

**NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS
AND SUBCONTRACTORS AND BY FEDERALLY ASSISTED CONSTRUCTION
CONTRACTORS AND SUBCONTRACTORS**

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OFFICE FOR CIVIL RIGHTS

Nondiscrimination in Employment by Government Contractors and Subcontractors and by Federally Assisted Construction **Contractors and Subcontractors**

Chapter 27-10 of the Department of Health, Education, and Welfare General Administration Manual is revised to read as follows:

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27-10-10 Purpose.
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SEC. 27-10-10 Purpose. The purpose of this chapter is (1) to prescribe policies, standards and procedures for carrying out the Department's responsibilities under Parts II and III of Executive Order 11246, dated September 24, 1965 (30 F.R. 12319, 12935; hereinafter called the "Order"), the rules and regulations of the Secretary of Labor (41 CFR Chapter 60; hereinafter called the rules and regulations) and the orders, instructions, designations, and other directives issued by the Office of Federal Contract Compliance, Department of Labor thereinafter called the "OFCC directives") and (2) to describe the responsibility of operating agencies and Department personnel for promoting and ensuring equal opportunity in employment for all qualified persons, without regard to race, color, religion, sex, or national origin, who are employed or are seeking employment with Government contractors and subcontractors and with federally assisted construction contractors and subcontractors.

Sec. 27-10-20 Definitions. The terms used in this chapter have the same meaning as terms used in the order, the rules and regulations, and the OFCC directives.

Sec. 27-10-30 Responsibilities—A General. The Department of Health, Education, and Welfare is responsible for (1) implementing the requirements of the order, the rules and regulations, the OFCC directives and all other rules, regulations, and orders issued pursuant thereto as they relate to the award and administration of contracts and the granting and management of Federal financial assistance which may involve construction; and (2) obtaining the compliance of (a) colleges, universities, hospitals and insurance intermediaries and carriers having contracts with any department or agency of the Federal Government, (b) its recipients of Federal financial assistance which may involve construction and all contractors and subcontractors which perform under contracts related to such construction and (c) any other contractors for which the Department has been designated the "Compliance Agency" by the Director, OFCC.

B. Director, Office for Civil Rights. The Secretary of Health, Education, and Welfare has designated the Director, Office for Civil Rights as the Contract Compliance Officer (CCO) for the Department and has assigned to him the responsibility for administering the Department's program under the order.

C. Director, Contract Compliance Division. The Director, Contract Compliance Division (CCD) is the principal advisor and staff assistant to the CCO on the Department's contract compliance programs and is responsible for the formulation of plans, policies and procedures necessary to effectively carry out the responsibilities and obligations of the Department under the order, rules and regulations, and OFCC directives. He (1) maintains technical surveillance over, provides guidance to, and reviews and coordinates plans, policies, and programs relating to the insurance compliance program assigned to the Social Security Administration and the construction compliance program assigned to the Office of Education, (2) manages, through Contract Compliance Branches located in the Regional Offices, Office for Civil Rights, a compliance program covering hospitals, colleges, universities, and other contractors for which the Department is designated the Compliance Agency or is otherwise, responsible, and (3) serves as the Departmental Deputy Contract Compliance Officer, Departmental DCCO.

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D. Heads of the procuring activity. Each official of the Department who is designated "Head of the Procuring Activity" shall be responsible for effectuating the requirements of the order, rules and regulations, OFCC directives, and all other rules, regulations, and orders issued pursuant thereto as they relate to the performance of his procurement function. He shall designate an official from within his organization to serve as liaison with the Office for Civil Rights on contract compliance matters and to assist him in discharging his obligations under this chapter.

E. Agency heads. The head of any operating agency who is authorized to extend Federal financial assistance which may involve construction work shall be responsible for effectuating the order, rules and regulations, OFCC directives, and all other rules, regulations, and orders issued pursuant thereto as they relate to the performance of his grant approval and management functions and the approval of construction contract awards under agreements for Federal financial assistance. He shall designate an official from within his organization to serve as liaison with the Office for Civil Rights and with the Division of Construction Support, Office of Education on contract compliance matters and to assist him in discharging his obligations under this chapter.

F. Office of Construction Services, Office of Education. The Division of Construction Support, Office of Construction

Services, Office of Education is responsible for planning and implementing a Department-wide program for promoting and ensuring equal opportunity in employment on all construction projects receiving Federal financial assistance from the Department or any of its operating agencies and on all construction projects for which the Department has been designated the Compliance Agency. The Director, Division of Construction Support shall serve as Deputy Contract Compliance Officer (Construction).

