

§ 34.6

§ 34.6 Equal opportunity clause.

Each certificate, permit, right-of-way, lease, or other Federal authorization to which this part applies, shall include the following Equal Opportunity Clause:

(a) The recipient, contractor, or subcontractor hereby agrees that it will not discriminate directly or indirectly against any individual or establishment in offering or providing procurements, employment, services, financial aid, other benefits, or other activities to which these regulations apply. The recipient, contractor, or subcontractor will take affirmative action to utilize business enterprises owned and controlled by minorities and/or women in its procurement practices; to assure that applicants for employment are employed, and that employees are treated during employment, without discrimination on the basis of race, creed, color, national origin, or sex; and to assure that individuals and establishments are offered and provided services, financial aid, and other benefits without discrimination on the basis of race, creed, color, national origin, or sex. The recipient, contractor, or subcontractor agrees to post in conspicuous places available to contractors, subcontractors, employees, and other interested individuals, notices which set forth these equal opportunity terms; and to notify interested individuals, such as bidders, contractors, purchasers, and labor unions or representatives of workers with whom it has collective bargaining agreements, of its obligations under section 17, Condition 11 of the President's *Decision*, and the implementing rules, regulations, and orders thereunder;

(b) The recipient, contractor, or subcontractor will comply with all rules, regulations, and orders which implement section 17 and Condition 11 of the President's *Decision*;

(c) The recipient, contractor, or subcontractor will furnish all information and reports required by or pursuant to rules, regulations, and orders implementing section 17 and Condition 11 of the President's *Decision*, and will permit access to its facilities, books, records, and accounts by the Federal Inspector for purposes of ascertaining

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compliance with such rules, regulations, and orders;

(d) In the event of a recipient's, contractor's, or subcontractor's non-compliance with these equal opportunity terms, compliance may be effected through procedures authorized 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 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.