business Act. If a business is not a small business concern according to these standards, then it is not eligible to participate as an MBE, WBE, or disadvantaged business under 49 CFR Part 23. This is true even though the business may be owned and controlled by minorities, women, or socially and economically disadvantaged individuals and is eligible in all other respects. Even a firm certified by the SBA under the 8(a) program is not eligible under this regulation if it is not a small business.

In determining whether a business is a small business concern, recipients should apply the standards established by the Small Business Administration in 13 CFR Part 121. In particular, recipients should refer to § 121.3-8 (Definition of Small Business for Government Procurement) and § 121.3-12 (Definition of Small Business for Government Subcontractors). This appendix lists the most frequent applications of these sections to the kinds of contracting done by FHWA and UMTA recipients. For information on types of businesses not listed in this appendix (e.g., manufacturers), recipients should consult § 121.3-8 and the Appendices to 13 CFR Part 121.

Recipients should apply the following size standards:

1. *Subcontracts of \$10,000 or less:* A business is small if, including its affiliates, it does not have more than 500 employees.

2. *Subcontracts over \$10,000 and prime contracts:*

A business is regarded as small if it meets the following criteria:

(a) *Construction.*

(1) General Construction (in which less than 75 percent of the work falls into one of the categories in paragraph (2)): The firm's average annual receipts for the three preceding fiscal years do not exceed \$12 million.

(2) Special trade contractors:

Type of firm	Maximum average annual receipts in preceding 3 fiscal years
Plumbing, heating (except electric) and air-conditioning.	\$5 million for all types of contractors on this list.
Painting, paperhanging, and decorating .....	
Masonry, stone setting, and other stonework.	
Plastering, drywall, acoustical and insulating work.	
Terazzo, tile, marble, and mosaic work .....	
Carpentering and flooring .....	
Floor laying and other floorwork .....	
Roofing and sheet metal work .....	
Concrete work .....	
Water well drilling .....	
Structural steel erection .....	
Glass and glazing work .....	
Excavating and foundation work .....	
Wrecking and demolition work .....	
Installation or erection of buildings equipment.	
Special trade contractors, not elsewhere classified.	

(b) *Suppliers of manufactured goods:* The firm, including its affiliates, must not have more than 500 employees.

(c) *Service contractors:*

Type of firm	Maximum average annual receipts in preceding 3 fiscal years (in millions of dollars)
Engineering .....	\$7.5
Janitorial and custodial .....	4.5
Computer programming or data processing .....	4
Computer Maintenance .....	7
Protective Services .....	4.5
Others not mentioned in 13 CFR 121.3-8(e) .....	2

**APPENDIX C—GUIDANCE FOR MAKING DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE**

Before making any determination of social and economic disadvantage, the recipient should always determine whether a

firm is a small business concern. If it is not, then the firm is not eligible to be considered a disadvantaged business, and no further determinations need be made.

Under the definition of "socially and economically disadvantaged individual" used in Subpart D of this part, members of the named groups (Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Asian-Indian Americans) and persons certified as socially and economically disadvantaged by the Small Business Administration (SBA) under the SBA's section 8(a) program are presumed to be both socially and economically disadvantaged. This presumption is rebuttable. This means that, as part of a challenge to the eligibility of a firm a recipient has certified under § 23.69 of this regulation, a third party may present evidence that the firm's owners are not truly socially and/or economically disadvantaged, even though they are members of one of the presumptive groups. Recipients must follow the challenge procedure in § 23.69 when a challenge is made, using this appendix for guidance in making determinations under that procedure.

Under the regulation, anyone who has been certified by SBA under its 8(a) program as socially and economically disadvantaged is automatically considered to be a socially and economically disadvantaged individual for purposes of this regulation. However, the absence of an 8(a) certification does not mean that an individual or firm is ineligible under this regulation.

Recipients should continue the existing practice of making their own judgments about whether an individual is in fact a member of one of the presumptive groups. If an individual has not maintained identification with the group to the extent that he or she is commonly recognized as a group member, it is unlikely that he or she will in fact have suffered the social disadvantage which members of the group are presumed to have experiences. If an individual has not held himself or herself out to be a member of one of the groups, has not acted as a member of a community of disadvantaged persons, and would not be identified by persons in the population at large as belonging to the disadvantaged group, the individual should be required to demonstrate social disadvantage on an individual basis.

For example, an individual could demonstrate that he had a Chinese ancestor. However, this hypothetical person has never lived in a Chinese-American community, has held himself out to be white for driver's license or other official records purposes, has not previously claimed to be a Chinese-American, and would not be perceived by others in either the Chinese-American community or non-minority community to be a

Chinese-American (or any other sort of Asian-Pacific American) by virtue of his appearance, culture, language or associations. The recipient should not regard this individual as an Asian-Pacific American.

Individuals who are not presumed to be socially and economically disadvantaged by virtue of membership in one of these groups may, nevertheless, be found to be socially and economically disadvantaged on a case-by-case basis. If an individual requests that his or her business be certified as an eligible disadvantaged business under Subpart D, the recipient, as part of its certification process, is responsible for making a determination of social and economic disadvantage.

In making determinations of social and economic disadvantage, recipients should be guided by the following standards, which have been adopted from materials prepared by the SBA.

#### A. SOCIAL DISADVANTAGE

(1) *Elements of Social Disadvantage.* In order to determine that an individual is socially disadvantaged, the recipient must conclude that the individual meets the following standards:

(i) The individual's social disadvantage must stem from his or her color; national origin; gender; physical handicap; long-term residence in an environment isolated from the mainstream of American society; or other similar cause beyond the individual's control. The individual cannot establish social disadvantage on the basis of factors which are common to small business persons who are not socially disadvantaged. For example, because of their marginal financial status, many small businesses have difficulty obtaining credit through normal banking channels. An individual predicating a social disadvantage claim on denial of bank credit to his or her firm would have to establish that the denial was based on one or more of the listed causes, or similar causes—not simply on the individual's or the firm's marginal financial status.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged. This can be achieved, for example, by describing specific instances of discrimination which the individual has experienced, or by recounting in some detail how his or her development in the business world has been thwarted by one or more of the listed causes or similar causes. As a general rule, the more specific an explanation of how one has personally suffered social disadvantage, the more persuasive it will be. In assessing such facts, the recipient should place substantial weight on prior administrative or judicial findings of discrimination experienced by the individual. Such findings, however, are not neces-

sarily conclusive evidence of an individual's social disadvantage; nor are they a prerequisite for establishing social disadvantage.

(iii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(iv) The individual's social disadvantage must be chronic, longstanding, and substantial, not fleeting or insignificant. Typically, a number of incidents illustrating a person's social disadvantage, occurring over a substantial period of time, would be necessary to make a successful claim. Usually, only by demonstrating a series of obstacles which have impeded one's progress in the business world can an individual demonstrate chronic, longstanding, and substantial social disadvantage.

(v) The individual's social disadvantage must have negatively affected his or her entry into, and/or advancement in, the business world.

The closer the individual can link social disadvantage to impairment of business opportunities, the stronger the case. For example, the recipient should place little weight on annoying incidents experienced by an individual which have had little or no impact on the person's career or business development. On the other hand, the recipient should place greater weight on concrete occurrences which have tangibly disadvantaged an individual in the business world.

(2) *Evidence of Social Disadvantage.* The recipient should entertain any relevant evidence in support of an individual's claim of social disadvantage. In addition to a personal statement from the individual claiming to be socially disadvantaged, such evidence may include, but is not limited to: third party statements; copies of administrative or judicial findings of discrimination; and other documentation in support of matters discussed in the personal statement. The recipient should particularly consider and place emphasis on the following experiences of the individual, where relevant: education, employment, and business history. However, the individual may present evidence relating to other matters as well. Moreover, the attainment of a quality education or job should not absolutely disqualify the individual from being found socially disadvantaged if sufficient other evidence of social disadvantage is presented to the recipient.

(i) *Education.* The recipient should consider, as evidence of an individual's social disadvantage, denial of equal access to business or professional schools; denial of equal access to curricula; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a



professional or business education; and other similar factors.

(ii) *Employment.* The recipient should consider, as evidence of an individual's social disadvantage: discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by an employer; social patterns or pressures which have channelled the individual into non-professional or non-business fields; and other similar factors.

(iii) *Business History.* The recipient should consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have retarded the individual's business development.

#### B. ECONOMIC DISADVANTAGE

Recipients should always make a determination of social disadvantage before proceeding to make a determination of economic disadvantage. If the recipient determines that the individual is not socially disadvantaged, it is not necessary to make the economic disadvantage determination.

As a general rule, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration will be given to both the disadvantaged individual and the applicant concern with which he or she is affiliated.

In considering the economic disadvantage of firms and owners, it is important for recipients to understand that they are making a comparative judgment about relative disadvantage. Obviously, someone who is destitute is not likely to be in any position to own a business. The test is not absolute deprivation, but rather disadvantage compared to business owners who are not socially disadvantaged individuals and firms owned by such individuals.

It is the responsibility of applicant firms and their owners to provide information to the recipient about their economic situation when they seek eligibility as disadvantaged businesses. Recipients are encouraged to become as knowledgeable as they can about the types of businesses with which they deal, so that they can make a reasonably in-

formed comparison between an applicant firm and other firms in the same line of business. Recipients are not required to make a detailed, point-by-point, accountant-like comparison of the businesses involved. Recipients are expected to make a basic judgment about whether the applicant firm and its socially disadvantaged owner(s) are in a more difficult economic situation than most firms (including established firms) and owners who are not socially disadvantaged.

#### OTHER ELIGIBILITY CONSIDERATIONS

It is very important for recipients to realize that making a determination of social and economic disadvantage, standing alone, does not mean that a firm is eligible. The recipient must also determine that the firm is 51 percent owned by socially and economically disadvantaged individuals and that these individuals control the firm. In making these latter determinations, recipients should continue to follow §§ 23.51-23.53 of Subpart C of 49 CFR Part 23.

If a firm or other party believes that any recipient's social and economic disadvantage determination is in error, the firm or party may make an administrative certification appeal to the Department as provided in 49 CFR 23.55.

#### APPENDIX D—JUSTIFICATION FOR REQUESTS FOR APPROVAL OF OVERALL GOALS OF LESS THAN TEN PERCENT

The purpose of a justification for a request for approval of an overall goal of less than ten percent is to explain why the goal requested by the recipient is the reasonable expectation for the participation of disadvantaged businesses in the recipient's DOT-assisted contracts. The justification has two basic elements. First, the recipient should show that it is doing as much as it can to increase disadvantaged business participation to at least a ten percent level. Second, the recipient should show that, given the availability of disadvantaged businesses, the requested goal is the reasonable expectation for the level of disadvantaged business participation that these efforts are likely to obtain.

With respect to the specific elements of the justification listed in § 23.65, the Department offers the following guidance, usually in the form of questions the answers to which will help the Department make an informed decision. It should be emphasized that this material is guidance, and is not intended to create a regulatory requirement or a mandatory list of the contents for recipient's submissions. However, it will help the Department to make expeditious and well-informed decisions if recipients provide



reasonably complete and detailed information. Doing so will also facilitate suggestions by the Department on additional ways recipients can increase disadvantaged business participation.

(a) *Efforts to locate disadvantaged businesses.* What contacts has the recipient made with sources of information about disadvantaged businesses (such as minority contractors, associations, the Commerce Department's Minority Business Development Administration, DOT Office of Small and Disadvantaged Utilization (and its Program Management Centers), and other recipients' directories of disadvantaged businesses)? In what geographic areas has it sought to locate additional disadvantaged businesses? Have these or other information sources produced additional names of disadvantaged businesses potentially available to work on the recipient's DOT-assisted contract? What follow-up was done with respect to these firms?

(b) *Efforts to make disadvantaged businesses aware of contracting opportunities.* What steps does the recipient take through publications, advertising, pre-bid conferences, direct contact, putting disadvantaged businesses in touch with firms that may bid on prime contracts, and other means to let disadvantaged businesses know about specific contracting and subcontracting opportunities as they arise? (Activity of this kind by the recipient is important because, in many cases, disadvantaged businesses may not be in a position to learn of contracting opportunities through informal communications networks available to non-disadvantaged firms.)

(c) *Initiatives to encourage and develop disadvantaged businesses.* What is the recipient doing to assist the formation and growth of disadvantaged firms, by means such as training, technical assistance, financial assistance and involvement of other sources of support (such as the FHWA Supportive Services Program and other Federal, state, or local agencies and associations)? What has the recipient done to facilitate the ability of disadvantaged businesses to perform contracts (e.g., splitting a large contract or project into smaller segments that disadvantaged businesses can more readily perform)?

(d) *Legal or other barriers to disadvantaged business participation.* What specific barriers to disadvantaged business participation has the recipient identified? (Common barriers include bonding, prequalification and licensing requirements; difficulty in obtaining financing; any state or local residency requirement or preference, or any other formal or informal limitations on the area from which disadvantaged businesses are sought; and the reluctance of some members of the non-disadvantaged contracting community to use firms owned and con-

trolled by socially and economically disadvantaged persons.) What is the recipient doing about the barriers it has identified? (Examples of efforts to overcome or mitigate the effect of these barriers include changes to or exceptions from state or local requirements as they affect disadvantaged businesses, technical or financial assistance to disadvantaged businesses to help them meet existing requirements, or cooperative efforts with financial institutions and non-minority contractors' associations.)

(e) *The availability of disadvantaged businesses.* How many disadvantaged businesses are available to perform work for the recipient on DOT-assisted contracts? The starting point for the recipient's information should be its directory or list of certified disadvantaged businesses. The number of firms in this directory may not give a complete picture, however. Disadvantaged firms in other jurisdictions, not currently certified by the recipient, may be willing and able to work on the recipient's contracts. On the other hand, firms in the directory may have limited availability (e.g., lack of interest in the recipient's work, other commitments, limitations of the amount of work they can handle). In some cases (e.g., where a state spends a large portion of its funds on a single large project requiring very specialized contractors), the availability of work that disadvantaged firms can perform could be a limitation. The recipient, as appropriate, should discuss these factors as they affect a determination of the reasonable expectation for disadvantaged business participation in its DOT-assisted contracts.

The recipient should not only advise the Department how many disadvantaged firms exist, but also analyze the dollar volume of the recipient's work the available firms are likely to be able to perform in the fiscal year (or other period) in question.

(f) *Size and other characteristics of the recipient's jurisdiction's minority population.* What is the size of the minority population of the recipient's jurisdiction? (In some cases, not only the size but also the composition or residence pattern of the minority population may be relevant). Where relevant, what is the size of the minority population of nearby jurisdictions?

Minority population is usually not an exact index of the availability of disadvantaged businesses. In some cases, disadvantaged business participation levels for various recipients have ranged well above or below the minority population of the jurisdictions involved. In any event, recipients should tie any assertions they make on the basis of minority population to the effect they believe it has on disadvantaged business availability.

(g) *Views and information from the consultation process.* With whom has the recip-

ient consulted and what did the consulted parties say with respect to anything in paragraph (a)-(f)? In particular, what were the views of and information provided by the disadvantaged business community concerning the availability of such firms, barriers to their participation and what is needed to overcome them, the efficacy of the recipient's efforts to increase disadvantaged business participation and what could be done to improve these efforts?

### Subpart E—Compliance and Enforcement

#### § 23.73 Complaints.

(a) *Filing.* Any person who believes himself or herself, another person, or any specific class of individuals to be subjected to a violation of this part may file a complaint in writing, signed and dated, with the Department. The complaint shall be filed no later than 180 days after the date of an alleged violation or the dates on which a continuing course of conduct in violation of this part was disclosed. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

(b) *Investigations.* The Secretary ensures that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures.

(c) *Cooperation in investigation.* The respondent to the complaint shall cooperate fully with the investigation. Failure or refusal by the respondent to furnish requested information or other failure to cooperate is a violation of this part.

(d) *Determinations.* Upon completion of the investigation, the Secretary informs the recipient or contractor and complainant of the results of the investigation in writing. If the investigation indicates a failure to comply with this part, the conciliation procedures of § 23.81 and, if necessary, the enforcement procedures of § 23.83 are followed.

(e) *Intimidation or retaliation acts prohibited.* No recipient, contractor, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part, or because he or she

made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential at their election during the conduct of any investigation, proceeding, or hearing under this part. But when such confidentiality is likely to hinder the investigation the complainant shall be advised for the purpose of waiving the privilege.

#### § 23.75 Compliance reviews of recipients.

(a) *Desk audit.* All compliance reviews conducted after financial assistance has been approved or contracts have been awarded begin with a desk audit. The desk audit is a review of all material and information concerning the recipient's MBE performance.

(b) *On-site review.* An on-site review includes interviews, visits to project or facility sites receiving DOT funds, and inspection of any statistical or documentary materials relevant to the recipient's performance which were not available for review during the desk audit.

(c) *Cooperation.* The recipient shall cooperate fully with these reviews. Failure or refusal to furnish requested information or failure to cooperate is a violation of this part.

(d) *Determination.* As a result of its review of the recipient, the Departmental element civil rights staff makes one of the following determinations:

(1) The recipient is in compliance with its MBE obligations; or

(2) There is reasonable cause to believe that the recipient is not in compliance with its MBE obligations in certain specified respects. Proceedings shall be begun in accordance with § 23.81 and, if necessary, § 23.83.

#### § 23.81 Conciliation procedures for financial assistance programs.

(a) *Reasonable cause notice.* Whenever the responsible office of civil rights makes a determination of reasonable cause to believe that a recipient is in noncompliance, a notice is sent promptly and in writing by registered mail, return receipt requested, describing the areas of noncompliance

requiring the applicant or recipient to show cause within 30 days why enforcement proceedings or other appropriate action to ensure compliance should not be instituted and offering the recipient an opportunity to conciliate. The responsible office of civil rights shall pursue conciliation efforts for at least 30 days from the date of the reasonable cause notice.

(1) *Successful conciliation.* If a conciliation agreement is signed by the Departmental element's office of civil rights and recipient, it is approved or disapproved by the head of the Departmental element within 20 days of receiving it. If the head of the Departmental element disapproves the agreement, the reasons therefor are stated in writing. The head of the Departmental element may propose amendments to the agreement which are forwarded to the recipient, requesting the recipient's acceptance or rejection of the amended agreement within 20 days of receipt.

(2) *Unsuccessful conciliation.* If no agreement is signed within 120 days of the notice of reasonable cause enforcement proceedings set forth in § 23.83 begin. The head of the responsible office of civil rights, upon a written determination that an additional 30 days are needed to complete conciliation, may extend the conciliation period for 30 days. Subsequent extensions may be made upon such written determinations. The determinations shall include reasons for the extension and shall be provided to the complainant and respondent.

(b) *Effect of conciliation agreement.* If a conciliation agreement is approved, the existence of the determination of noncompliance does not act as a bar to the provision of financial assistance as long as the terms of the agreement are fulfilled. A compliance review is conducted by the Department element within nine months of the approval of an agreement.

**§ 23.83 Enforcement proceedings for financial assistance programs.**

(a) Whenever conciliation efforts pursuant to § 23.81 are unsuccessful, enforcement proceedings begin. These proceedings are conducted in accordance with the Department's proce-

dures for enforcing Title VI (49 CFR Part 21).

(b) A finding of noncompliance and the imposition of any sanction pursuant to these proceedings is binding on all other Departmental elements. Sanctions are limited to the recipient with respect to whom the noncompliance finding has been made and to the particular program or activity, or part thereof, in which noncompliance has been found.

**§ 23.85 Emergency enforcement procedure.**

(a) *General.* Whenever the Secretary determines that the conciliation and enforcement proceedings set forth in §§ 23.81 and 23.83 will not result in the timely and adequate enforcement of the provisions of this Part, he/she initiates special enforcement procedures to obtain compliance.

(b) *Emergency reasonable cause notice.* A notice is sent, registered mail, return receipt requested, describing the areas of alleged noncompliance, setting forth the reasons why the normal course of conciliation and enforcement pursuant to §§ 23.81 and 23.83 will not result in timely and adequate enforcement, and requiring the recipient to show cause, within a specified period of time, generally not to exceed 15 days, why appropriate action, described in the notice, to ensure compliance should not be taken. The notice states that the recipient must respond in writing or orally on the record before an official appointed by the Secretary or the proposed action will be taken.

(c) *Decision.* If the Secretary, after reviewing the recipient's oral or written response, determines that such action is necessary, he/she orders that all or any part of the contracting activities of the recipient affected by the recipient's alleged noncompliance be halted until the matter is resolved under §§ 23.81 or 23.83. The Secretary's action under this paragraph may not affect any contract already awarded. When the Secretary makes an order under this paragraph, resolution of the matter shall proceed on an expedited basis.

§ 23.87 Willful provision of incorrect information.

If, at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the General Counsel of the Department. He/she may initiate debarment procedures in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refer the matter to the Department of Justice under 18 U.S.C. 1001, as he/she deems appropriate.

*Schedule A—Information for Determining Minority Business Enterprise Eligibility*

1. Name of firm \_\_\_\_\_
2. Address of firm \_\_\_\_\_
3. Phone Number of firm \_\_\_\_\_
4. Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (please specify) \_\_\_\_\_

5. Nature of firm's business \_\_\_\_\_
6. Years firm has been in business \_\_\_\_\_

7. Ownership of firm: Identify those who own 5 percent or more of the firm's ownership. Columns e and f need be filled out only if the firm is less than 100 percent minority owned.

a— Name	b— Race	c—Sex	d— Years of owner- ship	e— Ownership percentage	f— Voting per- centage

With firms less than 100 percent minority owned, list the contributions of money, equipment, real estate, or expertise of each of the owners.

8. Control of firm: (a) Identify by name, race, sex, and title in the firm those individuals (including owners and non-owners) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:

- (1) Financial decisions \_\_\_\_\_
- (2) Management decisions, such as—
  - a. Estimating \_\_\_\_\_
  - b. Marketing and sales \_\_\_\_\_
  - c. Hiring and firing of management personnel \_\_\_\_\_
  - d. Purchases of major items or supplies . — \_\_\_\_\_
- (3) Supervision of field operations \_\_\_\_\_

9. For each of those listed in question 8, provide a *brief* summary of the person's experience and number of years with the firm, indicating the person's qualifications for the responsibilities given him or her.

10. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties which restrict ownership or control of minority owners.

11. Identify any owner (see item 7) or management official (see item 8) of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships include shared space, equipment, financing, or employees as well as both firms having some of the same owners.

12. What are the gross receipts of the firm for each of the last two years?

Year ending \_\_\_\_\_  
\$ \_\_\_\_\_  
Year ending \_\_\_\_\_  
\$ \_\_\_\_\_

13. Name of bonding company, if any: \_\_\_\_\_

Bonding limit \_\_\_\_\_  
Source of letters of credit, if any \_\_\_\_\_

14. Are you authorized to do business in the state as well as locally, including all necessary business licenses?

15. Indicate if this firm or other firms with any of the same officers have previously received or been denied certification or participation as an MBE and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

AFFIDAVIT

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of \_\_\_\_\_ (name of firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the grantee current, complete and accurate information regarding actual work performed on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

NOTE: If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation,

there is any significant change in the information submitted, you must inform the grantee of the change through the prime contractor or, if no prime contractor, inform the grantee directly.

Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

Corporate Seal (where appropriate).  
 Date \_\_\_\_\_  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_

On this — day of —, 19—, before me appeared (Name) —, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) — to execute the affidavit and did so as his or her free act and deed.

[Seal]  
 Notary Public \_\_\_\_\_  
 Commission expires \_\_\_\_\_

**SCHEDULE B—INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY**

(This form need not be filled in if all joint venture firms are minority owned.)

1. Name of joint venture \_\_\_\_\_
2. Address of joint venture \_\_\_\_\_
3. Phone number of joint venture \_\_\_\_\_
4. Identify the firms which comprise the joint venture. (The MBE partner must complete Schedule A.) \_\_\_\_\_  
 (a) Describe the role of the MBE firm in the joint venture. \_\_\_\_\_

(b) Describe very briefly the experience and business qualifications of each non-MBE joint venturer: \_\_\_\_\_

5. Nature of the joint venture's business — \_\_\_\_\_

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of MBE ownership? \_\_\_\_\_

8. Ownship of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.)

- (a) Profit and loss sharing.
- (b) Capital contributions, including equipment.
- (c) Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:

- (a) Financial decisions \_\_\_\_\_
- (b) Management decisions, such as: \_\_\_\_\_  
 (1) Estimating \_\_\_\_\_  
 (2) Marketing and sales \_\_\_\_\_  
 (3) Hiring and firing of management personnel \_\_\_\_\_  
 (4) Purchasing of major items or supplies \_\_\_\_\_

(c) Supervision of field operations

NOTE: If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

**AFFIDAVIT**

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

_____	_____
Name of Firm	Name of Firm
_____	_____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date

Date \_\_\_\_\_  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_

On this — day of —, 19—, before me appeared (Name) —, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name

of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

[Seal]

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this — day of —, 19—, before me appeared (Name) \_\_\_\_\_, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

[Seal]

## PART 25—RELOCATION ASSISTANCE AND LAND ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

### Subpart A—General

Sec.

- 25.1 Purpose and policy.
- 25.3 Definitions.
- 25.5 Applicability.
- 25.7 Delegations of authority.
- 25.9 Regulations.
- 25.11 Displaced person; qualifications.
- 25.13 Notices of intent to acquire real property.
- 25.15 Comparable replacement dwelling; requirements.
- 25.17 Decent, safe, and sanitary dwelling; requirements.
- 25.19 Decent, safe, and sanitary rental sleeping rooms; requirements.
- 25.21 Appeals.
- 25.23 Accounts, records, and reports.
- 25.25 Last resort housing.
- 25.27 Loans for planning and preliminary expenses.
- 25.29 Consultation at planning stage.
- 25.31 State agency obligated to provide real property for Federal or Federally-assisted project.
- 25.33 Payments not to be considered income.

### Subpart B—Requirements for Federal Projects

- 25.41 Scope.
- 25.43 Determinations; displacement of persons.
- 25.45 Determinations; acquisition of real property.

### Subpart C—Requirements for Federally-Assisted Projects

Sec.

- 25.51 Scope.
- 25.53 Preliminary requirements.
- 25.55 Relocation plan required.
- 25.57 Assurances required; displacement of persons.
- 25.59 Assurances required; acquisition of real property.
- 25.60 Monitoring assurances.
- 25.61 Use of Federal financial assistance.
- 25.63 Federal share of costs.

### Subpart D—Relocation Assistance Advisory Programs

- 25.71 Scope.
- 25.73 Extension of services to adjacent occupants.
- 25.75 Relocation programs; general requirements.
- 25.77 Organizational requirements.
- 25.79 Local relocation office.
- 25.81 Coordination with other agencies.
- 25.83 Public information; general.
- 25.85 Public information; hearings.
- 25.87 Public information; brochure.
- 25.89 Public information; announcements.
- 25.91 Public information; notices.
- 25.93 Information for displaced persons.

### Subpart E—Moving and Related Expenses

- 25.111 Scope.
- 25.113 Eligibility.
- 25.115 Payment limited to one move; exception.
- 25.117 Moving expenses; application and payment.
- 25.119 Exclusions.
- 25.121 Moving expenses; displaced persons.
- 25.123 Moving expenses; outdoor advertising businesses.
- 25.125 Low value, high bulk property; businesses and farm operations.
- 25.127 Actual direct losses; businesses and farm operations.
- 25.129 Expenses in searching for replacement business or farm operation.

### Subpart F—Fixed Allowance in Lieu of Moving and Related Expenses

- 25.151 Scope.
- 25.153 Schedule of moving expense allowances; individuals and families.
- 25.155 Dislocation and moving expense allowances; individuals and families.
- 25.157 Fixed allowance; profit and non-profit businesses.
- 25.159 Fixed allowance; farm operation.
- 25.161 Computing average annual net income; businesses and farm operations.

**PART 60-1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS****Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports**

## Sec.

- 60-1.1 Purpose and application.
- 60-1.2 Administrative responsibility.
- 60-1.3 Definitions.
- 60-1.4 Equal opportunity clause.
- 60-1.5 Exemptions.
- 60-1.6 [Reserved]
- 60-1.7 Reports and other required information.
- 60-1.8 Segregated facilities.
- 60-1.9 Compliance by labor unions and by recruiting and training agencies.
- 60-1.10 Foreign government practices.
- 60-1.11 Payment or reimbursement of membership fees and other expenses to private clubs.

**Subpart B—General Enforcement; Compliance Review and Complaint Procedure**

- 60-1.20 Compliance reviews.
- 60-1.21 Filing complaints.
- 60-1.22 Where to file.
- 60-1.23 Contents of complaint.
- 60-1.24 Processing of matters.
- 60-1.25 Assumption of jurisdiction by or referrals to the Director.
- 60-1.26 Enforcement proceedings.
- 60-1.27 Sanctions and penalties.
- 60-1.28 Show cause notices.
- 60-1.29 Preaward notices.
- 60-1.30 Contract ineligibility list.
- 60-1.31 Reinstatement of ineligible prime contractors and subcontractors.
- 60-1.32 Intimidation and interference.
- 60-1.33 Conciliation agreements.
- 60-1.34 Violation of a conciliation agreement or letter of commitment.

**Subpart C—Ancillary Matters**

- 60-1.40 Affirmative action compliance programs.
- 60-1.41 Solicitations or advertisements for employees.
- 60-1.42 Notices to be posted.
- 60-1.43 Access to records and site of employment.
- 60-1.44 Rulings and interpretations.
- 60-1.45 Existing contracts and subcontracts.
- 60-1.46 Delegation of authority by the Director.
- 60-1.47 Effective date.

