

§ 34.7

by ANGTA and set forth in implementing rules, regulations, and orders, or by any other means authorized by law;

(e) The recipient, contractor, or subcontractor will include the provisions of paragraphs (a) to (e) of this section in all agreements to assign authorizations, all contracts over \$10,000, and all contracts of indefinite quantity, unless there is reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The recipient, contractor, or subcontractor will take such action with respect to any contract or purchase order that the Federal Inspector may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the recipient, contractor, or subcontractor becomes involved in or is threatened with litigation with a subcontractor or vendor, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(f) Any project labor agreement which may be entered into between the applicants and any union must be consistent with the provisions of these regulations and must contain an Equal Opportunity Clause.

§ 34.7 Incorporation by operation of law.

(a) The Equal Opportunity Clause shall be deemed incorporated into every Federal authorization, agreement to assign an authorization, contract and subcontract where § 34.6(e) of these regulations requires the inclusion of such a clause whether or not the clause is physically incorporated in such Federal authorization, agreement to assign authorization, contract or subcontract, and whether or not the agreement or contract is written.

(b) The affirmative action plans prepared pursuant to this part shall be deemed incorporated into the Federal authorizations, contracts, and subcontracts to which these regulations apply.

§ 34.8 Affirmative action plans.

(a)(1) Within one hundred and twenty (120) days after the effective date of this part, applicants or recipients shall

43 CFR Subtitle A (10-1-10 Edition)

have an acceptable affirmative action plan which has been approved by the Federal Inspector pursuant to paragraph (d) of this section and which conforms to the requirements of paragraph (c) of this section. The affirmative action plan must set forth overall goals and timetables for the employment of minorities and women and the utilization of MBE's and FBE's in the construction and operation of the applicant's or recipient's segment of the Alaska Natural Gas Transportation System. The approved goals and timetables shall be published in accordance with paragraph (d)(4) of this section and included in contract bid specifications in accordance with paragraph (b)(1) of this section.

(2) Each contractor and subcontractor with fifty (50) or more employees and with a contract of \$1,000,000 or more that is in effect on the effective date of this part shall, within one hundred and fifty (150) days after the effective date of this part, submit an affirmative action plan to the Federal Inspector for approval pursuant to paragraph (d) of this section. All contractors and subcontractors, with fifty (50) or more employees, which are awarded contracts for \$1,000,000 or more after the effective date of this part shall submit an affirmative action plan to the Federal Inspector pursuant to paragraph (d) of this section at the time the contract is awarded or 150 days after the effective date of this part, whichever is later.

(b)(1) In addition, recipients and each of their contractors and subcontractors shall require, as one of the specifications for all bids for contracts in the amount of \$50,000 or more, that all bidders which have, or would have if awarded the contract, a workforce of 50 or more employees, must develop a written affirmative action plan consistent with paragraphs (c) (1) and (2) of this section prior to bidding, unless an exemption under paragraph (d)(5) of this section has been obtained by the bidder. Such a plan must apply to each of the bidder's facilities which are associated with any activities conducted pursuant to Federal authorizations to which this part applies. A summary of such plan should be included with the

bid submitted to the contractor or subcontractor. The ability of the bidder to comply with these regulations shall be a factor considered in evaluating the bid. The plan must be included in the contract which is executed between the contractor or subcontractor and the bidder subject to whatever revision may be required by the Federal Inspector.

(2) The requirements of paragraph (b)(1) of this section also apply to any bidder which has previously been awarded a contract or contracts where the total amount of such contract or contracts taken together with the amount of the contract upon which the bid is to be made total \$50,000 or more and the bidder has a workforce of 50 or more employees.

(3) All bidders for contracts of \$150,000 or more must develop a written affirmative action plan under paragraph (c)(3) of this section regarding procurement and contracting practices. All such plans developed under paragraph (c)(3) of this section must be submitted to the Federal Inspector for approval at the time the contract is awarded.

