

Office of Federal Contract Compliance Programs

§ 60-1.33

show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

§ 60-1.29 Preaward notices.

(a) *Preaward compliance reviews.* Upon the request of the Deputy Assistant Secretary, 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 Deputy Assistant Secretary until a preaward compliance review has been conducted and the Deputy Assistant Secretary 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 Deputy Assistant Secretary, agencies shall not enter into contracts or approve the entry into subcontracts with any bidder; prospective prime contractor or proposed subcontractor specified by the Deputy Assistant Secretary until the agency has complied with the directions contained in the request.

[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997]

§ 60-1.30 Notification of agencies.

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarment taken against any contractor.

[62 FR 44191, Aug. 19, 1997]

§ 60-1.31 Reinstatement of ineligible contractors.

A contractor debarred from further contracts for an indefinite period under the Order may request reinstatement in a letter filed with the Deputy Assistant Secretary at any time after the effective date of the debarment. A contractor debarred for a fixed period may request reinstatement in a letter filed with the Deputy Assistant Secretary 30 days prior to the expiration of the fixed debarment period, or at any time thereafter. The filing of a reinstatement

request 30 days before a fixed debarment period ends will not result in early reinstatement. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Order and implementing regulations. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.

[62 FR 44192, Aug. 19, 1997]

§ 60-1.32 Intimidation and interference.

(a) The contractor, subcontractor or applicant shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Order or any other Federal, state or local law requiring equal opportunity;

(3) Opposing any act or practice made unlawful by the Order or any other Federal, state or local law requiring equal opportunity; or

(4) Exercising any other right protected by the Order.

(b) The contractor, subcontractor or applicant shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by OFCCP against any contractor, subcontractor or applicant who violates this obligation.

[62 FR 44192, Aug. 19, 1997]

§ 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,

§ 60-1.34

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.

(4) In any proceeding involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

(b) If the contractor has violated a letter of commitment, the matter shall

41 CFR Ch. 60 (7-1-99 Edition)

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, as amended at 62 FR 44192, Aug. 19, 1997]

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