**AUTHORITY:** Sec. 201, E.O. 11246 (30 FR 12319), as amended by E.O. 12086.

**SOURCE:** 43 FR 49240, Oct. 20, 1978, unless otherwise noted.

**Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports**

## § 60-1.1 Purpose and application.

The purpose of the regulations in this part is to achieve the aims of parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts. The regulations in this part apply to all contracting agencies of the Government and to contractors and subcontractors who perform under Government contracts, to the extent set forth in this part. The regulations in this part also apply to all agencies of the Government administering programs involving Federal financial assistance which may include a construction contract, and to all contractors and subcontractors performing under construction contracts which are related to any such programs. The procedures set forth in the regulations in this part govern all disputes relative to a contractor's compliance with his obligations under the equal opportunity clause regardless of whether or not his contract contains a "Disputes" clause. Failure of a contractor or applicant to comply with any provision of the regulations in this part shall be grounds for the imposition of any or all of the sanctions authorized by the order. The regulations in this part do not apply to any action taken to effect compliance with respect to employment practices subject to title VI of the Civil Rights Act of 1964. The rights and remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or contract; neither do the regulations limit the exercise by the Secretary or Government agencies of powers not herein specifically set forth, but granted to them by the order.

## § 60-1.2 Administrative responsibility.

The Director has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the Executive order. All correspondence regarding the order should be directed to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

## § 60-1.3 Definitions.

"Administering agency" means any department, agency and establishment in the executive branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

"Administrative law judge" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the *Code of Federal Regulations* (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

"Agency" means any contracting or any administering agency of the Government.

"Applicant" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

"Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contract" means any Government contract or any federally assisted construction contract.

"Contracting agency" means any department, agency, establishment, or instrumentality in the executive branch of the Government, including

any wholly owned Government corporation, which enters into contracts.

"Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

"Director" means the Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor or any person to whom he delegates authority under the regulations in this chapter.

"Equal opportunity clause" means the contract provisions set forth in § 60-1.4 (a) or (b), as appropriate.

"Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

"Government" means the government of the United States of America.

"Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services", as used in this section includes, but is not limited to the following services: Utility, construction, transportation, research, insurance, and fund depository. The term "Government contract" does not include (1) agreements in which the parties stand in the relationship of employer and employee, and (2) federally assisted construction contracts.

"Minority group" as used herein shall include, where appropriate, female employees and perspective female employees.

"Modification" means any alteration in the terms and conditions of a con-



tract, including supplemental agreements, amendments, and extensions.

“Order,” “Executive order,” or “Executive Order 11246” means parts II, III, and IV of the Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive order amending such order, and any other Executive order superseding such order.

“Person” means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

“Prime contractor” means any person holding a contract and, for the purposes of Subpart B of this part, any person who has held a contract subject to the order.

“Recruiting and training agency” means any person who refers workers to any contractor or subcontractor or who provides for employment by any contractor or subcontractor.

“Rules, regulations, and relevant orders of the Secretary of Labor” used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the order.

“Secretary” means the Secretary of Labor, U.S. Department of Labor.

“Site of construction” means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

“Subcontract” means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

“Subcontractor” means any person holding a subcontract and, for the purposes of Subpart B of this part, any person who has held a subcontract subject to the order. The term “First-tier subcontractor” refers to a subcontractor holding a subcontract with a prime contractor.

“United States” as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.

#### § 60-1.4 Equal opportunity clause.

(a) *Government contracts.* Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):

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, 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, 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 non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements 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, or national origin.

(3) 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 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 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.

(6) In the event of the contractor's non-compliance 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 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 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.

(b) *Federally assisted construction contracts.* (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the re-

quirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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, 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, 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 setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) 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 advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the

Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director may designate.

(e) *Incorporation by operation of the order.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

## § 60-1.5 Exemptions.

(a) *General*—(1) *Transactions of \$10,000 or under.* Contracts and subcontracts not exceeding \$10,000, other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No agency, contractor, or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: *Provided*, that where a contractor has contracts or subcontracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding \$10,000, the \$10,000 or under exemption does not apply, and the contracts are subject to the order and the regulations issued pursuant thereto regardless of whether any single contract exceeds \$10,000.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed \$10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause

for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States.

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, any agency, instrumentality or subdivision of such government, except for educational institutions and medical facilities, are exempt from the requirements of filing the annual compliance report provided for by § 60-1.7(a)(1) and maintaining a written affirmative action compliance program prescribed by § 60-1.40 and Part 60-2 of this chapter.

(5) *Contracts with certain educational institutions.* It shall not be a violation of the equal opportunity clause for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion. The primary thrust of this provision is directed at religiously oriented church-related colleges and universities and should be so interpreted.

(6) *Work on or near Indian reservations.* It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced

preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.

(b) *Specific contracts and facilities*—  
 (1) *Specific contracts.* The Director may exempt an agency or any person from requiring the inclusion of any or all of the equal opportunity clause in any specific contract or subcontract when he deems that special circumstances in the national interest so require. The Director may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the order.

(2) *Facilities not connected with contracts.* The Director may exempt from the requirements of the equal opportunity clause any of a prime contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order.

(c) *National security.* Any requirement set forth in these regulations in this part shall not apply to any contract or subcontract whenever the head of an agency determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the head of the agency will notify the Director in writing within 30 days.

(d) *Withdrawal of exemption.* When any contract or subcontract is of a class exempted under this section, the Director may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]

§ 60-1.6 [Reserved]

§ 60-1.7 Reports and other required information.

(a) *Requirements for prime contractors and subcontractors.* (1) Each prime contractor and subcontractor shall file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of these regulations in accordance with § 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided*, That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (a)(1) (i), (ii), and (iv) of this section.

(2) Each person required by § 60-1.7(a)(1) to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with § 60-1.7(a)(1), or at such other intervals as the Director may require. The Director may extend the time for filing any report.

(3) The Director or the applicant, on their own motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is ground for the imposition by the Director, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the regulations in this part.

(b) *Requirements for bidders or prospective contractors*—(1) *Certification of compliance with Part 60-2: Affirmative Action Programs.* Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part 60-2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; (iii) whether it has filed with the Joint Reporting Committee, the Director or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Director requests prior to the award of the contract or subcontract. When a

determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Director requests.

(c) *Use of reports.* Reports filed pursuant to this section shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

#### § 60-1.8 Segregated facilities.

(a) *General.* In order to comply with his obligations under the equal opportunity clause, a prime contractor or subcontractor must insure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, or national origin cannot result. He may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. His obligation extends further to insuring that his employees are not assigned to perform their services at any location, under his control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities" as used in this section means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees.

(b) *Certification by prime contractors and subcontractors.* Prior to the award or any nonexempt Government contract or subcontract or federally assisted construction contract or subcontract, each agency or applicant shall require the prospective prime contractor and each prime contractor and subcontractor shall require each subcontractor to submit a certification, in the form approved by the Director, that the prospective prime contractor or subcontractor does not and will not maintain any facilities he provides for his employees in a segregated manner,

or permit his employees to perform their services at any location, under his control, where segregated facilities are maintained; and that he will obtain a similar certification in the form approved by the Director, prior to the award of any nonexempt sub-contract.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]

**§ 60-1.9 Compliance by labor unions and by recruiting and training agencies.**

(a) Whenever compliance with the equal opportunity clause may necessitate a revision of a collective bargaining agreement the labor union or unions which are parties to such an agreement shall be given an adequate opportunity to present their views to the director.

(b) The Director shall use his best efforts, directly and through agencies, contractors, subcontractors, applicants, State and local officials, public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting and training agency or other representative of workers who are or may be engaged in work under contracts and subcontracts to cooperate with, and to comply in the implementation of, the purposes of the order.

(c) In order to effectuate the purposes of paragraph (a) of this section, the Director may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(d) The Director may notify any Federal, State, or local agency of his conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his judgment has failed to cooperate with himself, agencies, prime contractors, subcontractors, or applicants in carrying out the purposes of the order. The Director also may notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever he has reason to believe that the practices of any such labor organization or agency violates title VII of the Civil

Rights Act of 1964 or other provisions of Federal law.

**§ 60-1.10 Foreign government practices.**

Contractors shall not discriminate on the basis of race, color, religion, sex, or national origin when hiring or making employee assignments for work to be performed in the United States or abroad. Contractors are exempted from this obligation only when hiring persons outside the United States for work to be performed outside the United States (see 41 CFR 60-1.5(a)(3)). Therefore, a contractor hiring workers in the United States for either Federal or nonfederally connected work shall be in violation of Executive Order 11246, as amended, by refusing to employ or assign any person because of race, color, religion, sex, or national origin regardless of the policies of the country where the work is to be performed or for whom the work will be performed. Should any contractor be unable to acquire a visa of entry for any employee or potential employee to a country in which or with which it is doing business, and which refusal it believes is due to the race, color, religion, sex, or national origin of the employee or potential employee, the contractor must immediately notify the Department of State and the Director of such refusal.

**§ 60-1.11 Payment or reimbursement of membership fees and other expenses to private clubs.**

(a)(1) A contractor which maintains a policy or practice of paying membership fees or other expenses for employee participation in private clubs or organizations shall ensure that the policy or practice is administered without regard to the race, color, religion, sex, or national origin of employees.

(2) Payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts or limits its membership on the basis of race, color, sex, religion, or national origin constitutes a violation of Executive Order 11246 except where the contractor can provide evidence that



such restrictions or limitations do not abridge the promotional opportunities, status, compensation or other terms and conditions of employment of those of its employees barred from membership because of their race, color, religion, sex, or national origin. OFCCP shall provide the contractor with the opportunity to present evidence in defense of its actions.

(b) The contractor has the responsibility of determining whether the club or organization restricts membership on the basis of race, color, religion, sex, or national origin. The contractor may make separate determinations for different chapters of an organization, and where it does so, may limit any necessary corrective action to the particular chapters which observe discriminatory membership policies and practices.

[46 FR 3896, Jan. 16, 1981]

EFFECTIVE DATE NOTE: At 46 FR 3896, Jan. 16, 1981, § 60-1.11 was added. At 46 FR 18951, Mar. 27, 1981, the effective date was deferred until further notice.

### **Subpart B—General Enforcement; Compliance Review and Complaint Procedure**

#### **§ 60-1.20 Compliance reviews.**

(a) The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to insure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. It shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The

commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

(c) [Reserved]

(d) Each agency shall include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should exceed the amount of \$1 million or more, the prospective contractor and his known first-tier subcontractors with subcontracts of \$1 million or more will be subject to a compliance review before the award of the contract. No such contract shall be awarded unless a preaward compliance review of the prospective contractor and his known first-tier \$1 million subcontractors has been conducted within 12 months prior to the award. The awarding agency will notify OFCCP and request appropriate action and findings in accordance with this subsection. OFCCP will provide awarding agencies with written reports of compliance within 30 days following the request. In order to qualify for the award of a contract, a contractor and such first-tier subcontractors must be found to be in compliance pursuant to paragraph (b) of this section, and with Part 60-2 of these regulations.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]

#### **§ 60-1.21 Filing complaints.**

Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended by the Director for good cause shown.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]



## § 60-1.22 Where to file.

Complaints may be filed with the OFCCP, 200 Constitution Avenue, NW., Washington, D.C. 20210, or with any OFCCP regional or area office.

## § 60-1.23 Contents of complaint.

(a) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his/her authorized representative. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met.

(b) If a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. In the event such information is not furnished to the Director within 60 days of the date of such request, the case may be closed.

## § 60-1.24 Processing of matters.

(a) *Complaints.* OFCCP may refer appropriate complaints to the Equal Employment Opportunity Commission (EEOC) for processing under Title VII of the Civil Rights Act of 1964, as amended, rather than processing under E.O. 11246 and the regulations in this chapter. Upon referring complaints to the EEOC, OFCCP shall promptly notify complainant(s) and the contractor of such referral.

(b) *Complaint investigations.* In conducting complaint investigations, OFCCP shall, as a minimum, conduct a thorough evaluation of the allegations of the complaint and shall be responsible for developing a complete case record. The case record should contain the name, address, and telephone number of each person interviewed, the interview statements, copies, transcripts, or summaries (where appropriate) of pertinent documents, a reference to at least one covered contract, and a narrative report of the investigation with references to

exhibits and other evidence which relate to the alleged violations.

(c)(1) [Reserved]

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the Director shall proceed in accordance with § 60-1.26.

(4) When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of the Director and believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within ten days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action.

(5) For reasonable cause shown, the Director may reconsider or cause to be reconsidered any matter on his/her own motion or pursuant to a request.

(d) *Reports to the Director.* (1) With the exception of complaints which have been referred to EEOC, within 60 days from receipt of a complaint or within such additional time as may be allowed by the Director for good cause shown, the complaint shall be processed and the case record developed containing the following information:

(i) Name and address of the complainant;

(ii) Brief summary of findings, including a statement regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause;

(iii) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

(2) A written report of every preaward compliance review required by this regulation or otherwise required by the Director, shall be developed and maintained.

(3) A written report of every other compliance review or any other matter processed involving an apparent violation of the equal opportunity clause shall be made. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

#### § 60-1.25 Assumption of jurisdiction by or referrals to the Director.

The Director may inquire into the status of any matter pending before an agency. Where he considers it necessary or appropriate to the achievement of the purposes of the order, he may assume jurisdiction over the matter and proceed as provided herein. Whenever the Director assumes jurisdiction over any matter, or an agency refers any matter he may conduct, or have conducted, such investigations, hold such hearings, make such findings, issue such recommendations and directives, order such sanctions and penalties, and take such other action as may be necessary or appropriate to achieve the purposes of the order. The Director shall promptly notify the agency of any corrective action to be taken or any sanctions to be taken or any sanction to be imposed by the agency. The agency shall take such action, and report the results thereof to the Director within the time specified.

#### § 60-1.26 Enforcement proceedings.

(a) *General.* (1) Violations of the order, equal opportunity clause, the regulations in this chapter, or of applicable construction industry equal employment opportunity requirements, may result in the institution of administrative or judicial enforcement proceedings to enforce the order and to seek appropriate relief. Violations may be found based upon, inter alia, any of the following: (i) The results of a complaint investigation; (ii) analysis of an affirmative action program; (iii) the results of an on-site review of the contractor's compliance with the order

and its implementing regulations; (iv) a contractor's refusal to submit an affirmative action program; (v) a contractor's refusal to allow an on-site compliance review to be conducted; (vi) a contractor's refusal to supply records or other information as required by these regulations or applicable construction industry requirements; or (vii) any substantial or material violation or the threat of a substantial or material violation of the contractual provisions of the order, or of the rules or regulations issued pursuant thereto.

(2) If the investigation of a complaint, or a compliance review, results in a determination that the order, equal opportunity clause or regulations issued pursuant thereto, have been violated, and the violations have not been corrected in accordance with the conciliation procedures in this chapter, OFCCP may institute an administrative enforcement proceeding to enjoin the violations, to seek appropriate relief (which may include affected class and back pay relief), and to impose appropriate sanctions, or any of the above. However, if the contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow the compliance agency access to its premises for an on-site review; and if conciliation efforts under this chapter are unsuccessful, OFCCP, notwithstanding the requirements of this chapter, may go directly to administrative enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above. Whenever the Director has reason to believe that there is substantial or material violation or the threat of substantial or material violation of the contractual provisions of the order or of the rules, regulations or orders issued pursuant thereto, he/she may refer the matter to the Solicitor of Labor to institute administrative enforcement proceedings as set forth in this section or refer the matter to the Department of Justice to enforce the contractual provisions of the order, to seek injunctive relief (including relief against noncontractors, including labor unions, who seek

to thwart implementation of the order and regulations) and to seek such additional relief, including back pay, as may be appropriate. There are no procedural prerequisites to a referral to the Department of Justice by the Director, and such referrals may be accomplished without proceeding through the conciliation procedures in this chapter, and a referral may be made at any stage in the procedures under this chapter: *Provided*, That no order for debarment from further contracts or subcontracts pursuant to section 209(a)(6) of the order shall be made without affording the contractor an opportunity for a hearing, either administrative or judicial.

(b) [Reserved]

(c) *Administrative enforcement proceedings.* Administrative enforcement proceedings shall be conducted under the control and supervision of the Solicitor of Labor and under the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in Part 60-30 of this chapter.

(d) *Decision following administrative proceeding.* If it is determined after a hearing (or after the contractor waives a hearing) that the contractor is violating the order or the regulations issued thereunder, the Secretary (in accordance with 41 CFR 60-30.30(a)) shall issue an Administrative order enjoining the violations and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative order shall result in the imposition of the sanctions contained in section 209 (a)(5) or (a)(6) of the Executive order.

(e) *Referrals to the Department of Justice.* (1) Whenever a matter has been referred to the Department of Justice for consideration of judicial proceedings pursuant to § 60-1.26(a)(2) of these regulations, the Attorney General may bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional equitable relief, including back pay, deemed necessary or

appropriate to ensure the full enjoyment of the rights secured by the order, or any of the above.

(2) The Attorney General is authorized to conduct such investigation of the facts as he may deem necessary or appropriate to carry out his responsibilities under these regulations.

(3) Prior to the institution of any judicial proceedings, the Attorney General, on behalf of the Director, is authorized to make reasonable efforts to secure compliance with the contract provisions of the order. He may do so by providing the contractor and any other respondent with reasonable notice of his findings, his intent to file suit, and the actions he believes necessary to obtain compliance with the contract provisions of the order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation, in an effort to obtain such compliance without contested litigation.

(4) As defined in these regulations, the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person authorized by regulations or practice to act for the Attorney General with respect to the enforcement of equal employment opportunity laws, orders and regulations generally, or in a particular matter or case.

(5) The Director or his/her designee, and representatives of the Attorney General may consult from time to time to determine what investigations should be conducted to determine whether contractors or groups of contractors or other persons may be engaged in patterns or practices in violation of the Executive order or these regulations, or of resistance to or interference with the full enjoyment of any of the rights secured by them, warranting judicial proceedings.

(f) *Initiation of lawsuits by the Attorney General without referral from the Director.* In addition to initiating lawsuits upon referral under 41 CFR 60-1.26, the Attorney General may, subject to approval by the Director, initiate independent investigations of contractors which he/she has reason to believe may be in violation of the

order or the rules and regulations issued pursuant thereto. If, upon completion of such an investigation, the Attorney General determines that the contractor has in fact violated the order or the rules and regulations issued thereunder, he shall make reasonable efforts to secure compliance with the contract provisions of the order. He may do so by providing the contractor and any other respondent with reasonable notice of the Department's findings, its intent to file suit, and the actions that the Attorney General believes are necessary to obtain compliance with the contract provisions of the order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation in an effort to obtain such compliance without contested litigation. If these efforts are unsuccessful, the Attorney General may, upon approval by the Director, bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the order or any of the above.

(g) To the extent applicable, this section and Part 60-30 of this chapter shall govern proceedings resulting from the Director's determination under § 60-2.2(b) that there are substantial issues of law or fact as to the contractor/bidder's responsibility.

(E.O. 11246 (30 FR 12319) as amended by E.O. 11375 and 12086; sec. 503, Pub. L. 93-112, 87 Stat. 393 (29 U.S.C. 793), as amended by sec. 111, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706) and E. O. 11758; sec. 503(a), Pub. L. 92-540, 86 Stat. 1097 (38 U.S.C. 2012), as amended by sec. 402, Pub. L. 93-508, 88 Stat. 1593 (38 U.S.C. 2012))

[43 FR 49240, Oct. 20, 1978, as amended at 45 FR 9272, Feb. 12, 1980]

#### § 60-1.27 Sanctions and penalties.

The sanctions described in subsections (1), (5), and (6) of section 209(a) of the order may be exercised only by or with the approval of the Director. Referral of any matter arising under the order to the Department of Jus-

tice or to the Equal Employment Opportunity Commission shall be made by the Director.

#### § 60-1.28 Show cause notices.

When the director has reasonable cause to believe that a contractor has violated the equal opportunity clause he may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted.

#### § 60-1.29 Preaward notices.

(a) *Preaward compliance reviews.* Upon the request of the Director, agencies shall not enter into contracts or approve the entry into contracts or subcontracts with any bidder, prospective prime contractor, or proposed subcontractor named by the Director until a preaward compliance review has been conducted and the Director or his designee has approved a determination that the bidder, prospective prime contractor or proposed subcontractor will be able to comply with the provisions of the equal opportunity clause.

(b) *Other special preaward procedures.* Upon the request of the Director, agencies shall not enter into contracts or approve the entry into subcontracts with any bidder; prospective prime contractor or proposed subcontractor specified by the Director until the agency has complied with the directions contained in the request.

#### § 60-1.30 Contract ineligibility list.

The Director shall distribute periodically a list to all executive departments and agencies giving the names of prime contractors and subcontractors who have been declared ineligible under the regulations in this part and the order.

#### § 60-1.31 Reinstatement of ineligible prime contractors and subcontractors.

Any prime contractor or subcontractor declared ineligible for further contracts or subcontracts under the order may request reinstatement in a letter directed to the Director. In connection with the reinstatement proceedings,

the prime contractor or subcontractor shall be required to show that it has established and will carry out employment policies and practices in compliance with the equal opportunity clause.

#### § 60-1.32 Intimidation and interference.

The sanctions and penalties contained in Subpart D of the order may be exercised by the Director against any prime contractor, subcontractor or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the order or any other Federal, State, or local laws requiring equal employment opportunity.

#### § 60-1.33 Conciliation agreements.

(a) If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and (1) if the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and (2) if OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(b) The term "conciliation agreement" does not include "letters of commitment" which are appropriate for resolving minor technical deficiencies.

(E.O. 11246 (30 FR 12319) as amended by E.O. 11375 and 12086)

[44 FR 77002, Dec. 28, 1979]

#### § 60-1.34 Violation of a conciliation agreement or letter of commitment.

(a) When a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violations alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(3) If the contractor is unable to demonstrate that it has not violated its commitments, or if the complaint alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement contained in this chapter.

(b) If the contractor has violated a letter of commitment, the matter shall be handled, where appropriate, pursuant to 41 CFR 60-2.2(c) or 60-4.8. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated.

(E.O. 11246 (30 FR 12319) as amended by EO 11375 and 12086)

[44 FR 77002, Dec. 28, 1979]

### Subpart C—Ancillary Matters

#### § 60-1.40 Affirmative action compliance programs.

(a) *Requirements of programs.* Each contractor who has 50 or more employees and (1) has a contract of \$50,000 or more; or (2) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (3) serves as a depository of Government funds in any amount; or (4) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, shall develop a written affirmative action compliance program for

each of its establishments. Each contractor and subcontractor shall require each subcontractor who has 50 or more employees and (i) has a subcontract of \$50,000 or more; or (ii) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (iii) serves as a depository of Government funds in any amount; or (iv) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, to develop a written affirmative action compliance program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation of opportunities for utilization of minority group personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and time tables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in its affirmative action compliance program a table of job classifications. This table should include but need not be limited to job titles, principal duties (and auxiliary duties, if any), rates of pay, and where more than one rate of pay applied (because of length of time in the job or other factors), the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.

(b) *Utilization evaluation.* The evaluation of utilization of minority group personnel shall include the following:

(1) An analysis of minority group representation in all job categories.

(2) An analysis of hiring practices for the past year, including recruitment sources and testing, to determine whether equal employment opportunity is being afforded in all job categories.

(3) An analysis of upgrading, transfer and promotion for the past year to determine whether equal employment opportunity is being afforded.

(c) *Maintenance of programs.* Within 120 days from the commencement of the contract, each contractor shall maintain a copy of separate affirmative action compliance programs for each establishment, including evaluations of utilization of minority group personnel and the job classification tables, at each local office responsible for the personnel matters of such establishment. An affirmative action compliance program shall be part of the manpower and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to representatives of the Director upon request and the contractor's affirmative action program and the result it produces shall be evaluated as part of compliance review activities.

[43 FR 49240, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]

#### § 60-1.41 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§ 60-1.42 Notices to be posted.

(a) Unless alternative notices are prescribed by the Director, the notices which prime contractors and subcontractors are required to post by paragraphs (1) and (3) of the equal opportunity clause will contain the following language and will be provided by the contracting or administering agencies:

**EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW—DISCRIMINATION IS PROHIBITED BY THE CIVIL RIGHTS ACT OF 1964 AND BY EXECUTIVE ORDER NO. 11246**

Title VII of the Civil Rights Act of 1964—*Administered by:*

**THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 75 or more employees, by Labor Organizations with a hiring hall of 75 or more members, by Employment Agencies, and by Joint Labor-Management Committees for Apprenticeship or Training. After July 1, 1967, employers and labor organizations with 50 or more employees or members will be covered; after July 1, 1968, those with 25 or more will be covered.

**ANY PERSON**

Who believes he or she has been discriminated against

**SHOULD CONTACT**

**THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

2401 E Street NW, Washington, D.C. 20508

Executive Order No. 11246—*Administered by:*

**THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

By all Federal Government Contractors and Subcontractors, and by Contractors Performing Work Under a Federal Assisted

Construction Contract, regardless of the number of employees in either case.

**ANY PERSON**

Who believes he or she has been discriminated against

**SHOULD CONTACT**

**THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

U.S. Department of Labor Washington, D.C. 20210

(b) The requirements of paragraph (3) of the equal opportunity clause will be satisfied whenever the prime contractor or subcontractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment, and representatives of each labor union or other organization representing his employees with which he has a collective-bargaining agreement or other contract or understanding.

**§ 60-1.43 Access to records and site of employment.**

Each prime contractor and subcontractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews and inspecting and copying such books, records, accounts, and other material as may be relevant to the matter under investigation and pertinent to compliance with the order, and the rules and regulations promulgated pursuant thereto by the agency, or the Director. Information obtained in this manner shall be used only in connection with the administration of the order, the administration of the Civil Rights Act of 1964 (as amended) and in furtherance of the purposes of the order and that Act. (See 41 CFR Part 60-60, Contractor Evaluation Procedures for Nonconstruction Contractors; 41 CFR Part 60-40, Examination and Copying of OFCCP Documents.)

(Sec. 201. E.O. 11246, 30 FR 12319, and E.O. 11375. 32 FR 14303)



## § 60-1.44 Rulings and interpretations.

Rulings under or interpretations of the order or the regulations contained in this part shall be made by the Secretary or his designee.

## § 60-1.45 Existing contracts and subcontracts.

All contracts and subcontracts in effect prior to October 24, 1965, which are not subsequently modified shall be administered in accordance with the nondiscrimination provisions of any prior applicable Executive orders. Any contract or subcontract modified on or after October 24, 1965, shall be subject to Executive Order 11246. Complaints received by and violations coming to the attention of agencies regarding contracts and subcontracts which were subject to Executive Orders 10925 and 11114 shall be processed as if they were complaints regarding violations of this order.

## § 60-1.46 Delegation of authority by the Director.

The Director is authorized to redelegate the authority given to him by the regulations in this part. The authority re delegated by the Director pursuant to the regulations in this part shall be exercised under his general direction and control.

## § 60-1.47 Effective date.

The regulations contained in this part shall become effective July 1, 1968, for all contracts, the solicitations, invitations for bids, or requests for proposals which were sent by the Government or an applicant on or after said effective date, and for all negotiated contracts which have not been executed as of said effective date. Notwithstanding the foregoing, the regulations in this part shall become effective as to all contracts executed on and after the 120th day following said effective date. Subject to any prior approval of the Secretary, any agency may defer the effective date of the regulations in this part, for such period of time as the Secretary finds to be reasonably necessary. Contracts executed prior to the effective date of the regulations in this part shall be governed by the regulations promulgated by the former President's Com-

mittee on Equal Employment Opportunity which appear at 28 FR 9812, September 2, 1963, and at 28 FR 11305, October 23, 1963, the temporary regulations which appear at 30 FR 13441, October 22, 1965, and the orders at 31 FR 6881, May 10, 1966, and 32 FR 7439, May 19, 1967.

## PART 60-2—AFFIRMATIVE ACTION PROGRAMS

## Subpart A—General

Sec.

- 60-2.1 Title, purpose and scope.
- 60-2.2 Agency action.

## Subpart B—Required Contents of Affirmative Action Programs

- 60-2.10 Purpose of affirmative action program.
- 60-2.11 Required utilization analysis.
- 60-2.12 Establishment of goals and timetables.
- 60-2.13 Additional required ingredients of affirmative action programs.
- 60-2.14 Program summary.
- 60-2.15 Compliance status.

## Subpart C—Methods of Implementing the Requirements of Subpart B

- 60-2.20 Development or reaffirmation of the equal employment opportunity policy.
- 60-2.21 Dissemination of the policy.
- 60-2.22 Responsibility for implementation.
- 60-2.23 Identification of problem areas by organizational units and job groups.
- 60-2.24 Development and execution of programs.
- 60-2.25 Internal audit and reporting systems.
- 60-2.26 Support of action programs.

## Subpart D—Miscellaneous

- 60-2.30 Use of goals.
- 60-2.31 Preemption.
- 60-2.32 Supersedure.

AUTHORITY: 5 U.S.C. 553(a)(3)(B); 29 CFR 2.7; sec. 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086.

SOURCE: 43 FR 49249, Oct. 20, 1978, unless otherwise noted.



**Subpart A—General**

## § 60-2.1 Title, purpose and scope.

(a) This part shall also be known as "Revised Order No. 4," and shall cover nonconstruction contractors. Section 60-1.40 of this chapter, affirmative action compliance programs, requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and (1) a contract of \$50,000 or more; or (2) Government bills of lading which, in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or (3) who serves as a depository of Government funds in any amount; or (4) who is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, develop a written affirmative action compliance program for each of its establishments. A review of compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then sets forth detailed guidelines to be used by contractors and the Government in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity. Subparts B and C of this part are concerned with affirmative action plans only.

(b) Relief, including back pay where appropriate, for members of an affected class who by virtue of past discrimination continue to suffer the present effects of that discrimination, shall be provided in the conciliation agreement entered into pursuant to § 60-60.6 of this title. An "affected class" problem must be remedied in order for a contractor to be considered in compliance. Section 60-2.2 herein pertaining to an acceptable affirmative action program is also applicable to the failure to remedy discrimination against members of an "affected class."

## § 60-2.2 Agency action.

(a) Any contractor required by § 60-1.40 of this chapter to develop an affirmative action program at each of its establishments who has not complied fully with that section is not in compliance with Executive Order 11246, as amended (30 FR 12319). Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60-2.10 through 60-2.32, the contractor is unable to comply with the equal employment opportunity clause. An affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate OFCCP field, area, regional, or national office has accepted such plan unless within 45 days thereafter the Director has disapproved such plan.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his agency or through the Office of Federal Contract Compliance Programs or other Government agencies, that the contractor has no affirmative action program at each of its establishments, or has substantially deviated from such an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the regulations in this chapter, the contracting officer shall declare the contractor/bidder nonresponsible and so notify the contractor and the Director, unless he can otherwise affirmatively determine that the contractor is able to comply with his equal employment obligations. Any contractor/bidder which has been declared nonresponsible in accordance with the provisions of this section may request the Director to determine that the responsibility of the contractor/bidder raises substantial issues of law or fact to the extent that a hearing is required. Such request shall set forth the basis upon which the contractor/bidder seeks such a determination. If the Director, in his/her sole discretion, determines that substantial issues of law or fact exist, an administrative or judicial proceeding may be commenced in accordance with the regulations contained in

§ 60-1.26; or the Director may require the investigation or compliance review be developed further or additional conciliation be conducted: *Provided*, That during any pre-award conferences, every effort shall be made through the processes of conciliation, mediation, and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§ 60-2.10 through 60-2.32 so that, in the performance of his contract, the contractor is able to meet its equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: *Provided further*, That a contractor/bidder may not be declared nonresponsible more than twice due to past non-compliance with the equal opportunity clause at a particular establishment or facility without receiving prior notice and an opportunity for a hearing.

(c)(1) Immediately upon finding that a contractor has no affirmative action program, or has deviated substantially from an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the requirements of the regulations in this chapter, that fact shall be recorded in the investigation file. Whenever administrative enforcement is contemplated, the notice to the contractor shall be issued giving him 30 days to show cause why enforcement proceedings under section 209(a) of Executive Order 11246, as amended, should not be instituted. The notice to show cause should contain:

(i) An itemization of the sections of the Executive order and of the regulations with which the contractor has been found in apparent violation, and a summary of the conditions, practices, facts, or circumstances which give rise to each apparent violation;

(ii) The corrective actions necessary to achieve compliance or, as may be appropriate, the concepts and principles of an acceptable remedy and/or the corrective action results anticipated;

(iii) A request for a written response to the findings, including commitments to corrective action or the pres-

entation of opposing facts and evidence; and

(iv) A suggested date for the conciliation conference.

(2) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the case file shall be processed for enforcement proceedings pursuant to § 60-1.26 of this chapter. If an administrative complaint is filed, the contractor shall have 20 days to request a hearing. If a request for hearing has not been received within 20 days from the filing of the administrative complaint, the matter shall proceed in accordance with Part 60-30 of this chapter.

(3) During the "show cause" period of 30 days, every effort will be made through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of non-responsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the case shall be processed for enforcement proceedings pursuant to § 60-1.26 of this chapter.

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

[43 FR 49249, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]

### Subpart B—Required Contents of Affirmative Action Programs

#### § 60-2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is defi-

cient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of its work force where deficiencies exist.

[43 FR 49249, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]

#### § 60-2.11 Required utilization analysis.

Based upon the Government's experience with compliance reviews under the Executive order program and the contractor reporting system, minority groups are most likely to be underutilized in departments and jobs within departments that fall within the following Employer's Information Report (EEO-1) designations: Officials and managers, professionals, technicians, sales workers, office and clerical and craftsmen (skilled). As categorized by the EEO-1 designations, women are likely to be underutilized in departments and jobs within departments as follows: Officials and managers, professionals, technicians, sales workers (except over-the-counter sales in certain retail establishments), craftsmen (skilled and semi-skilled). Therefore, the contractor shall direct special attention to such jobs in its analysis and goal setting for minorities and women. Affirmative action programs must contain the following information:

(a) Workforce analysis which is defined as a listing of each job title as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job families, or dis-

plines, in order of wage rates or salary ranges. For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

(b) An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups ("job groups" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In making the utilization analysis, the contractor shall conduct such analysis separately for minorities and women.

(1) In determining whether minorities are being underutilized in any job group, the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job group, the contractor will consider at least all of the following factors:

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

(vi) The availability of promotable and transferable female employees within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

[43 FR 49249, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]

#### § 60-2.12 Establishment of goals and timetables.

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of its deficiencies and its entire affirmative action program. Thus, in establishing the size of its goals and the length of its timetables, the contractor should consider the results which could reasonably be expected from its putting forth every good faith effort to make its overall affirmative action program work. In determining levels of goals, the contractor should consider at least the factors listed in § 60-2.11.

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal-setting process.

(c) Goals should be significant, measurable, and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

(f) In establishing timetables to meet goals and commitments, the contractor will consider the anticipated expansion, contraction, and turnover of and in the work force.

(g) Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies.

(h) Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

(i) Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor.

(j) A contractor or subcontractor extending a publicly announced preference for Indians as authorized in 41 CFR 60-1.5(a)(6) may reflect in its goals and timetables the permissive employment preference for Indians living on or near an Indian reservation.

(k) Where the contractor has not established a goal, its written affirmative action program must specifically analyze each of the factors listed in § 60-2.11 and must detail its reason for a lack of a goal.

(l) In the event it comes to the attention of the Office of Federal Contract Compliance Programs that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, OFCCP may require separate goals and timetables for such minority group and may further require, where appropriate, such goals and timetables by sex for such group for such job classifications and organizational units specified by the OFCCP.

(m) Support data for the required analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data will include but not be

limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

(n) Copies of affirmative action programs and/or copies of support data shall be made available to the Office of Federal Contract Compliance Programs, upon request, for such purposes as may be appropriate to the fulfillment of its responsibilities under Executive Order 11246, as amended.

[43 FR 49249, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978]

#### § 60-2.13 Additional required ingredients of affirmative action programs.

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job group.

(e) Establishment of goals and objectives by organizational units and job groups, including timetables for completion.

(f) Development and execution of action-oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Compliance of personnel policies and practices with the Sex Discrimination Guidelines (41 CFR Part 60-20).

(i) Active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.

(j) Consideration of minorities and women not currently in the work force having requisite skills who can be recruited through affirmative action measures.

#### § 60-2.14 Program summary.

The affirmative action program shall be summarized and updated annually. The program summary shall be prepared in a format which shall be prescribed by the Director and published in the FEDERAL REGISTER as a notice before becoming effective. Contractors and subcontractors shall submit the program summary to OFCCP each year on the anniversary date of the affirmative action program.

[44 FR 77003, Dec. 28, 1979]

#### § 60-2.15 Compliance status.

No contractor's compliance status shall be judged alone by whether or not it reaches its goals and meets its timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of its program, the extent of its adherence to this program, and its good faith efforts to make its program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of examples of procedures that contractors and Federal agencies should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program.

[43 FR 49249, Oct. 20, 1978; 43 FR 51400, Nov. 3, 1978. Redesignated at 44 FR 77003, Dec. 28, 1979]

### Subpart C—Methods of Implementing the Requirements of Subpart B

#### § 60-2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officer's attitude on the subject matter, assign overall responsibility and provide for a reporting and monitoring procedure. Specific items to be mentioned should include, but not be limited to:

(1) Recruit, hire, train, and promote persons in all job titles, without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. (The term "bona fide occupational qualification"

has been construed very narrowly under the Civil Rights Act of 1964. Under Executive Order 11246 as amended and this part, this term will be construed in the same manner.)

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin.

[43 FR 49249, Oct. 30, 1978; 43 FR 51400, Nov. 3, 1978]

#### § 60-2.21 Dissemination of the policy.

(a) The contractor should disseminate its policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report, and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to insure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions, etc., of minority and female employees, in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, employee handbooks or similar publications both minority and nonminority, men and women should be pictured.

(11) Communicate to employees the existence of the contractor's affirmative action program and make available such elements of its program as will enable such employees to know of and avail themselves of its benefits.

(b) The contractor should disseminate its policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

(2) Incorporate the equal opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority and women's organizations, community agencies, community leaders, secondary schools, and colleges, of company policy, preferably in writing.

(4) Communicate to prospective employees the existence of the contractor's affirmative action program and make available such elements of its program as will enable such prospective employees to know of and avail themselves of its benefits.

(5) When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women should be shown.

(6) Send written notification of company policy to all subcontractors, vendors, and suppliers requesting appropriate action on their part.

[43 FR 49249, Oct. 30, 1978; 43 FR 51400, Nov. 3, 1978]

#### § 60-2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company equal opportunity programs. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. He or she should be given the necessary top management support and staffing to execute the assignment. His or her identity should

appear on all internal and external communications on the company's equal opportunity programs. His or her responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies.

(6) Serve as liaison between the contractor and minority organizations, women's organizations and community action groups concerned with employment opportunities of minorities and women.

(7) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations, women's organizations, community action groups and community service programs.

(3) Periodic audit of training programs, hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure that minorities and women are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in areas such as:

(i) Posters are properly displayed.

(ii) All facilities, including company housing, which the contractor maintains for the use and benefit of its employees, are in fact desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms and rest rooms, they must be comparable for both sexes.

(iii) Minority and female employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational, and social activities.

(8) Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

(9) It shall be a responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

[43 FR 49249, Oct. 30, 1978; 43 FR 51401, Nov. 3, 1978]

#### § 60-2.23 Identification of problem areas by organizational units and job groups.

(a) An in-depth analysis of the following should be made, paying particular attention to trainees and those categories listed in § 60-2.11(b).

(1) Composition of the work force by minority group status and sex.

(2) Composition of applicant flow by minority group status and sex.

(3) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities or women in specific job groups.

(2) Lateral and/or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities or men.

(4) Application and related preemployment forms not in compliance with Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Formal or scored selection procedures not validated as required by the OFCCP Uniform Guidelines on Employee Selection Procedures.

(7) Test forms not validated by location, work performance and inclusion of minorities and women in sample.

(8) Referral ratio of minorities or women to the hiring supervisor or manager indicates a significantly higher percentage are being rejected as compared to nonminority and male applicants.

(9) Minorities or women are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a disparity by minority group status or sex exists between length of service and types of job held.

(12) Nonsupport of company policy by managers, supervisors or employees.

(13) Minorities or women underutilized or significantly underrepresented in training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities.

(16) Lack of suitable transportation (public or private) to the work place inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

#### § 60-2.24 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate worker specifications by division, department, location or other organizational unit and by job title using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job title in all locations and should be free from bias as regards to race, color, religion, sex or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women, such requirements should be professionally validated to job performance.

(c) Approved position descriptions and worker specifications, when used by the contractor, should be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and



trained to insure elimination of bias in all personnel actions.

(2) The contractor shall observe the requirements of the OFCCP Uniform Guidelines on Employee Selection Procedures.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include but are not restricted to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where there exist data suggesting that such unfair discrimination or exclusion of minorities or women exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority or female applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights organizations, Women's Equity Action League, Talent Bank from Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro Women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish Women's Groups, Catholic Women's Groups and Protestant Women's Groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, followup with sources, and feedback on disposition of applicants.

(3) Minority and female employees, using procedures similar to subparagraph (2) of this paragraph, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities and women on the Personnel Relations staff.

(5) Minority and female employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representative so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

(8) Recruiting efforts at all schools should incorporate special efforts to reach minorities and women.

(9) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and female.

(iii) Summer jobs for underprivileged youth, male and female.

(iv) Summer work-study programs for male and female faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hardcore unemployed, male and female.

(10) When recruiting brochures pictorially present work situations, the minority and female members of the work force should be included, especially when such brochures are used in school and career programs.

(11) Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

(f) The contractor should insure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) Post or otherwise announce promotional opportunities.

(2) Make an inventory of current minority and female employees to determine academic, skill and experience level of individual employees.

(3) Initiate necessary remedial, job training and workstudy programs.

(4) Develop and implement formal employee evaluation programs.

(5) Make certain "worker specifications" have been validated on job performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.)

(6) When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

(7) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system and similar programs.

(8) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

(h) Encourage child care, housing and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

[43 FR 49249, Oct. 30, 1978; 43 FR 51401, Nov. 3, 1978]

#### § 60-2.25 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a schedule basis as to degree to which corporate or unit goals are attained and timetables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

#### § 60-2.26 Support of action programs.

(a) The contractor should appoint key members of management to serve on merit employment councils, community relations boards and similar organizations.

(b) The contractor should encourage minority and female employees to participate actively in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support vocational guidance institutes, vestibule training programs and similar activities.

(d) The contractor should assist secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority and female employees in local and minority news media.

(f) The contractor should support programs developed by such organizations as National Alliance of Businessmen, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

[43 FR 49249, Oct. 30, 1978; 43 FR 51401, Nov. 3, 1978]

**Subpart D—Miscellaneous**

§ 60-2.30 Use of goals.

The purpose of a contractor's establishment and use of goals is to insure that it meet its affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

[43 FR 49249, Oct. 30, 1978; 43 FR 51401, Nov. 3, 1978]

§ 60-2.31 Preemption.

To the extent that any State or local laws, regulations or ordinances, including those which grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with the requirements of this part, we will regard them as preempted under the Executive order.

§ 60-2.32 Supersedure.

All orders, instructions, regulations, and memoranda of the Secretary of Labor, other officials of the Department of Labor and contracting agencies are hereby superseded to the extent that they are inconsistent herewith, including a previous "Order No. 4" from this office dated January 30, 1970. Nothing in this part is intended to amend 41 CFR Part 60-3 or 41 CFR 60-20.

**PART 60-3—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)**

COMPREHENSIVE TABLE OF CONTENTS

GENERAL PRINCIPLES

- § 60-3.1 Statement of purpose
  - A. Need for uniformity—Issuing agencies
  - B. Purpose of guidelines
  - C. Relation to prior guidelines
- § 60-3.2 Scope
  - A. Application of guidelines
  - B. Employment decisions
  - C. Selection procedures
  - D. Limitations
  - E. Indian preference not affected
- § 60-3.3 Discrimination defined: Relationship between use of selection procedures and discrimination

- A. Procedure having adverse impact constitutes discrimination unless justified
- B. Consideration of suitable alternative selection procedures
- § 60-3.4 Information on impact
  - A. Records concerning impact
  - B. Applicable race, sex, and ethnic groups for recordkeeping
  - C. Evaluation of selection rates—The "bottom line"
  - D. Adverse impact and the "four-fifths rule"
  - E. Consideration of user's equal employment opportunity posture
- § 60-3.5 General standards for validity studies
  - A. Acceptable types of validity studies
  - B. Criterion-related, content, and construct validity
  - C. Guidelines are consistent with professional standards
  - D. Need for documentation of validity
  - E. Accuracy and standardization
  - F. Caution against selection on basis of knowledges, skills, or abilities learned in brief orientation period
  - G. Method of use of selection procedures
  - H. Cutoff scores
  - I. Use of selection procedures for higher level jobs
  - J. Interim use of selection procedures
  - K. Review of validity studies for currency
- § 60-3.6 Use of selection procedures which have not been validated
  - A. Use of alternate selection procedures to eliminate adverse impact
  - B. Where validity studies cannot or need not be performed
    - (1) Where informal or unscored procedures are used
    - (2) Where formal and scored procedures are used
- § 60-3.7 Use of other validity studies
  - A. Validity studies not conducted by the user
  - B. Use of criterion-related validity evidence from other sources
    - (1) Validity evidence
    - (2) Job similarity
    - (3) Fairness evidence
  - C. Validity evidence from multiunit study
  - D. Other significant variables
- § 60-3.8 Cooperative studies
  - A. Encouragement of cooperative studies
  - B. Standards for use of cooperative studies
- § 60-3.9 No assumption of validity
  - A. Unacceptable substitutes for evidence of validity
  - B. Encouragement of professional supervision
- § 60-3.10 Employment agencies and employment services
  - A. Where selection procedures are devised by agency

citation. The specific additional citations are as follows:

Equal Employment Opportunity Commission

29 CFR Part 1607

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60-3

Department of Justice

28 CFR 50.14

Civil Service Commission

5 CFR 300.103(c)

Normally when citing these guidelines, the section number immediately preceding the title of the guidelines will be from these guidelines series 1-18. If a section number from the codification for an individual agency is needed it can also be added at the end of the agency citation. For example, section 6A of these guidelines could be cited for EEOC as follows: "Section 6A, Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38295, (August 25, 1978); 29 CFR Part 1607, section 6A."

## PART 60-4—CONSTRUCTION CONTRACTORS—AFFIRMATIVE ACTION REQUIREMENTS

Sec.

60-4.1 Scope and application.

60-4.2 Solicitations.

60-4.3 Equal opportunity clauses.

60-4.4 Affirmative action requirements.

60-4.5 Hometown plans

60-4.6 Goals and timetables.

60-4.7 Effect on other regulations.

60-4.8 Show cause notice.

60-4.9 Incorporation by operation of the Order.

**AUTHORITY:** Secs. 201, 202, 205, 211, 301, 302, and 303 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303, as amended by E.O. 12086.

**SOURCE:** 43 FR 49254, Oct. 20, 1978, unless otherwise noted.

### § 60-4.1 Scope and application.

This part applies to all contractors and subcontractors which hold any Federal or federally assisted construction contract in excess of \$10,000. The regulations in this part are applicable to all of a construction contractor's or subcontractor's construction employees who are engaged in on site construction including those construction

employees who work on a non-Federal or nonfederally assisted construction site. This part also establishes procedures which all Federal contracting officers and all applicants, as applicable, shall follow in soliciting for and awarding Federal or federally assisted construction contracts. Procedures also are established which administering agencies shall follow in making any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of Executive Order 11246, as amended.

In addition, this part applies to construction work performed by construction contractors and subcontractors for Federal nonconstruction contractors and subcontractors if the construction work is necessary in whole or in part to the performance of a non-construction contract or subcontract.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978]

### § 60-4.2 Solicitations.

(a) All Federal contracting officers and all applicants shall include the notice set forth in paragraph (d) of this section and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in § 60-4.3 of this part in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of the part. Administering agencies shall require the inclusion of the notice set forth in paragraph (d) of this section and the specifications set forth in § 60-4.3 of this part as a condition of any grant, contract, subcontract, loan, insurance or guarantee involving federally assisted construction covered by this Part 60-4.

(b) All nonconstruction contractors covered by Executive Order 11246 and the implementing regulations shall include the notice in paragraph (d) of this section in all construction agreements which are necessary in whole or in part to the performance of the covered nonconstruction contract.

(c) Contracting officers, applicants and nonconstruction contractors shall

given written notice to the Director within 10 working days of award of a contract subject to these provisions. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

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

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time-tables	Goals for minority participation for each trade	Goals for female participation in each trade
	Insert goals for each year.	Insert goals for each year.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female em-

ployment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65977, Oct. 3, 1980]

**§ 60-4.3 Equal opportunity clauses.**

(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part and in construction sub-

contracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive order.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obliga-

tions under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a

year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.



n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New



Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980]

#### § 60-4.4 Affirmative action requirements.

(a) To implement the affirmative action requirements of Executive Order 11246 in the construction industry, the Office of Federal Contract Compliance Programs previously has approved affirmative action programs commonly referred to as "Hometown Plans," has promulgated affirmative action plans referred to as "Imposed Plans" and has approved "Special Bid Conditions" for high impact projects constructed in areas not covered by a Hometown or an Imposed Plan. All solicitations for construction contracts made after the effective date of the regulations in this part shall include the notice specified in § 60-4.2 of this part and the specifications in § 60-4.3 of this part in lieu of the Hometown and Imposed Plans including the Philadelphia Plan and Special Bid Conditions. Until the Director has issued an order pursuant to § 60-4.6 of this part establishing goals and timetables for minorities in the appropriate geographical areas or for a project covered by Special Bid Conditions, the goals and timetables for minorities to be inserted in the Notice required by 41 CFR 60-4.2 shall be the goals and timetables contained in the Hometown Plan, Imposed Plan or Special Bid Conditions presently covering the respective geographical area or project involved.

(b) Signatories to a Hometown Plan (including heavy highway affirmative action plans) shall have 45 days from the effective date of the regulations in this part to submit under such a Plan (for the director's approval) goals and timetables for women and to include female representation on the Hometown Plan Administrative Committee. Such goals for female representation shall be at least as high as the goals established for female representation in the notice issued pursuant to 41 CFR 60-4.6. Failure of the signatories, within the 45-day period, to include female representation and to submit

goals for women or a new plan, as appropriate, shall result in an automatic termination of the Office of Federal Contract Compliance Program's approval of the Hometown Plan. At any time the Office of Federal Contract Compliance Programs terminates or withdraws its approval of a Hometown Plan, or when the plan expires and another plan is not approved, the contractors signatory to the plan shall be covered automatically by the specifications set forth in § 60-4.3 of this part and by the goals and timetables established for that geographical area pursuant to § 60-4.6 of this part.

#### § 60-4.5 Hometown plans.

(a) A contractor participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the plan: *Provided*, That each contractor or subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables. If a contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in § 60-4.3 of this part and with the goals and timetables for the appropriate area as listed in the notice required by 41 CFR 60-4.2 with regard to that trade. For the purposes of this part 60-4, a contractor is not participating in a Hometown Plan for a particular trade if it:

(1) Ceases to be signatory to a Hometown Plan covering that trade;

(2) Is signatory to a Hometown Plan for that trade but is not party to a collective bargaining agreement for that trade;

(3) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organizations which are not or cease to be signatories to the same Hometown Plan for that trade;

(4) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan for that trade;

(5) Is participating in a Hometown Plan for that trade which is no longer acceptable to the Office of Federal Contract Compliance Programs;

(6) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade and the labor organization and the contractor have failed to make a good faith effort to comply with their obligations under the Hometown Plan for that trade.

(b) Contractors participating in Hometown Plans must be able to demonstrate their participation and document their compliance with the provision of the Hometown Plan.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978]

#### § 60-4.6 Goals and timetables.

The Director, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data and which shall cover construction projects or construction contracts performed in specific geographical areas. The goals, which shall be applicable to each construction trade in a covered contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be published as notices in the FEDERAL REGISTER, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the

minority and female goals established for the geographical area where the work is being performed.

[45 FR 65978, Oct. 3, 1980]

#### § 60-4.7 Effect on other regulations.

The regulations in this part are in addition to the regulations contained in this chapter which apply to construction contractors and subcontractors generally. See particularly, 41 CFR 60-1.4 (a), (b), (c), (d), and (e); 60-1.5; 60-1.7; 60-1.8; 60-1.26; 60-1.29; 60-1.30; 60-1.32; 60-1.41; 60-1.42; 60-1.43; and 41 CFR Part 60-3; Part 60-20; Part 60-30; Part 60-40; and Part 60-50.

#### § 60-4.8 Show cause notice.

If an investigation or compliance review reveals that a construction contractor or subcontractor has violated the Executive order, any contract clause, specifications or the regulations in this chapter and if administrative enforcement is contemplated, the Director shall issue to the contractor or subcontractor a notice to show cause which shall contain the items specified in paragraphs (i) through (iv) of 41 CFR 60-2.2(c)(1). If the contractor does not show good cause within 30 days, or in the alternative, fails to enter an acceptable conciliation agreement which includes where appropriate, make up goals and timetables, back pay, and seniority relief for affected class members, the OFCCP shall follow the procedure in 41 CFR 60-1.26(b): *Provided*, That where a conciliation agreement has been violated, no show cause notice is required prior to the initiation of enforcement proceedings.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978]

#### § 60-4.9 Incorporation by operation of the order.

By operation of the order, the equal opportunity clause contained in § 60-1.4, the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) contained in § 60-4.2, and the Standard Federal Equal Employment Opportunity Construction Con-

tract Specifications (Executive Order 11246) contained in § 60-4.3 shall be deemed to be a part of every solicitation or of every contract and subcontract, as appropriate, required by the order and the regulations in this chapter to include such clauses whether or not they are physically incorporated in such solicitation or contract and whether or not the contract is written.

### PART 60-20—SEX DISCRIMINATION GUIDELINES

Sec.

- 60-20.1 Title and purpose.
- 60-20.2 Recruitment and advertisement.
- 60-20.3 Job policies and practices.
- 60-20.4 Seniority system.
- 60-20.5 Discriminatory wages.
- 60-20.6 Affirmative actions.

**AUTHORITY.** Sec. 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086.

**SOURCE:** 43 FR 49258, Oct. 20, 1978, unless otherwise noted.

#### § 60-20.1 Title and purpose.

The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance Programs regarding the implementation of Executive Order 11246, as amended for the promotion and insuring of equal opportunities for all persons employed or seeking employment with Government contractors and subcontractors or with contractors and subcontractors performing under federally assisted construction contracts, without regard to sex. Experience has indicated that special problems related to the implementation of the Executive order require a definitive treatment beyond the terms of the order itself. These interpretations are to be read in connection with existing regulations, set forth in Part 60-1 of this chapter.

#### § 60-20.2 Recruitment and advertisement.

(a) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

(b) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification

for the job. The placement of an advertisement in columns headed "Male" or "Female" will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

#### § 60-20.3 Job policies and practices.

(a) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

(b) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification.

**NOTE:** In most Government contract work there are only limited instances where valid reasons can be expected to exist which would justify the exclusion of all men or all women from any given job.

(c) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not be considered to have violated these guidelines if his contributions are the same for men and women or if the resulting benefits are equal.

(d) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

(e) The employer's policies and practices must assure appropriate physical facilities to both sexes. The employer may not refuse to hire men or women,



## SCRTD METRO RAIL PROJECT

### Cal-OSHA TUNNEL SAFETY ORDERS

#### 1. General

A. The Tom Carrell Memorial Tunnel and Mine Safety Act of 1972 requires the Mine and Tunnel Unit of the Division of Occupational Safety and Health to classify all proposed tunnels (Policy and Procedure No. C-29 of DOSH) as to their potential of encountering explosive or flammable gasses. This classification assignment shall be made before contracts are awarded so that all bidding parties are aware of this classification. The classifications that can be assigned to tunnels are Non-Gassy, Potentially Gassy, Gassy, and Extra Hazardous.

#### B. Classification

The Los Angeles Subway Tunnel (Metro Rail) MOS-1, from East Portal near Union Station Depot to Alvarado Street, approximately 4.5 miles long, has been classified by Cal-OSHA as gassy. The Title 8 Tunnel Safety Orders have specific requirements for this classification.

2. Contractor's Responsibility

- A. A pre-job safety conference shall be held with an authorized representative of the division for all underground operations. Representatives of the tunnel owner, the employer, and employees shall be included in the pre-job safety conference. (Pre-job Safety Conference subject items attached).
- B. The Contractor shall comply with the RTD Construction Safety and Security Manual, State, County and City safety requirements and, the Division of Industrial Safety, Tunnel Orders, special safety measures, including those set forth in Sections 7965 to 7976, inclusive, those established by the division and board, and adopted by the board, or special orders written by the Chief and his representatives shall be observed in addition to regular rules, orders, special orders, or regulations.
- C. The Contractor shall have a safety representative qualified to recognize hazardous conditions and certified by the Division. He shall have the authority to correct unsafe conditions and unsafe practices and shall be responsible for directing the required safety programs. (Application for Certification attached).

2. (Cont'd)

- D. Supervisory personnel shall conduct "tool box or tailgate" safety meetings with their crews at least weekly with record of meetings logged and maintained for examination by concerned organization.
- E. Employer shall hold safety meetings at least once each month with supervisory personnel with records kept of meetings accordingly.
- F. When an employee is first engaged, the person in charge shall determine the employer's experience at the work for which he has been hired. He shall instruct the employee in the hazards of the job and the safe performance of his duties and what is expected of him on this project for safe operations.
- G. Each employee, when first engaged, shall have his attention directed to the provision of the "Safe Practices and Operations Code" for the projects and shall be given a copy of them.
- H. Each employee shall be issued a copy of the Contractor's Safety Procedures Manual that the Contractor has developed and has had approved by CM's Safety/Security Manager. The employee shall be informed that there will be no deviation from the basic rules and regulations stated therein.

2. (Cont'd)

- I. Every reasonable precaution shall be taken to insure the safety of the workmen in all cases, whether or not provided in any of the safety procedure manuals.
- J. The Contractor shall provide every employee with specific items of personal protective equipment that is approved by Cal-OSHA, i.e., head protection, foot protection (where employees are exposed to foot injuries to either the top of the foot or the bottom of the foot), hand protection, eye protection, body protection, ear protection, etc.

The Contractor shall insure that the personal protective equipment is maintained in good operating and sanitary condition and records kept of the issuance to each employee.

- K. All personnel underground shall be provided with approved emergency rescue equipment and trained in its use.

At all times where flammable or noxious gases are anticipated in hazardous quantities, the Contractor shall provide and properly maintain permissible self-contained oxygen breathing apparatus in numbers and types as the Division of Industrial Safety so directs. The Contractor shall also keep a sufficient supply of replacement parts and regenerating material and the equipment kept in good repair and ready for use at all times.



- L. Each person underground shall have a portable permissible hand light or permissible cap lamp available for emergency use unless natural light or emergency lighting systems are adequate for escape.
- M. Automatic and manual gas monitoring equipment shall be provided for the heading and return air of tunnels using mechanical excavators. Test for flammable gas shall be conducted in the return air and not less than 12 inches from the roof, face, floor and walls in any open workings. Test for flammable petroleum vapors shall be conducted in the return air and not less than 3 inches from the roof, face, floor and walls in any open workings. Tests for gas shall be made by persons certified by the Division of Industrial Safety prior to the start of each work shift and at least hourly during working hours. When 20 percent or more of L.E.L. is encountered, the tester or monitor shall signal the heading and shut down electrical power in the tunnel, except for ventilation equipment. In addition, a manual shut down control shall be provided near the heading.
- N. Ventilation systems are our prime control of methane gas. Ventilation systems shall exhaust flammable gas or vapors from the tunnel shall be provided with explosion relief mechanisms, and shall be constructed of fireproof materials. (200 CFM minimum).

2. (Cont'd)

0. A refuge chamber or alternate escape route shall be maintained within 5,000 feet of the face of the tunnel. Refuge chambers shall be equipped with a compressed air supply, a telephone, and means of isolating the chamber from the tunnel atmosphere. This chamber and equipment must be acceptable to the Division of Industrial Safety.

3. Contractor's Emergency Rescue Plan

- A. A trained rescue crew of at least 5 men shall be provided at tunnels with 10 or more men underground at any one time. Two crews divided between shifts shall be provided when more than 25 men are underground at one time. There must be enough physically fit and trained men outside the tunnel to provide one or more crews of 5 men within reach by telephone or other means and available for service at the tunnel within 30 minutes.
- B. Training shall be given annually with practice at least 30 minutes per month in the use of the rescue equipment.

4. First Aid

- A. The Contractor shall have adequate first aid materials to properly care for injured employees. Frequent inspections shall be made of all first aid materials. One basket type stretcher with an approved type of blanket shall be available for every 20 men or less on the project.

B. A qualified first aid attendaent shall be available and responsible for first aid care at all times when work is in progress. He shall be under the directions of a responsible licensed physician.

C. All supervisors and at least one man on each tunnel crew shall have had first aid training within the last 2 years, and be competent to give proper emergency treatment.

5. Training

With ventilation being our major means of controlling the gassy conditions and mechanical means of controlling explosions, fire and other hazards of a gassy tunnel operation, training of personnel becomes second only to ventilation. The Construction Manager's safety and security personnel shall continue to monitor the working personnel and constantly upgrade the system through training programs with the assistance of the Insurance Administrator's staff and resources.

Ventilation, constant monitoring of work areas and work habits, and training of personnel shall be our three major areas of effort.

Cal-OSHA TUNNEL DIVISION  
PRE-JOB CONFERENCE SUBJECT ITEMS

DATE  
PLACE  
CONTRACTOR  
    Address & Zip Code  
    Telephone  
    Jobsite Telephone  
    Home Address  
    Home Telephone  
    Supervisor-Project Manager  
    Safety Representative (Certified?)  
TUNNEL (Location)  
    Date of Start  
    Approximate Duration of Job  
    Dimensions of Tunnel  
        Length  
        Cross-Sectional Area  
        Diameter  
    Method of Excavation  
    Ground Control  
    Tunnel Support  
    Shafts  
        Locations  
        Dimensions  
        Method of Excavation  
        Access  
    Classification  
        Non-Gassy Requirements  
        Potentially Gassy Requirements )  
        Gassy Requirements ) Gas Tester (Certified)  
        Extra Hazardous Requirements )  
    Plans & Specifications  
    Geological Report  
        Core Hole Logs  
        Soil Analysis Logs  
    Explosives  
        Type or Class  
        Storage  
        Blasting System  
        Blaster (Licensed)  
    No. of Men Underground  
    Ventilation  
        Fan Size (cfm)  
        Make  
        Horsepower  
        Reversible  
        Direction of Air Flow  
    Locomotives

TUNNEL (Continued)

- Diesel Permits
  - Number
  - Horsepower
- Power Source
- Illumination
  - Laser
- SANITATION
  - Drinking Water
  - Change House
  - Underground Dry Closets
- ACCIDENT PREVENTION PROGRAM
  - Code of Safe Practices & Procedures
  - Monthly Safety Meetings
  - Tailgate Safety Meetings
  - Safety Indoctrination of New Employees
  - Safety Bulletin Board & Location
  - Check-in System for Employees Underground
- MINE RESCUE TRAINING
  - Crews
  - Emergency Plan & Procedure
- RESCUE EQUIPMENT
  - Permissible Self-Contained Breathing Apparatus
  - Parts
  - Regenerating Material
- FIRST-AID TRAINING & MATERIAL
- TELEPHONE SYSTEM
- FIRE PREVENTION AND CONTROL
- STORAGE OF FLAMMABLE AND COMBUSTIBLE MATERIALS
- DUST CONTROL
- GAS TESTING
  - Hydrocarbons - Equipment
  - Oxygen Deficiency - Equipment
  - Personnel - Certificated
- PROTECTIVE EQUIPMENT
- MECHANICAL GUARDING OF EQUIPMENT

State of California  
Agriculture and Services Agency  
Department of Industrial Relations  
DIVISION OF INDUSTRIAL SAFETY

455 Golden Gate Avenue  
San Francisco, California 94102

3460 Wilshire Boulevard  
Los Angeles, California 90010

SAFETY REPRESENTATIVE APPLICATION

FULL NAME OF APPLICANT \_\_\_\_\_  
First Middle Last

APPLICANT'S ADDRESS \_\_\_\_\_  
City & State ZIP Phone

REPRESENTING \_\_\_\_\_  
Company/Self

COMPANY ADDRESS \_\_\_\_\_  
City & State ZIP Phone

TYPE OF SAFETY REPRESENTATIVE CERTIFICATION REQUESTED

- A. UNDERGROUND MINING AND TUNNELING
- B. TUNNEL CONSTRUCTION
- C. UNDERGROUND MINING

List at least 2 years of underground qualifying experience and experience in mine or tunnel safety.

From Mo. Yr.	To Mo. Yr.	Job Title and Duties	Employers (Name, Address and Phone Number)

Applicant must appear in person to be certified as a safety representative. A certification will be issued only to persons possessing sufficient knowledge to perform the duties of a safety representative. The license will be issued after the applicant has passed the examination and a background check has been made to determine the applicant's qualifications.

Labor Code, Section 8003. Violation of regulations, rules, orders, or special orders adopted by the board or division as a condition of certification shall be punishable by suspension or revocation of certification unless such violation is responsible for death or injury to employees, in which case it shall be punishable as a misdemeanor.

The application fee is \$15.00 for the Safety Representative Certification and \$5.00 for renewals. Make checks or money orders payable to the Department of Industrial Relations.



## THE CRITICAL ROLE OF COMMUNITY RELATIONS

The past decade for the Southern California Rapid Transit District has been a period marked by tremendous growth in service and scale of operation. It has also been a period of excitement and opportunity insofar as RTD has evolved from a bus operating company in the 1970s to the corporate entity it has become today. The District now stands at the threshold of a dynamic era--an historic one, highlighted by the transitional challenge of becoming a multimodal transit agency. Once federal funding arrangements for the Metro Rail Project are finalized, the District will begin preparing for this milestone transition from North America's largest single-modal transit operator to a multimodal agency that will have the formidable task of merging both bus and rail services into one, integrated system.

Further, the District has increased its base of community involvement and now interacts with a public constituency that has become more demanding and very astute in transit matters.

Through this next decade, we will continue to have a vital need for an effective community relations program to meet future challenges and trends. The Community Relations Department will develop and implement programs to communicate and interpret the District's plans, programs, projects and services to the multiple publics it serves, and in turn, will bring back to District management and the Board the public's reactions and suggestions.

As the District's "vanguard," Community Relations has the charge of communicating "realities" versus "perceptions" to the communities we serve, as well as to the contractual employees of this agency. What may be perceived as the right way of doing things from the points of view of architectural design, engineering or scheduling, may differ vastly from what is perceived as "right" from a human resources standpoint. And both opinions may differ radically from what the construction-affected citizen or taxpayer perceives as "right," "acceptable" or "politically appropriate." Thus, the role of community relations as interpreter-mediator-communicator becomes very apparent. And in an industry that is changing as rapidly as public transportation, community relations becomes even more essential.

The internal value of an effective community relations program is also noteworthy for the technical assistance and vital information that shall be provided to the Metro Rail Project by Project Management, Construction Management and Contractors in order to mitigate community concerns. Through the combined efforts of all entities, the District will make informed decisions based on construction requirements, public viewpoints, and possible social/political sensitivities.

A strong commitment to community relations will ensure widespread community support for the Metro Rail Project. This accomplishment will significantly aid the District in meeting many of its goals--goals that are more widely and clearly understood by the public now than at any other time in the District's history.



The material in this section offers a general description of the diverse communities that will be affected by construction, and indicates the myriad number of construction issues that may be of concern to the community, at one time or another, throughout the life of this project.

COMMUNITIES ALONG MOS-1

UNION STATION

The immediate station area borders on the industrial periphery of the Central Business District (CBD) and is near several ethnic communities on the east side of the downtown area: Chinatown, Little Tokyo, and an expanding Hispanic community. The area is characterized by an overall resident population approximately 45% Asian, primarily Chinese, and 39% Hispanic. The residential areas are primarily transitional, low-income areas. The Union Station architecture, important public places nearby, and ethnic contrasts create a strong image and draw significant tourist and pedestrian trade to the area. Olvera Street, and Chinatown are regional attractions, generating activity both day and night. The primary traffic artery is Alameda Street, although pedestrian movement is concentrated in the areas around Olvera Street and on parking areas to the west and north.

CIVIC CENTER

Government buildings, Civic Center Plaza, the Mall, and the Music Center Complex to the north are the major focuses of the station area. Along Hill Street, just to the west of the proposed station entrances, lies a portion of the high-density Bunker Hill housing development primarily for the elderly but planned for additional market-rate housing for all population groups. The L.A. Street Scene Festival in late September, closing a number of Civic Center streets, is a major annual event.

FIFTH/HILL

This station area lies in the heart of the CBD. The Pershing Square area offers pedestrian access to a number of important activity centers--retail commercial shopping on Broadway, the Jewelry Mart, Grand Central Market, Spring Street, the Biltmore Hotel, and the Main Library. The focus of the area for residents, employees, and tourists is Pershing Square which is heavily used during daylight hours. After office hours the area is generally avoided and there is little activity.

SEVENTH/FLOWER

This station area contains the important office, retail shopping, and financial buildings of the CBD. Seventh Street is a major auto and pedestrian artery through the CBD. Pedestrian volumes are heavy during the day. Housing is located on the periphery of the station environs in the South Park and the Convention Center areas.

WILSHIRE/ALVARADO

This station area is in transition and contains a predominantly young, Hispanic population. Residents value the ethnic homogeneity of the area, as well as its central location, good public transportation and convenient shops and services. The area services a low-income population and is dominated by McArthur Park which extends north and south of Wilshire. Surrounding the Park are several large hotels, office buildings and the Otis Art Institute of Parsons School of Design and its museum.

COMMUNITY RELATIONS  
COMMUNITY ISSUES/CONSTRUCTION ASPECTS

<u>I</u> <u>General</u>	<u>II</u> <u>Construction</u>
Safety	Preconstruction survey
Emergency response	Utility relocation
Security	water, gas, electric, telephone
Property protection	cable, street lighting
Vandalism	Rodent control
Pedestrian safety - children	Staging areas - equipment
Fire - Police - Ambulances	Excavation
Traffic Coordination	Soldier piles
Hauling routes	Decking - crossovers
Signalization	Tunneling
Direction/detours	Underpinning
Bus routes	Structure placement
Pedestrian access	Sidewalks
Deliveries	Street restoration
Closures	Quality control/standards
Signage	state-of-art equipment
	up-to-date design criteria
Environment	
Noise, dust, vibration	
Air/water quality	
pollution	
carbon monoxide	
Excavation muck disposal	
Historic - statues	
Archaeologic/Paleontologic	
artifacts - fossils	
Seismic - fault crossings	
Oil, tar, gas - abandoned wells	
Blasting	
Settling ground	
Scheduling	
Community notification - changes	
Construction segments	
Timetables - day/night/holidays	
utility relocation	
mobilization - materials	
construction	
finishing	
EO/contracts/procurement	
Opportunities	
Labor - local involvement	
	<u>III</u> <u>Community</u>
	Elected Officials' concerns
	Project status
	Description
	general, cut & cover, tunneling,
	stations, handicapped access
	Impacts
	community disruptions: residents,
	businesses, organizations, hotels,
	hospitals, schools, theaters,
	libraries
	additional traffic
	spillover parking
	Financial aspects
	funding, fare increases
	benefit assessments
	Real Estate
	Displacement & relocation
	Property management & development
	function
	Loss of business, damages, claims
	Vacant buildings, eyesores
	Easement problems
	Transit options
	Scheduled community activities/events



METRO RAIL PROJECT  
MOS-1/YARD AND SHOPS THROUGH WILSHIRE/ALVARADO STATION  
WORK OPPORTUNITIES\*

CONSTRUCTION CONTRACT UNIT	CONTRACT TYPE	CONTRACT SCOPE
A-111	Sitework	Reconstruct curbs, gutters, and limited resurfacing along Santa Fe Avenue.
A-112	Yard Service Area and Main Shop Building	Construction of Main Shop Building, Car Wash Facility, Car Main Shop Building Cleaner Building, traction power substation and control tower building. Construction also includes demolition of existing structures, underground utility work to service the above facilities, yard lighting, paving, fencing, and landscaping.
A-115	Yard Storage Area	At-grade construction of the train storage yard. Includes demolition of existing facilities, rough grading, drainage work relocation of utilities, and installation of conduits for all future systems contracts.
A-116	Fencing	Install security fencing and gates around First Street yard complex.
A-117	Lighting	Install yard lighting at First Street yard.
A-118	Landscaping	Install sprinkler system and landscaping around Main Shop and Maintenance-of-Way Building.
A-121	Maintenance-of-Way Shop Building	Construction of Maintenance-of-Way Shop building and development of adjacent site.
A-130	Yard Leads and Transfer Zone	Main Line, Yard Lead, and Yard portion north of First Street and east of Union Station. Cut-and-cover construction of yard lead and transfer zone including demolition, grading, retaining walls, traction power substation, major modification of underground storm drain, underpinning of existing freeway, and installation of utilities.
A-133	Union Station Replacement Baggage Handling Facilities	Construct replacement baggage handling facility for LAUPT patrons of Union Station prior to demolition of existing baggage handling facility.
A-135	Union Station, Stage I Design for Station and Double Crossover Just West of Station	Stage I construction of Union Station and double crossover structure west of station, including all civil and structural construction (shell), plus embedded items for installation of architectural finishes, embedded mechanical items, and electrical conduits.
A-136	Union Station, Stage II Design for Station and Double Crossover Just West of Station	Union Station and west crossover Stage II construction, including design for station and all architectural, landscaping, mechanical and electrical work except those items embedded in Stage I construction.

\* This list represents the current "packaging" of construction contracts and is subject to change at any time based on funding availability, interfaces, scheduling, and other constraints.

WORK OPPORTUNITIES (Cont'd)

CONSTRUCTION CONTRACT UNIT	CONTRACT TYPE	CONTRACT SCOPE
A-138	Sitework	Curbs, gutters, sidewalks, and paving at east end of Union Station.
A-139	Landscaping	Sprinklers and landscaping at Union Station.
A-141	Line Section, Union Station to 7th/Flower. Civic Center Station - Stage I; 5th/Hill Station - Stage I	Construction of that portion of the line beginning just west of Union Station, proceeding beneath Macy Street, deviating at Spring Street, crossing under Broadway and continuing under Hill Street just north of Santa Ana Freeway. Line continues through Civic Center Station and 5th/Hill Station, turning west under 7th Street to 7th/Flower Station.  Stage I construction of Civic Center Station with traction power substation. Includes all civil and structural construction (shell), except that included in Contract A-142, and the embedment of all required architectural and mechanical items, as well as electrical conduits.  Stage I construction of the west 100' of the double crossover immediately east of this Line section.
A-142	Excavation Support and Utilities	Civic Center Station; design installation, and maintenance of support system, relocation of sewer and storm water lines, and support in place of all other utilities.
A-145	Station Stage I	Stage I construction of 5th/Hill Station with an auxiliary power substation; including all civil and structural construction (shell), the relocation of all sewer and storm water lines, and the support in place of all other utilities. This contract also includes the embedment of all required architectural and mechanical items, as well as electrical conduits.
A-146	Line Section	Construction of that portion of the line beginning just south of 5th/Hill Station, turning west under 7th Street to 7th/Flower Station.
A-147	Station Stage II	Stage II construction of Civic Center Station; includes all architectural, landscaping, mechanical, electrical, and restoration work except for those items embedded in Stage I construction.
A-148	Utility Services	Remove and modify existing vaults and basements, and relocate building utility services at 5th/Hill Station.