(c) An acceptable affirmative action plan must include an analysis of all areas of operation of the recipient, contractor, or subcontractor in which it could be deficient in offering services, opportunities, or benefits to minority groups and women, all areas of employment in which it could be deficient in the utilization of minority groups and women, and all areas of procurement in which it could be deficient in the utilization of MBE's and FBE's; and, further, the plan must include specific goals and specific timetables to which the recipient, contractor, or subcontractor will direct its best efforts and undertake specific action to correct all deficiencies, and to materially increase the participation of minorities and women in all aspects of its operation. Such plans shall be updated annually.

In addition, the affirmative action plan shall include the following:

(1) *Services, financial aid, and other benefits.* The recipient, contractor, or subcontractor is required to specifically address and analyze all areas of its operation in which services, financial aid, and other benefits are offered

or provided at each of its facilities to which this part applies. The analysis should include:

(i) An identification of services, financial aid, and other benefits that the recipient, contractor or subcontractor provides or may provide;

(ii) A description of the population eligible to be served or to participate, by race, color, national origin, and sex;

(iii) An identification of specific actions that will be taken to assure that no discrimination occurs in providing services, financial aid, and other benefits;

(iv) If relevant, the location of all existing or proposed facilities connected with the services, financial aid, or other benefits, as well as related information adequate for determining whether the location has or could have the effect of denying access to any individual on the basis of prohibited discrimination;

(v) Where relocation of facilities is involved, the steps that will be taken to guard against adverse socio-economic effects on individuals on the basis of race, color, creed, national origin, or sex;

(vi) Information on all areas of the recipient's, contractor's, or subcontractor's operations that require change to assure that specific actions prohibited in paragraph (b)(3) of this section do not occur in the provision of any of its services, financial aid, or benefits;

(vii) A monitoring system to assure that no discrimination occurs.

(2) *Employment practices.* (i) The affirmative action plan shall address all aspects of employment in construction and non-construction operations and shall contain the analysis and commitments which are required in regulations promulgated by the Department of Labor pursuant to Executive Order 11246, specifically, those at 41 CFR 60-4.3(a)(7), (13), and (14) for the employment of construction employees, and those at 41 CFR 60-2.21, 60-2.22, 60-2.24, 60-2.26 for the employment of non-construction employees.

(ii)(A) The affirmative action plan of the applicants or recipients shall contain goals and timetables applicable to each segment of the ANGTS, employing the method of analysis set forth at

§ 34.8

41 CFR 60-2.11(b). In developing goals the standards set out at 41 CFR 60-2.12(a)-(j) should be followed as well as the specific guidelines set forth below:

(1) Current national statistics, such as those available from the U.S. Bureau of the Census, should be used to determine the available minority and female workforce populations unless it can be shown that a particular part of the project can be reasonably expected to draw labor only from a small area. If such a showing is made then statistics from such smaller area shall be employed in setting goals for that part of the project.

(2) Goals should be set separately for each minority group, as set out in paragraph (j) of this section, and for women, by each job group.

(3) Goals should be set in proportion to the group's general availability in the population taking into consideration

(i) The number of group members currently available in that job group,

(ii) The reason members of the group are not available in that job group in proportion to their existence in the general population, and

(iii) The degree to which the provision of training could be expected to increase the availability of the group's members in the particular job group within the time available.

(B) The affirmative action plan of each contractor and subcontractor shall contain goals and timetables based upon the overall goals and timetables set by the applicant or recipient for the segment of the ANGTS upon which the contractor or subcontractor will work.

(iii) It shall not be a violation of this part for a recipient, contractor or subcontractor to extend a preference in employment consistent with 41 CFR 60-2.12(j). For the purpose of this section the term "reservation" in Alaska shall be the same as in 25 CFR 80.1, 91.1, and 93.1.¹

(3) *Procurement and contracting practices.* (i) Applicants or recipients and each of their contractors and subcontractors with contracts of \$150,000

43 CFR Subtitle A (10-1-10 Edition)

or more shall develop for the Federal Inspector's approval an affirmative action plan that identifies specific actions which the applicant or recipient, contractor or subcontractor, will take to afford MBE's and FBE's the maximum practicable opportunity to participate in the construction and operation of ANGTS.

