

Subpart D—Construction Contract Equal Opportunity Compliance Procedures

SOURCE: 41 FR 34239, Aug. 13, 1976, unless otherwise noted.

§ 230.401 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans.

§ 230.403 Applicability.

The procedures set forth hereinafter apply to all nonexempt direct Federal and Federal-aid highway construction contracts and subcontracts, unless otherwise specified.

§ 230.405 Administrative responsibilities.

(a) *Federal Highway Administration (FHWA) responsibilities.* (1) The FHWA has the responsibility to ensure that contractors meet contractual equal opportunity requirements under E.O. 11246, as amended, and title 23 U.S.C., and to provide guidance and direction to States in the development and implementation of a program to assure compliance with equal opportunity requirements.

(2) The Federal Highway Administrator or a designee may inquire into the status of any matter affecting the FHWA equal opportunity program and, when considered necessary, assume jurisdiction over the matter, proceeding in coordination with the State concerned. This is without derogation of the authority of the Secretary of Transportation, Department of Transportation (DOT), the Director, DOT Departmental Office of Civil Rights (OCR) or the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor.

(3) Failure of the State highway agency (SHA) to discharge the responsibilities stated in § 230.405(b)(1) may result in DOT's taking any or all of the following actions (see appendix A to 23

CFR part 630, subpart C "Federal-aid project agreement"):

(i) Cancel, terminate, or suspend the Federal-aid project agreement in whole or in part;

(ii) Refrain from extending any further assistance to the SHA under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the SHA; and

(iii) Refer the case to an appropriate Federal agency for legal proceedings.

(4) Action by the DOT, with respect to noncompliant contractors, shall not relieve a SHA of its responsibilities in connection with these same matters; nor is such action by DOT a substitute for corrective action utilized by a State under applicable State laws or regulations.

(b) *State responsibilities.* (1) The SHA's, as contracting agencies, have a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.

(2) The corrective action procedures outlined herein do not preclude normal contract administration procedures by the States to ensure the contractor's completion of specific contract equal opportunity requirements, as long as such procedures support, and sustain the objectives of E.O. 11246, as amended. The State shall inform FHWA of any actions taken against a contractor under normal State contract administration procedures, if that action is precipitated in whole or in part by non-compliance with equal opportunity contract requirements.

§ 230.407 Definitions.

For the purpose of this subpart, the following definitions shall apply, unless the context requires otherwise:

(a) *Actions*, identified by letter and number, shall refer to those items identified in the process flow chart. (Appendix D);

(b) *Affirmative Action Plan* means a written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate