

## § 230.411

## 23 CFR Ch. I (4–1–12 Edition)

changes, the corrective action plan shall be immediately amended through negotiations. If, at this point, the contractor refuses to appropriately amend the corrective action plan, the formal hearing process shall be recommended immediately.

(vi) A contractor operating under an approved voluntary corrective action plan (*i.e.*, plan entered into prior to the issuance of a show cause) must be issued a 30-day show cause notice in the situations referred to in paragraphs (h) (7) (iv) and (v) of this section, *i.e.*, failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

(i) *Followup reviews.* (1) A followup review is an extension of the initial review process to verify the contractors performance of corrective action and to validate progress report information. Therefore, followup reviews shall only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

(2) Followup reviews shall be reported as a narrative summary referencing the initial review report.

(j) *Hearing process.* (1) When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing contractors into compliance within the prescribed 30 days, the reviewer (or other appropriate level) shall immediately recommend, through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing (Action R-19). The Contractor should be notified of this action.

(2) Recommendations to the Federal Highway Administrator for hearing approval shall be accompanied by full reports of findings and case files containing any related correspondence. The following items shall be included with the recommendation:

- (i) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;
- (ii) Copies of any contractor or subcontractor certifications;
- (iii) Copy of show cause notice;

(iv) Copies of any corrective action plans; and

(v) Copies of all pertinent Manpower Utilization Reports, if applicable.

(3) SHA's through FHWA regional and division offices, will be advised of decisions and directions affecting contractors by the FHWA Washington Headquarters, Office of Civil Rights, for the Department of Transportation.

(k) *Responsibility determinations.* (1) In instances where requests for formal hearings are pending OFCCP approval, the contractor may be declared a non-responsible contractor for inability to comply with the equal opportunity requirements.

(2) SHA's shall refrain from entering into any contract or contract modification subject to E.O. 11246, as amended, with a contractor who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to E.O. 11246, as amended.

### § 230.411 Guidance for conducting reviews.

(a) *Extensions of time.* Reasonable extensions of time limits set forth in these instructions may be authorized by the SHA's or the FHWA regional office, as appropriate. However, all extensions are subject to Washington Headquarters approval and should only be granted with this understanding. The Federal Highway Administrator shall be notified of all time extensions granted and the justification therefor. In sensitive or special interest cases, simultaneous transmittal of reports and other pertinent documents is authorized.

(b) *Contract completion.* Completion of a contract or seasonal shutdown shall not preclude completion of the administrative procedures outlined herein or the possible imposition of sanctions or debarment.

(c) *Home office reviews outside regions.* When contractor's home offices are located outside the FHWA region in which the particular contract is being performed, and it is determined that the contractors' home offices should be reviewed, requests for such reviews with accompanying justification shall be forwarded through appropriate

channels to the Washington Headquarters, Office of Civil Rights. After approval, the Washington Headquarters, Office of Civil Rights, (OCR) shall request the appropriate region to conduct the home office review.

(d) *Employment of women.* Executive Order 11246, as amended, implementing rules and regulations regarding sex discrimination are outlined in 41 CFR part 60-20. It is the responsibility of the Compliance Specialist to ensure that contractors provide women full participation in their work forces.

(e) *Effect of exclusive referral agreements.* (1) The OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved;

(i) It shall be no excuse that the union, with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority or female employees.

(ii) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.

(iii) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

(2) If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and:

(i) The contractor will be formally directed to comply with the equal opportunity requirements.

(ii) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.

(iii) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be in-

formed of the criteria outlined in §230.411(e)(1) of this section. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with full documentary evidence to support the discriminatory pattern indicated.

(iv) In the event the union referral practices prevent the contractor from meeting the equal opportunity requirements pursuant to the E.O. 11246, as amended, such contractor shall immediately notify the SHA.

#### § 230.413 Review reports.

(a) *General.* (1) The Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

(2) The completed compliance review report shall contain documentary evidence to support the determination of a contractor's or subcontractor's compliance status.

(3) Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence.

(4) The compliance review report shall contain at least the following information.<sup>1</sup> (Action R-20)

(i) Complete name and address of contractor.

(ii) Project(s) identification.

(iii) Basis for the review, *i.e.*, area work force, project work force, home office work force, and target area work force.

(iv) Identification of Federal or Federal-aid contract(s).

(v) Date of review.

(vi) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above. This shall be the data verified during the onsite.

(vii) Identification of local unions involved with contractor, when applicable.

(viii) Determination of compliance status: compliance or noncompliance.

(ix) Copy of show cause notice or compliance notification sent to contractor.

<sup>1</sup>The Federal Highway Administration will accept completed Form FHWA-86 for the purpose. The form is available at the offices listed in 49 CFR part 7, appendix D.