(ii) The affirmative action plan of the applicant or recipient shall contain specific dollar goals set separately for MBE's and FBE's, and timetables for achieving these goals. The applicant's or recipient's goals and timetables shall be applicable to all procurement and contracting on its respective segment of the ANGTS. In setting goals the following factors should be considered:

(A) The availability and capability of existing MBE's and FBE's in each procurement and contracting area;

(B) The anticipated levels of procurement and contracting activities;

(C) The extent to which procurement and contracting procedures can be amended to utilize contract breakouts and other methods, as described in paragraph (c)(3)(iii)(D)(2) of this section, to increase opportunities for MBE's and FBE's;

(D) The extent to which new firms can be organized and the capability of existing firms expanded either through the efforts of the applicant or recipient and its contractors and subcontractors or through the efforts of government or other organizations and institutions.

(iii) Affirmative action plans developed and submitted pursuant to paragraph (c)(3)(i) of this section shall contain the following elements:

(A) An in-depth analysis of all areas of procurement and contracting procedures to determine if these procedures offer maximum opportunity for the utilization of MBE's and FBE's. All deficiencies must be identified along with steps that will be taken to correct them.

(B) A description of all contracting opportunities to be offered in the succeeding year, or for such longer period of time for which projections are available. The plan shall identify the types

¹EDITORIAL NOTE: In the March 30, 1982, FEDERAL REGISTER, these sections were redesignated as 25 CFR 286.1, 101.1, and 103.1, respectively.

of services and supplies for which contracts are to be let, with as much specificity as possible, indicating the anticipated dollar amounts of such contracts.

(C) Specific dollar goals for MBE's and FBE's and timetables for achieving such goals based upon the overall goals and timetables set by the applicant or recipient for the segment of ANGTS upon which the contractor or subcontractor will work.

(D) A description of all actions that will be taken to provide the maximum practicable opportunity for MBE's and FBE's to participate in the construction and operation of the ANGTS including the following:

(1) The appointment of a liaison officer who will administer the MBE and FBE program, the identification of that officer, and a description of the officer's duties and authority;

(2) Identification of steps that will be taken to insure timely and full consideration of MBE's and FBE's in all procurement and contracting decisions, and the identification of how those procedures will be implemented. This shall include procedures relevant to (i) the arrangement of solicitations, (ii) time for preparation of bids, (iii) quantity requirements, (iv) determination of specifications, (v) determination of delivery schedules, (vi) the determination of the manner of contracting, and (vii) breaking out contracts into smaller subcontracts;

(3) An identification of contracting arrangements that will be adopted to increase the use of MBE's and FBE's, including analysis of the circumstances in which and the extent to which the following types of contracting practices can be used: (i) Noncompetitive contracting, (ii) contracting based upon competition between a limited number of enterprises, and (iii) negotiated contracts;

(4) Specific procedures for identifying capable MBE's and FBE's and for the dissemination of information on business opportunities and procurement practices to minority and women's business organizations and associations, in sufficient detail, and affording sufficient time, to offer full opportunities for participation by MBE's and FBE's;

(5) An identification of financial assistance, such as investment in Minority Enterprise Small Business Investment Companies (MESBIC) and direct investment in MBE's and FBE's, that the recipient, contractor, or subcontractor determines to be feasible and financially appropriate to offer MBE's and FBE's;

(6) The identification and elimination of non-essential technical requirements and procedures, including non-essential bonding and insurance requirements;

(7) Holding regularly scheduled meetings with procurement and contracting officials of the recipient, contractor, or subcontractor to explain MBE and FBE policies and procedures;

(8) Identification of specific procedures for certifying and verifying ownership and control of companies identified as MBE's and FBE's. The plan shall include the requirements that firms submit affidavits as to their status as MBE's and FBE's as defined in §34.3.

