

5 CFR part 737 may seek judicial review of the determination in an appropriate United States District Court.

[48 FR 38233, Aug. 23, 1984]

PART 906—AFFIRMATIVE ACTION POLICY AND PROCEDURE

Subpart A—Development Program

Sec.

- 906.1 Purpose and policy.
- 906.2 Definitions.
- 906.3 Procedures.
- 906.4 Formulation of affirmative action plan.
- 906.5 Administration of affirmative action plan.
- 906.6 Implementation.
- 906.7 Incentives.
- 906.8 Review and monitoring.
- 906.9 Voluntary compliance.
- 906.10 Confidentiality.

Subpart B [Reserved]

EXHIBIT A TO PART 906—SUGGESTED MINIMUM GUIDELINES AND GOALS

EXHIBIT B TO PART 906—GUIDELINES FOR ESTABLISHING STRATEGY TO IMPLEMENT AFFIRMATIVE ACTION PERSONNEL PLAN

AUTHORITY: Pennsylvania Avenue Development Corporation Act of 1972, as amended, sec. 6(6), Pub. L. 92-578, 86 Stat. 1270 (40 U.S.C. 875(6)); E.O. 11625 (36 FR 19967) Oct. 14, 1971; title VII Civil Rights Act of 1964 (42 U.S.C. 2000e-2); Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, secs. 119, 122(d)(2), Pub. L. 95-602, 92 Stat. 2982, 2987 (29 U.S.C. 794); E.O. 12138 (44 FR 29637) May 22, 1979.

SOURCE: 44 FR 37226, June 26, 1979, unless otherwise noted.

Subpart A—Development Program

§ 906.1 Purpose and policy.

(a) One of the objectives stated in the Congressionally approved Pennsylvania Avenue Plan—1974 is insuring that minority businesses, investors, and workers have an opportunity to share in the benefits that will occur as a result of redevelopment. Accordingly, the Corporation will take affirmative action to assure full minority participation in activities and benefits that result from implementation of The Pennsylvania Avenue Plan—1974.

(b) It is the policy of the Pennsylvania Avenue Development Corpora-

tion to foster a progressive Affirmative Action Program that affords minorities, women, handicapped persons, and Vietnam era veterans a fair and meaningful share in the opportunities generated by the development activities of the Corporation.

(c) It is mandatory for developers who respond to a solicitation for proposals made by the Corporation to comply with the rules stated in subpart A of part 906.

(d) It is mandatory for developers who receive property interests of ten percent (10%) or more of the area of a development parcel from the Corporation to comply with the rules stated in subpart A of part 906.

(e) The Corporation will encourage any entity not described in paragraphs (c) and (d) of this section to comply with the requirements set forth in this subpart A of part 906.

§ 906.2 Definitions.

As used in this part:

(a) *Affirmative Action Plan* means a plan which at a minimum includes:

(1) A statement of the affirmative action policy of the development team and a list of the names of the members of the development team including equity investors, and identification of minority owned businesses and investors;

(2) A contracting and purchasing plan;

(3) A leasing plan;

(4) A personnel plan;

(5) An equity investment plan;

(6) The goals, timetables and strategy for achieving the goals of the developer;

(7) A list of specific, quantifiable committed opportunities; and

(8) Designation of an Affirmative Action Officer.

(b) *Committed Opportunity* means an opportunity set aside and committed for the sole involvement of a woman, minority group member, Vietnam era veteran, handicapped person, or minority owned business, including opportunities for training and equity investment.

(c) *Contracting and purchasing plan* means a plan for the subject project which at a minimum includes the following:

(1) A list of all minority enterprises and minority owned businesses that are involved in the development proposal or its implementation;

(2) An analysis of the types of contracts and purchases that will be required by the development team in order to implement the development through and including operation of the completed development;

(3) A list of goals and timetables by category of purchase or contract for involvement of minority owned businesses in the development process;

(4) Strategy for achieving the goals established; and

(5) A list of committed opportunities for the involvement of minority owned businesses in the development process.

(d) *Developer* means a person partnership, company, corporation, association, or other entity that develops a new structure on a site or substantially renovates a structure on a site within the Corporation's development area where the site either: (1) Has been offered to the public by the Corporation for development, or (2) the Corporation has transferred real property rights that equal or exceed ten percent (10%) of the area of the development parcel.

(e) *Development parcel* is an area of land established by the Corporation to be a minimum developable site under The Pennsylvania Avenue Plan—1974, as amended, and The Planning and Design Objectives, Controls, and Standards of the Corporation (36 CFR part 920 *et seq.*).

(f) *Development team* means the group that submits a proposal to develop a parcel including developers, architects, engineers, lawyers, financial institutions, insurance companies, and others who help formulate, develop, and otherwise make a proposal to the Corporation.

(g) *Equity Investment Plan* means a plan for the subject project which at a minimum includes the following:

(1) A statement as to whether or not equity investment has been or will be solicited to implement the subject project;

(2) A statement as to whether or not a joint venture has been or will be formed to implement the subject project;

(3) If equity investment has been solicited or if a joint venture has been formed, a statement of the efforts made to involve members of minority groups and women when these opportunities were offered;

(4) If equity investment will be solicited, or a joint venture will be formed, a plan to involve members of minority groups and women when these opportunities are offered, including a list of committed opportunities;

(5) A list of goals and a timetable for securing participation of members of minority groups and women in equity investment and joint venture.

(h) *Handicapped person* means any person who: (1) Has a physical or mental impairment that substantially limits one or more of the person's major life activities, (2) has a record of such impairment.

(i) *Leasing plan* means a plan for the subject project which at a minimum includes the following:

(1) A retail plan showing the types of retail businesses to be included in the project and a plan for the types of uses for the balance of the development;

(2) Goals and methods for inclusion of minority enterprises as tenants in the project;

(3) Committed opportunities for leasing to minority enterprises.

(j) *Minority Enterprise* means any enterprise that is either a minority owned business or a not for profit or non-profit organization (as defined in 26 U.S.C. 501(c)(3) or (c)(6)) and also fulfills one or more of the following criteria:

(1) The Board of Directors or equivalent policy making body is comprised of members, a majority of whom are minorities or women and the chief executive officer of the organization is a minority group member or a woman; or

(2) The objectives of the organization as described in its charter are substantially directed toward the betterment of minorities or women.

(k) *Minority group member* means any person residing in the United States who is Negro, Hispanic, Oriental, Native American, Eskimo, or Aleut, as defined below:

(1) Negro—is an individual of the Negro race of African origin;

§ 906.3

36 CFR Ch. IX (7-1-01 Edition)

(2) **Hispanic**—is an individual who is descended from and was raised in or participates in the culture of Spain, Portugal, or Latin America, or who has at least one parent who speaks Spanish or Portuguese as part of their native culture;

(3) **Oriental**—is an individual of a culture, origin, or parentage traceable to the areas south of the Soviet Union, East of Iran, inclusive of the islands adjacent thereto, located in the Pacific including, but limited to, Taiwan, Indonesia, Japan, Hawaii, and the Philippines, together with the islands of Polynesia;

(4) **Native American**—is an individual having origins in any of the original people of North America, who is recognized as an Indian by either a tribe, tribal organization, or suitable authority in the community. For purposes of this section a suitable authority in the community may be an educational institution, a religious organization, or a state or Federal agency.

(5) **Eskimo**—is an individual having origins in any of the original peoples of Alaska;

(6) **Aleut**—is an individual having origins in any of the original peoples of the Aleutian Islands.

(1) *Minority owned business* means a business that is:

(1) A sole proprietorship owned by a minority group member or a woman;

(2) A business entity at least 50 percent of which is owned by minority group members or women;

(3) A publicly owned business at least 51 percent of the stock of which is owned by minority group members or women;

(4) A certified minority owned business as evidenced by a certificate satisfactory to the Corporation's Affirmative Action Officer, and signed by the owner or the executive officer of the minority owned business.

For purposes of this definition, ownership means that the risk of gain or loss and the amount of control exercised must be equivalent to the ownership percentage.

(m) *Personnel plan* means a plan for the subject project which at a minimum includes the following:

(1) An analysis of participation of minority group members, women, Viet-

nam era veterans, and handicapped persons in the development project including an evaluation by category of employment, i.e., professional and managerial, skilled, semi-skilled, trainee, and other, and the number of employees in each category;

(2) An analysis of the salaries of minority group members, women, handicapped persons, and Vietnam era veterans showing the relative position of these employees with those not covered by the Affirmative Action Plan;

(3) Goals and timetables for employment by category and salary level of minorities, women, Vietnam era veterans, and handicapped persons employed for the development parcel;

(4) Strategy for achieving the goals established (see Exhibit B);

(5) A list of committed opportunities for the employment of minority group members, women, Vietnam era veterans, and handicapped persons.

(n) *Vietnam era veteran* means a person who:

(1) Served on active duty for a period of more than 180 days, any part of which occurred during the Vietnam era, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed during the Vietnam era.

§ 906.3 Procedures.

(a) Affirmative Action Plans must be submitted to the Corporation at the following times:

(1) At the time a response is submitted to the Corporation's solicitation for proposals, the response must include an Affirmative Action Plan;

(2) If a property right exceeding 10 percent of the area of the development parcel is made available by the Corporation, but without the Corporation having made a solicitation for proposals, the developer must submit an Affirmative Action Plan within 30 days after the start of negotiations with the Corporation.

(b) Affirmative Action Plans will be reviewed as follows: