

100-C-151d EXECUTIVE ORDER 11246

(Revised 03-09-06)

The Standard Specifications are revised as follows:

SECTION 103, LINE 342, DELETE AND INSERT AS FOLLOWS:

103.03 ~~Blank~~ Executive Order 11246: Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity

This requirement will apply only to a federal aid contract. The Code of Federal Regulations 41 CFR 60-4.2(d) is amended by revising Paragraph 2 of the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246), to read as follows:

2. *The Contractor's or Bidder's attention is called to the Equal Opportunity Clause and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.*

(a) Timetables

The timetables for minority and female participation for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

1. Minorities

Immediately.

2. Women

April 1, 1980 to indefinite.

The goals are shown in 103.03(j) and 103.03(k).

Contractors who are signatory to an area (Hometown) plan are covered by 103.03(b). All Contractors, signatory or not to an area (Hometown) plan, will be covered by the minority goals as shown in 103.03(j).

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, in accordance with 41 CFR 60-4 as set out in Volume 45, No. 194 of the Federal Register dated October 3, 1980. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

(b) Area (Hometown) Plans

Until further notice, the following goals and timetables for minority utilization shall be included in all Federal or federally-assisted construction contracts and subcontracts in excess of \$10,000.00 to be performed in the respective covered areas. The goals are applicable to the Contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or

federally-assisted construction contract or subcontract.

1. Cincinnati, Ohio Area

Area Covered: Ohio counties of Clermont, Hamilton, and Warren; Kentucky counties of Boone, Campbell, and Kenton; and Indiana county of Dearborn. The minority hiring goal in Dearborn County, Indiana is 11 percent.

2. Indianapolis, Indiana Area

Area Covered: Marion County. The minority hiring goal in Marion County is 12.5 percent.

(c) Written Notification

The Contractor shall provide written notification to the Department within ten work days of award of any construction subcontract in excess of \$10,000.00 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, estimated dollar amount of the contract, estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

(d) 41 CFR 60-4.3 Equal Opportunity Clauses

The equal opportunity clause published as 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all non-exempt 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 non-exempt federally-assisted construction contracts and subcontracts. In addition to the clause described above, all Federal contracting officers, all applicants and all non-construction Contractors, as applicable, shall include the specification set forth in this section in all Federal and federally-assisted construction contracts in excess of \$10,000.00 to be performed in geographical areas designated by the Department pursuant to 41 CFR-60-4.6 of this part and in construction subcontracts in excess of \$10,000.00 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive Order.

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:*

- (1) *Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);*
 - (2) *Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);*
 - (3) *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*
 - (4) *American Indian or Alaskan Native 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 \$10,000.00 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 obligations 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 7.p of this specification. The goals set forth in the solicitation form 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. The Contractor is expected to make substantially uniform progress toward 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 non-working 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 organization 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 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 Department 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 source 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 the Contractor's workforce.*
- 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 see 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 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 non-segregated 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 supervisor's 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 under 7.a. through 7.p. of this specification. The efforts of*

a contractors' 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 7.a. through 7.p. of this specification 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 non-compliance.

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 suspensions, 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, of these specifications, the Department will 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 number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, trainee, helper, or laborer), date 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).*

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 as 41 CFR 32482 and commonly known as the Model Federal EEO Bid Conditions. The New Form shall not be used after the regulations in 41 CFR part 60-4 become effective.

(e) 41 CFR 60-4.5 Hometown Plans

If the Contractor is participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) it 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 the Contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in 41 CFR 60-4.3 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 41 CFR 60-4, the 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 and is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment in the Hometown Plan for that trade.*
- 5. In 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.*
- 7. If the Contractor participates in Hometown Plans, it must be able to demonstrate its participation and document its compliance with the provisions of the Hometown Plan.*

(f) 41 CFR 60-4.6 Goals and Timetables

The Department, 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 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.

(g) 41 CFR 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. So 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; 60-1.42; 60-1.43; and 41 CFR part 60-3; part 60-20; part 60-30; part 60-40; and part 60-50.

(h) 41 CFR 60-4.8 Show Cause Notice

If an investigation or compliance review reveals that a construction Contractor or subcontract has violated the Executive Order, any contract clause, specifications or the regulations in this chapter and if administrative enforcement is contemplated, the Department will issue to the Contractor or subcontractor a notice to show cause which shall contain the items specified in II10-(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 compliance agency shall follow the procedure described 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.

(i) 41 CFR 60-4.9 Incorporation by Operation of the Order

By operation of the Order, the equal opportunity clause contained in 41 CFR 60-1.4, 41 CFR 60-4.2 and 41 CFR 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 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.

(j) Minority Hiring Goals by County

COUNTY	PCT.	COUNTY	PCT.	COUNTY	PCT.
Adams	4.4	Hendricks	12.5	Pike	3.5
Allen	4.4	Henry	3.9	Porter	20.9
Bartholomew	9.7	Howard	4.4	Posey	4.8
Benton	1.5	Huntington	4.4	Pulaski	18.4
Blackford	3.9	Jackson	9.7	Putnam	9.7
Boone	12.5	Jasper	18.4	Randolph	3.9
Brown	9.7	Jay	3.9	Ripley	9.2
Carroll	1.5	Jefferson	9.6	Rush	9.7
Cass	3.7	Jennings	9.7	St. Joseph	7.1
Clark	11.2	Johnson	12.5	Scott	9.6
Clay	3.1	Knox	3.5	Shelby	12.5
Clinton	1.5	Kosciusko	6.2	Spencer	3.5
Crawford	9.6	LaGrange	6.2	Starke	18.4
Daviess	9.7	Lake	20.9	Steuben	4.4
Dearborn	11.0	LaPorte	18.4	Sullivan	3.1
Decatur	9.7	Lawrence	9.7	Switzerland	9.2
Dekalb	4.4	Madison	4.9	Tippecanoe	2.7
Delaware	5.3	Marion	12.5	Tipton	4.4
Dubois	3.5	Marshall	7.1	Union	3.9
Elkhart	4.0	Martin	9.7	Vanderburgh	4.8
Fayette	3.9	Miami	3.7	Vermillion	3.1
Floyd	11.2	Monroe	3.1	Vigo	3.1
Fountain	1.5	Montgomery	1.5	Wabash	3.7

<i>Franklin</i>	9.2	<i>Morgan</i>	12.5	<i>Warren</i>	1.5
<i>Fulton</i>	6.2	<i>Newton</i>	18.4	<i>Warrick</i>	4.8
<i>Gibson</i>	4.8	<i>Noble</i>	4.4	<i>Washington</i>	9.6
<i>Grant</i>	3.7	<i>Ohio</i>	9.2	<i>Wayne</i>	3.9
<i>Greene</i>	9.7	<i>Orange</i>	9.6	<i>Wells</i>	4.4
<i>Hamilton</i>	12.5	<i>Owen</i>	9.7	<i>White</i>	1.5
<i>Hancock</i>	12.5	<i>Parke</i>	2.5	<i>Whitley</i>	4.4
<i>Harrison</i>	9.6	<i>Perry</i>	3.5		

(k) Female Hiring Goal

The female hiring goal is 6.9 percent throughout the State. Minority females may be counted both as a minority and as a female. Double counting will be permitted for reporting on Form CC-257.