G. Special Staff, Social Security Administration. The Special Staff, Office of Administration, Social Security Administration (SSA) is responsible for planning and implementing a program for promoting and ensuring equal opportunity in employment with all Medicare insurance intermediaries under contract with SSA and other insurance carriers holding contracts with the Federal Government. The Director, Special Staff shall serve as Deputy Contract Compliance Officer (Insurance).

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SEC. 27-10-40 Award of Contracts—
A. Government contracts. Prior to the award or modification of each non-exempt Government contract identified under subparagraph 3, of this paragraph, the Contracting Officer shall obtain and provide, in writing, the following information to the Director, CCD:

(a) The dollar amount of the contract;

(b) The anticipated time of performance;

(c) Name and address of the prospective contractor and each known subcontractor;

(d) The number of employees at the contractor establishment(s) where the contract is to be performed;

(e) Whether the contractor and each known subcontractor have previously held contracts subject to Executive Orders 10925, 11114, or 11246.

(f) Whether the contractor and each known subcontractor have previously filed a Compliance Report (SF-40, SF-41, or EEO-1) required by Executive Orders 10925, 11114, or 11246 or by regulations issued pursuant to title VII of the Civil Rights Act of 1964;

(g) Whether the contractor and each known subcontractor have submitted the Certification of Nonsegregated Facilities required by § 60-1.8 of the rules and regulations;

(h) For each contract to be executed on or after December 29, 1968, a copy of the written affirmative action compliance program required by § 60-1.40 of the rules and regulations for the contractor establishment(s) where the contract is to be performed, or a statement of the reasons why the contractor has not developed or is not required to develop such a program.

The Contracting Officer shall not execute any contract subject to this procedure until notified by the Director, CCD that the prospective contractor and all known subcontractors appear to be able to conform to the requirements of the equal opportunity clause or have made specific commitments, in writing, to correct any deficiencies found to exist in their equal opportunity compliance & a-h. If the Director, CCD, so requests, any commitments made by the prospective contractor shall be stated in the contract.

2. Within 7 workdays of receipt of the above listed information the Director, CCD will notify the Contracting Officer that:

(a) The prospective contractor appears to be able to conform to the requirements of the equal opportunity clause;

(b) The prospective contractor appears to be able to conform to the requirements of the equal opportunity clause;

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(b) Deficiencies have been found to exist in the prospective contractor's equal opportunity compliance status and that the Contracting Officer should notify the prospective contractor of these deficiencies and direct the prospective contractor to negotiate with the Director, CCD or his designee and take such actions as he may require; or

(c) An on-site preaward compliance review of the prospective contractor is required, has been scheduled and the Contracting Officer will be notified of the results of the review within 30 calendar days.

3. The following listed Government contracts are covered by the procedures contained in this paragraph.

(a) Contracts of \$100,000 or more with colleges, universities, and hospitals;

(b) All other Government contracts of \$500,000 or more except contracts with financial intermediaries and insurance carriers under sections 1816 and 1842 of the Social Security Act, "(§ 42 U.S.C. 1395 (h) and (u)).";

(c) Any funding modification to a contract whose original monetary value exceeded the amounts specified in subparagraphs (a) and (b) above, and awarded prior to the effective date of this procedure;

(d) Any funding modification to a contract which increases the monetary value to the amounts specified in subparagraphs (a) and (b) above;

(e) Such other Government contracts as may be specified by the Director, CCD.

4. Operating agency personnel assigned to the Regional Offices who have been delegated responsibility and authority for procurement functions shall, with respect to contracts they propose to award, obtain, and provide to the Contract Compliance Branch Chief in the respective Regional Office, the information specified in subparagraph 1 of this Paragraph. The Contract Compliance Branch Chief shall act for the Director, CCD in carrying out the procedures of this paragraph with respect to such contracts.

B. Medicare contracts. Prior to the award or modification of each Government contract under section 1816 or 1842 of the Social Security Act "(42 U.S.C. 9 1395 (h) and (u)).," the Director Special Staff, Social Security Administration, shall certify that the prospective contractor appears to be able to conform to the requirements of the equal opportunity clause or has made specific commitments, in writing, to correct any deficiencies found to exist in their equal opportunity compliance status.