(E) As an integral part of the affirmative action plan, develop and maintain separate source listings of MBE's and FBE's. Such lists or files should contain whenever possible the following information on each company:

(1) A description of each business, including the type of organization,

(2) The product or service offered,

(3) Information on ownership and control,

(4) All relevant data and affidavits which establish that the enterprise is in fact owned, controlled, and managed by minorities and/or women.

(4) *Complaint system for affirmative action plans.* (i) The affirmative action plan must include a grievance mechanism for resolving disputes arising from the implementation of the plan.

(ii) A copy of all complaints, related records, and specific resolutions must be maintained.

(5) *Data to support affirmative action plans and access to plans.* (i) Data supporting the analyses and plans required by these regulations shall be compiled and maintained as part of the affirmative action plan.

(ii) Copies of the affirmative action plan and supporting data shall be made available to the Federal Inspector upon

§ 34.9

his request as may be appropriate for the fulfillment of the Inspector's responsibilities under these regulations.

(d) *Review of affirmative action plan.*

(1) Applicants and their contractors and subcontractors which are required by paragraphs (a) and (b) of this section to submit affirmative action plans to the Federal Inspector for approval shall provide the Federal Inspector with the following information at the time the affirmative action plan is submitted:

(i) A brief description of pending applications to any Federal agency for Federal financial assistance or the award of a government contract, as well as any Federal assistance being received, or any government contracts or subcontracts being performed;

(ii) Whether the applicant, contractor, or subcontractor has been the subject of a compliance review conducted by the Department of Labor pursuant to 41 CFR part 60-1 within the preceding twelve months;

(iii) Whether any Federal, State or local government agency has found the applicant, contractor, or subcontractor in non-compliance or has found reasonable cause to believe the applicant, contractor, or subcontractor is in violation of, or in non-compliance with, any civil rights requirements;

(iv) A description of the methods by which the applicant, contractor, or subcontractor will insure that its contractors and subcontractors comply with the provisions of the affirmative action plans during the term of the contracts;

(2) The Federal Inspector shall consider conducting an on-site review before the award of any Federal authorizations, agreements to assign Federal authorizations, contracts or subcontracts under which substantial employment or procurement opportunities will be offered;

(3) The Federal Inspector will determine whether the affirmative action plans are adequate. If deficiencies are found to exist in a plan, the recipient, contractor, or subcontractor shall correct the deficiencies in consultation with the Federal Inspector. If deficiencies are not corrected to the satisfaction of the Federal Inspector, the Inspector may enforce compliance with

43 CFR Subtitle A (10-1-10 Edition)

this section through measures authorized by ANGTA or any other provision of law.

(4) Upon approval of the affirmative action plan—including the goals and timetables—of the applicants or recipients, the Federal Inspector shall publicize the goals and timetables which are approved for each segment. Notice should be sent to all parties who submitted comments to the Department of the Interior in response to the Notice of Proposed Rulemaking issued about these regulations on October 12, 1979 (44 FR 59096).

(5) The Federal Inspector may, upon request, grant exemptions from the requirements of paragraph (b) of this section to any bidder which can demonstrate that no significant employment opportunities will result from an award of a contract to the bidder.

§ 34.9 Compliance reporting.

(a) *Records, reports, and access to books.* Each recipient, contractor, or subcontractor to which these regulations apply shall submit to the Federal Inspector reports in the form and manner that the Federal Inspector determines to be necessary to insure compliance with the rules, regulations, and orders implementing section 17 and Condition 11 of the President's *Decision*.

(b) *Access to sources of information.* Each person to whom this part applies shall permit access by the Federal Inspector during normal business hours to books, records, accounts, and other sources of information, and to facilities, as the Federal Inspector determines to be necessary to insure compliance with the rules, regulations, and orders implementing section 17 and the President's *Decision*.

(c) *Failure to submit reports.* Failure to file timely, complete, and accurate reports, or failure to permit access to sources of information as required constitutes non-compliance with the Equal Opportunity Clause and with these regulations and, therefore, constitutes grounds for action by the Federal Inspector, recipient, contractor, or subcontractor to enforce compliance or levy sanctions as authorized by ANGTA, by the implementing rules, regulations, and orders thereunder, by