WORK OPPORTUNITIES (Cont'd)

CONSTRUCTION CONTRACT UNIT	CONTRACT TYPE	CONTRACT SCOPE
A-157	5th/Hill Station, Stage II	Stage II construction of 5th/Hill Station. Includes all architectural, landscaping, mechanical, and electrical work except for those items embedded in Stage I construction.
A-165	7th/Flower Station, Stage I	Stage I construction of 7th/Flower Station with a traction power substation; including all civil and structural construction (shell), the relocation of all sewer and storm water lines and the support in place of all other utilities. This contract also includes the embedment of all required architectural and mechanical items, as well as electrical conduits.
A-167	7th/Flower Station, Stage II	Stage II construction of 7th and Flower Station, including all architectural, landscaping, mechanical, and electrical work except for those items embedded in Stage I construction.
A-171	Line Section, 7th/Flower to Wilshire/Alvarado. Wilshire/Alvarado Station, Stage I	Construction of that portion of the line continuing in a northerly direction from 7th/Flower Station under 7th Street curving north-westerly to Wilshire/Alvarado Station. Stage I construction of Wilshire/Alvarado Station, with traction power substation and double crossover just east of station, including all civil and structural construction (shell), the relocation of all sewer and storm water lines, and the support in place of all other utilities. This contract also includes the embedment of all required architectural and mechanical items, as well as electrical conduits.
A-175	Station Stage I	Stage I construction of Wilshire/Alvarado Station with traction power substation and double crossover just east of station; including all civil and structural construction (shell), the relocation of all sewer and storm water lines, and the support in place of all other utilities. This contract also includes the embedment of all required architectural and mechanical items, as well as electrical conduits.
A-185	Sitework	Sitework, including kiss-and-ride facility, bus drop-off facility, entry plaza, curbs, gutters, and sidewalks.
A-186	Landscaping	Installation of sprinklers and landscaping at station site.
A-187	Wilshire/Alvarado Station Stage II	Stage II construction of Wilshire/Alvarado Station with traction power substation and double crossover just east of station, including all architectural, landscaping, mechanical and electrical work except for those items embedded in Stage I construction.

METRO RAIL PROJECT  
MOS-1 YARD AND SHOPS THROUGH WILSHIRE/ALVARADO STATION

BUSINESS OPPORTUNITIES BY CRAFTS

<u>CONSTRUCTION CONTRACT UNIT</u>	<u>CONTRACT TYPE</u>	<u>CRAFTS</u>	<u>SPECIALTIES (SUB-CONTRACTS)</u>
A-111	Sitework	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster	Forming, Rebar Placing, Curbs and Gutters, Paving, Demolition
A-112	Yard Service Area and Main Shop Building	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Electrician, Ironworker, Glazier, Roofer, Painter, Plumber	Landscaping, Fencing, Rebar Placing, Electrical, Painting, Roofing, Mechanical (Plumbing), Masonry, Glazing, Demolition
A-115	Yard Storage Area	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Electrician	Demolition, Electrical, Mechanical (Plumbing)
A-116	Yard Site Security Fencing	Labor, Operating Engineer	Concrete, Fencing
A-117	Yard Site Lighting	Electrician, Operating Engineer, Teamster, Labor	Electrical
A-118	Yard Site Landscaping	Labor, Operating Engineer, Teamster, Plumber	Sprinkler Systems, Landscaping
A-121	Maintenance-of-Way Shop Building	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Glazier, Painter, Roofer, Plumber	Rebar Placing, Electrical, Painting, Roofing, Mechanical (Plumbing), Masonry, Glazing
A-130	Yard Leads and Transfer Zone	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Pile Driver, Plumber	Pile Drilling, Demolition, Rebar Placing, Electrical, Underpinning, Mechanical (Plumbing)
A-133	Union Station replacement baggage handling facilities	Labor, Carpenter, Operating Engineer, Cement Mason, Ironworker, Electrician, Painter, Roofer, Plumber	Rebar Placing, Painting, Roofing, Mechanical Masonry
A-135	Union Station, Stage I design for station and double crossover just west of station	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Plumber, Pile Driver	Rebar Placing, Electrical, Mechanical (Plumbing), Pile Drilling



CONSTRUCTION  
CONTRACT UNIT

CONTRACT TYPE

CRAFTS

SPECIALTIES (SUB-CONTRACTS)

A-136	Union Station, Stage II design for station and double crossover just west of station	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Bricklayer, Glazier, Painter, Plumber, Sheet Metal Worker, Tile Worker, Marble Setter, Stone Mason	Landscaping, Fencing, Rebar Placing, Electrical, Painting, Tile, Roofing, Sheet Metal, Plastering, Mechanical (Plumbing), Masonry, Brickwork, Glazing, Paving
A-138	Sitework	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster	Curbs and Gutters, Sidewalks, Paving, Demolition
A-139	Landscaping	Labor, Operating Engineer, Teamster, Plumber	Sprinkler Systems, Landscaping
A-140	Line Section, Union Station to 7th/Flower. Civic Center Station - Stage I; 5th/Hill Station - Stage I	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Miner, Pile Driver, Plumber	Rebar Placing, Electrical, Mechanical (Plumbing), Pile Drilling
A-145	5th/Hill Station - Stage I	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Plumber, Pile Driver	Rebar Placing, Electrical, Mechanical (Plumbing), Pile Drilling
A-146	Tunnel Line Section	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Pile Driver, Plumber, Miner	Rebar Placing, Electrical, Mechanical (Plumbing), Pile Drilling
A-147	Civic Center Station - Stage II	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Bricklayer, Glazier, Marble Setter, Painter, Plumber, Sheet Metal Worker, Tile Worker, Stone Mason	Landscaping, Fencing, Rebar Placing, Electrical, Painting, Tile, Roofing, Sheet Metal, Plastering, Mechanical (Plumbing), Masonry, Brickwork, Glazing, Paving
A-157	5th/Hill Station - Stage II	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Bricklayer, Glazier, Marble Setter, Painter, Plumber, Sheet Metal Worker, Tile Worker	Landscaping, Fencing, Rebar Placing, Electrical, Painting, Tile, Roofing, Sheet Metal, Plastering, Mechanical (Plumbing), Masonry, Brickwork, Glazing, Paving
A-165	7th/Flower Station - Stage I	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Plumber, Pile Driver	Rebar Placing, Electrical, Mechanical (Plumbing), Pile Drilling

CONSTRUCTION  
CONTRACT UNIT

CONTRACT TYPE

CRAFTS

SPECIALTIES (SUB-CONTRACTS)

A-167	7th/Flower Station - Stage II	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Bricklayer, Glazier, Marble Setter, Painter, Plumber, Sheet Metal Worker, Stone Mason, Tile Worker	Landscaping, Fencing, Rebar Placing, Electrical, Painting, Tile, Roofing, Sheet Metal, Plastering, Mechanical (Plumbing), Masonry, Brickwork, Glazing, Paving
A-171	Line Section 7th/Flower to Wilshire/Alvarado Wilshire/Alvarado Station - Stage I	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Pile Driver, Plumber, Miner	Rebar Placing, Electrical, Mechanical (Plumbing), Pile Drilling
A-175	Wilshire/Alvarado Station Stage I	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Plumber, Pile Driver	Rebar Placing, Electrical, Mechanical (Plumbing), Pile Drilling
A-185	Sitework Wilshire/Alvarado Restoration	Labor, Carpenter, Operating Engineer, Teamster, Cement Mason	Curbs and Gutters, Sidewalks, Bus Shelters, Paving
A-186	Wilshire/Alvarado Site Landscaping	Labor, Operating Engineer, Teamster, Plumber	Sprinkler Systems, Landscaping
A-187	Wilshire/Alvarado Station - Stage II	Labor, Carpenter, Operating Engineer, Cement Mason, Teamster, Ironworker, Electrician, Bricklayer, Glazier, Marble Setter, Painter, Plumber, Sheet Metal Worker, Stone Mason, Tile Worker	Landscaping, Fencing, Rebar Placing, Electrical, Painting, Tile, Roofing, Sheet Metal, Plastering, Mechanical (Plumbing), Masonry, Brickwork, Glazing, Paving

**METRO RAIL PROJECT**  
**MINIMUM OPERABLE SEGMENT - 1**  
**LEVEL I CONTRACT SCHEDULE**

PAGE 1

7/29/85

DESIGN	CONSTRUCTION	1983	1984	1985	1986	1987	1988	1989	1990	1991
A 100	A 111 SANTA FE AVE. RESTORATION						BID A 111			
	A 112 MAIN SHOP & YARD SERVICE AREA	A 100				BID A 112				
	A 115 YARD STORAGE AREA					BID A 115				
	A 116 YARD SITE SECURITY FENCING								BID A 116	
	A 117 YARD SITE LIGHTING								BID A 117	
	A 118 YARD SITE LANDSCAPING								BID A 118	
	A 121 MAINTENANCE OF WAY SHOP BUILDING						BID A 121			
	A 130 YARD LEADS AND TRANSFER					BID A 130				
A 135	A 133 UNION STATION BAGGAGE HANDLING FACILITIES				BID A 133					
	A 135 UNION STATION STAGE I	A 135			BID A 135					
	A 136 UNION STATION STAGE II					BID A 136				
	A 138 UNION STATION EAST END RESTORATION								BID A 138	
	A 139 UNION STATION SITE LANDSCAPING								BID A 139	
A 140	A 141 LINE SECTION & CIVIC CENTER STATION STAGE I				BID A 141					
	A 142 CIVIC CENTER EXCAVATION	A 140			BID A 142					
	A 145 5th/HILL STATION STAGE I					BID A 145				
	A 146 LINE SECTION, 5th/HILL STATION TO 7th/FLOWER					BID A 146				
	A 147 CIVIC CENTER STATION STAGE II						BID A 147			
	A 148 VAULTS RELOCATION, 5th/HILL				BID A 148					
	A 157 5th/HILL STATION II						BID A 157			
A 165	A 165 LINE SECTION & 7th/FLOWER STATION STAGE I	A 165			BID A 165					
	A 167 7th/FLOWER STATION STAGE II						BID A 167			
A 170	A 171 LINE SECTION				BID A 171					
	A 175 WILSHIRE/ALVARADO STATION STAGE I	A 170			BID A 175					
	A 187 WILSHIRE/ALVARADO STATION STAGE II						BID A 187			
	A 188 WILSHIRE/ALVARADO RESTORATION							BID A 188		
	A 186 WILSHIRE/ALVARADO SITE LANDSCAPING							BID A 186		

**LEGEND**

BID YEAR -----

BID PRICE ---

CONSTRUCTION PHASES: PRELIMINARY, INSTALLATION & TEST

METRO RAIL PROJECT  
MOS-I YARD AND STATION THROUGH WILSHIRE/ALVARADO STATION

POTENTIAL PRIME BIDDERS

GENERAL CONTRACTORS:

Al Johnson Company	Minneapolis, Minn.
Ball Ball & Brosamer	Danville, Ca.
Bechtel Group, Incorporated	San Francisco, Ca.
Blount International, LTD	Montgomery, Ala.
Fru-Con Corporation	Ballwin, Mo.
Granite Construction Company	Watsonville, Ca.
Greenfield Construction	Detroit, Mich.
Gust K. Newberg Construction Company	Chicago, Ill.
Guy F. Atkinson Company	San Francisco, Ca.
Harrison Western Corporation	Lakewood, Colo.
Hensel Phelps Construction Company	Greely, Colo.
Hyman Construction	Washington, D.C.
J. A. Jones Construction Company	Charlotte, N.C.
James McHugh Construction Company	Chicago, Ill.
J. F. Shea Company	Walnut, Ca.
Kasler Corporation	San Bernardino, Ca.
Kenny Construction	Chicago, Ill.
McLean Grove	New York, N.Y.
Mergentime Corporation	Flemington, N.J.
Morrison-Knudsen Company, Incorporated	Boise, Idaho
Obayashi Gumi	San Francisco, Ca.
Paschen Contractors, Incorporated	Chicago, Ill.
Perini Corporation	Framingham, Mass.
Peter Kiewit Sons' Incorporated	Omaha, Neb.
Reidel International, Incorporated	Portland, Ore.
S. A. Healy Company	Chicago, Ill.
Schiavone Construction Company	Secaucus, N.J.
Shank-Artokovich	California
S. J. Groves & Sons Company	Minneapolis, Minn.
Slattery Associates, Incorporated	Maspeth, N.Y.
S & M Constructors	Solon, Ohio
Traylor Bros.	Evansville, Ill
Underground Construction Co. Inc.	San Leandro, Ca.

SPECIALTY CONTRACTORS:

Mechanical:

Air Conditioning Company, Inc.	Glendale, CA
E. H. Morrill Company	Berkeley, CA
Geo. F. Schuler, Incorporated	Stockton, CA
J. T. Thorpe, Incorporated	Monterey Park, CA
Linford Air & Refrigeration	Oakland, CA
O. C. McDonald Company Incorporated	San Jose, CA
Reactor Controls, Incorporated	San Jose, CA
R. P. Richards, Incorporated	Goleta, CA
Southland Heating & Air Conditioning, Inc.	Long Beach, CA
University Mech. & Engr. Contractors	San Diego, CA
Western Allied Corporation	Santa Fe Springs, CA
Wisner & Becker	Sacramento, CA

Electrical:

Berg Electric Corporation	Los Angeles, CA
Collins Electrical Company, Inc.	Stockton, CA
Commonwealth Electric Company	Lincoln, Nebraska
Contra Costa Electric, Incorporated	Martinez, CA
Cupertino Electric, Inc.	Sunnyvale, CA
Fischbach & Moore, Inc.	New York, N.Y.
Howard P. Foley Company	Washington, D.C.
Morrow, Meadows Corporation	Walnut, CA
Rosendin Electric, Inc.	San Jose, CA
SASCO Energy	Los Angeles, CA
Steiny & Company, Incorporated	Los Angeles, CA

Roofing-Sheet Metal:

Bryant Organization, Incorporated	Gardena, CA
B. T. Mancini Company., Inc.	Santa Clara, CA

Excavation-Foundation:

Conco Cement Company	Concord, CA
Foundation Constructors, Inc.	Antioch, CA
Malcolm Drilling Company, Inc.	San Francisco, CA
McKinney Drilling Company	Nacogdoches, TX

Excavation-Foundation Cont.:

TMC Foundations, Inc.

McKinney TX

Demolition-Wrecking:

Cleveland Wrecking Company

Los Angeles, CA

Penhall International

Anaheim, CA

Concrete Coring Company Equipment  
Program, Incorporated

Hawthorne, CA

Steel Erection:

Adams & Smith, Incorporated

Pleasant Hill, CA

W. A. Ornamental Iron Works

Gardena, CA

Glazing-Curtain Wall:

Contract Glass & Aluminum Company

San Leandro, CA