C. Federally assisted construction contracts. Prior to approval of the award of each federally assisted construction contract in areas designated by the Office of Federal Contract Compliance or the CCO, the Approving Officer shall be responsible for assuring that all requirements and conditions established for contractors in the designated area are met, including conducting preaward re-

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views, holding preaward conferences, obtaining written affirmative action plans and, as required, securing the concurrence of the OFCC Area Coordinator. His approval shall be based upon certification by the Regional EEO Specialist, or, where otherwise provided, the Chief, EEO Branch, Division of Construction Support, Construction Services, OE, that the prime contractor and subcontractors meet the established requirements. For purposes of this procedure, Approving Officer shall mean the Office of Education Regional Engineer, the Director, Regional Hospital Program, Public Health Service, or the Construction Engineer, Division of Research Facilities and Resources, National Institutes of Health.

Sec. 27-10-50 Compliance Reviews.

A. Each DCCO shall institute a regular systematic program of compliance reviews to assure that the contractors and subcontractors for which he is assigned responsibility understand and comply with the requirements of the order and all rules, regulations, directives, and orders issued pursuant thereto. The program shall include the conduct of reviews both prior to and after the award of contracts and federally assisted construction contracts.

B. Purpose and objective. The purpose of a compliance review is to thoroughly investigate, analyze and evaluate the employment policies and practices of successful bidders or offerers, contractors, and subcontractors to ensure that applicants are employed and employees placed, trained, upgraded, promoted, and otherwise treated during employment, and in the condition of employment, without regard to race, color, religion, sex, or national origin, end that the bidder, offerer, contractor, or subcontractor has, or is taking necessary action to establish and implement an affirmative program of equal employment opportunity sufficient to achieve compliance. The compliance review shall include reasonable efforts, within a reasonable time limit, to recommend and negotiate corrective action on the part of the bidder, offerer, contractor, or subcontractor in affirmatively eliminating discriminatory employment practices and in developing or improving an affirmative action program which includes specific provisions for eliminating the effects of past discriminatory policies or practices and for furtherance of the employment and effective utilization of minority group persons. Commitments secured through negotiation shall be confirmed by the bidder, offerer, contractor, or subcontractor in writing and shall include specific time periods for their accomplishments. Where deficiencies are found to exist and corrective action cannot be negotiated or written commitments which are sufficient to achieve

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compliance secured, recommendations will be made to the Director, Contract Compliance Division, or the CCO for the holding of a compliance conference or the imposition of sanctions.

C. Special compliance reviews. Upon request of the Director, OFCC, the CCO or the Director, CCD special compliance reviews will be conducted of bidders, offerers, contractors and subcontractors to determine their compliance or ability to comply with the order and with such other conditions as may be prescribed in the request.

D. Compliance review reports. A report of each compliance review shall be forwarded to the Director, CCD within 30 days after the compliance review is conducted unless otherwise provided by the Director, CCC. Reports shall be prepared in the format and content prescribed by the Director, CCD.

E. Compliance conference. On the basis of the findings of a compliance review the Director, CCD or a DCCO, with the approval of the Director, CCD, may call a compliance conference for the purpose of determining the equal opportunity status of any bidder, offerer, contractor, or subcontractor and attempting, through negotiation, conciliation, and Persuasion, to secure required corrective or remedial actions on the part of any noncomplying bidder, offerer, contractor, or subcontractor. Participants in such conference shall be notified in writing of the time and place of the conference and shall be requested to bring such documents and records as may be relevant to the purpose of the conference.

F. Sanctions and penalties. If the results of a compliance review show the existence of deficiencies in a contractor's equal employment opportunity program which cannot be resolved through the informal means described above, a formal hearing may be convened in accordance with the procedures provided in the rules and regulations. If it is found that any deficiencies have not been corrected, the Director, OFCC, shall be notified, and the Department may cause the cancellation, termination, or suspension of the contract or subcontract pursuant to section 209 of the Order, or may, with the approval of the Director, OFCC, impose such other sanctions as are necessary and appropriate to carry out the purposes of the order.

Sec. 27-10-60 Complaints-A. General. Any employee of any contractor or subcontractor or any applicant for employment with any contractor or subcontractor may, directly or through his designated representative, file with the Department or OFCC a complaint of employment discrimination on account of race, color, religion, sex, or national origin against the contractor or subcontractor.

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B. Reception and processing of complaints. Any Department employee receiving a complaint of alleged discrimination in employment against a contractor or subcontractor shall forward the complaint to the Director, CCD.

If the complaint is against a contractor or subcontractor for which the Department is the Compliance Agency, the Director, CCD shall request an investigation by the appropriate DCCO or contract Compliance Branch Chief and notify the Director, OFCC. Any complaint received by the Department against a contractor or subcontractor for which the Department is not the Compliance Agency shall be referred to the Director, OFCC for appropriate disposition.

If the complaint statement, lacks sufficient information to initiate an investigation, a written notice shall be sent to the complainant requesting the necessary information. Such notice shall be sent by the appropriate DCCO or the Contract Compliance Branch Chief. The information shall be transmitted to the Director, CCD along with the original complaint. In the event the complainant does not respond within 60 days, the complaint and a copy of the notice shall be transmitted to the Director, CCD who may close the complaint and notify the Director, OFCC.

C. Investigation of complaints. Complaints will be assigned to the DCCO or Contract Compliance Branch Chief responsible for the contractor against whom the complaint is filed. He shall institute a prompt investigation which shall include holding a personal interview with the complainant, any witnesses identified by the complainant, and with responsible contractor officials, and making a thorough investigation of related employment records and actions.

D. Resolution and disposition of complaints. If the investigation of a complaint shows no violation of the equal opportunity clause, a written report of findings and conclusions, with supporting information attached, shall be prepared and forwarded to the Director, CCD.

If the investigation reveals a violation of the equal opportunity clause, the investigator shall proceed by informal negotiations to obtain prompt corrective action by the contractor involved. Upon resolution of the complaint, a report on the case shall be submitted to the Director, CCD. The investigator shall advise the complainant and the contractor involved of the terms of adjustment, with the provision that such terms of adjustment are subject to the approval of the Director, CCD and the Director, OFCC.

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If a valid complaint cannot be adjusted by informal negotiation within a reasonable time between the investigator, the DCCO or Contract Compliance Branch Chief and the contractor involved, a report of the findings and conclusions and efforts to negotiate adjustment shall be submitted to the Director, CCD. The Director, CCD shall provide the contractor with a written notice of the terms of adjustment and shall schedule a compliance conference with the contractor. If the contractor, either as a result of the notice or conference, implements the terms of adjustment but believes them to be erroneous, he may, within ten (10) days, request a hearing to review the merits of the adjustment.

If the above specified informal procedures fail to achieve adjustment of a violation the contractor shall be afforded an opportunity for an informal hearing to determine whether a violation of the equal opportunity clause has taken place. If the decision is that a violation has taken place, the contractor shall be notified of the sanctions or penalties which the agency proposes to impose and shall be offered an opportunity for a formal hearing. If the contractor does not request a formal hearing or the decision following such hearing is that the contractor is not complying with provisions of the equal opportunity clause, the Department shall notify the Director, OFCC and proceed with imposing the proposed sanctions or penalties.

SEC. 27-10-70 Exemptions. Request for exemptions from the equal opportunity clause for specific contracts or categories of contracts or for a contractor's or subcontractor's facilities not involved in the performance of Government contracts shall be submitted to the Director, CCD by the Contracting Officer with complete justification. He shall forward all such requests with recommendations to the CCO for his consideration and, as appropriate, transmittal to the Director, OFCC. Request for the withdrawal of exemptions shall be processed in the same manner.

SEC. 27-10-80 Use of department funds by another agency. Where funds to finance construction are made available by the Department through another Federal department or agency, it shall be deemed compliance with the requirements of this chapter if such funds are made available pursuant to and in compliance with the approved regulations of the Federal department or agency administering the contract. "Approved regulations" as used in the preceding sentence shall mean regulations issued pursuant to the order, rules and regulations, and OFCC directives.

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SEC. 27-10-90 Rulings and interpretations. The Director, CCD shall advise all appropriate personnel regarding any rulings and interpretations of OFCC which involve the Department's contract compliance programs. All questions relating to rulings and interpretations of the order, the rules and regulations, or the OFCC directives shall be referred to the Director, CCD.

SEC. 27-10-100 Operating agency regulations. Operating agencies may issue such implementing regulations, procedures, and instructions as are considered necessary provided they are not inconsistent with the provisions of the order, the rules and regulations, the OFCC directives, and this chapter. A copy of such regulations, procedures, and instructions shall be forwarded to the Director, CCD, for approval prior to issuance.

Effective date. This chapter shall be effective upon publication in the FEDERAL REGISTER.

Dated: January 18, 1969.

WILBUR J. COHEN,
Secretary.

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