

forth the basis upon which the contractor/bidder seeks such a determination. If the Deputy Assistant Secretary, in his/her sole discretion, determines that substantial issues of law or fact exist, an administrative or judicial proceeding may be commenced in accordance with the regulations contained in §60-1.26; or the Deputy Assistant Secretary may require the investigation or compliance evaluation be developed further or additional conciliation be conducted: Provided, That during any pre-award conferences, every effort will be made through the processes of conciliation, mediation, and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in this part so that, in the performance of the contract, the contractor is able to meet its equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: Provided further, That a contractor/bidder may not be declared nonresponsible more than twice due to past noncompliance with the equal opportunity clause at a particular establishment or facility without receiving prior notice and an opportunity for a hearing.

(c)(1) Immediately upon finding that a contractor has no affirmative action program, or has deviated substantially from an approved affirmative action program, or has failed to develop or implement an affirmative action program which complies with the requirements of the regulations in this chapter, that fact shall be recorded in the investigation file. Except as provided in §60-1.26(b)(1), whenever administrative enforcement is contemplated, the notice to the contractor shall be issued giving the contractor 30 days to show cause why enforcement proceedings under section 209(a) of Executive Order 11246, as amended, should not be instituted. The notice to show cause should contain:

(i) An itemization of the sections of the Executive Order and of the regulations with which the contractor has been found in apparent violation, and a summary of the conditions, practices, facts, or circumstances which give rise to each apparent violation;

(ii) The corrective actions necessary to achieve compliance or, as may be appropriate, the concepts and principles of an acceptable remedy and/or the corrective action results anticipated;

(iii) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence; and

(iv) A suggested date for the conciliation conference.

(2) If the contractor fails to show good cause for its failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the case file shall be processed for enforcement proceedings pursuant to §60-1.26 of this chapter. If an administrative complaint is filed, the contractor shall have 20 days to request a hearing. If a request for hearing has not been received within 20 days from the filing of the administrative complaint, the matter shall proceed in accordance with part 60-30 of this chapter.

(3) During the “show cause” period of 30 days, every effort will be made through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of non-responsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the case shall be processed for enforcement proceedings pursuant to §60-1.26 of this chapter.

(d) During the “show cause” period and formal proceedings, each contracting agency must continue to determine the contractor’s responsibility in considering whether or not to award a new or additional contract.

Subpart B—Purpose and Contents of Affirmative Action Programs

§60-2.10 General purpose and contents of affirmative action programs.

(a) *Purpose.* (1) An affirmative action program is a management tool designed to ensure equal employment opportunity. A central premise underlying affirmative action is that, absent discrimination, over time a contractor’s workforce, generally, will reflect

§ 60-2.11

the gender, racial and ethnic profile of the labor pools from which the contractor recruits and selects. Affirmative action programs contain a diagnostic component which includes a number of quantitative analyses designed to evaluate the composition of the workforce of the contractor and compare it to the composition of the relevant labor pools. Affirmative action programs also include action-oriented programs. If women and minorities are not being employed at a rate to be expected given their availability in the relevant labor pool, the contractor's affirmative action program includes specific practical steps designed to address this underutilization. Effective affirmative action programs also include internal auditing and reporting systems as a means of measuring the contractor's progress toward achieving the workforce that would be expected in the absence of discrimination.

(2) An affirmative action program also ensures equal employment opportunity by institutionalizing the contractor's commitment to equality in every aspect of the employment process. Therefore, as part of its affirmative action program, a contractor monitors and examines its employment decisions and compensation systems to evaluate the impact of those systems on women and minorities.

(3) An affirmative action program is, thus, more than a paperwork exercise. An affirmative action program includes those policies, practices, and procedures that the contractor implements to ensure that all qualified applicants and employees are receiving an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment. Affirmative action, ideally, is a part of the way the contractor regularly conducts its business. OFCCP has found that when an affirmative action program is approached from this perspective, as a powerful management tool, there is a positive correlation between the presence of affirmative action and the absence of discrimination.

(b) *Contents of affirmative action programs.* (1) An affirmative action program must include the following quantitative analyses:

41 CFR Ch. 60 (7-1-04 Edition)

- (i) Organizational profile—§60-2.11;
- (ii) Job group analysis—§60-2.12;
- (iii) Placement of incumbents in job groups—§60-2.13;
- (iv) Determining availability—§60-2.14;
- (v) Comparing incumbency to availability—§60-2.15; and
- (vi) Placement goals—§60-2.16.

(2) In addition, an affirmative action program must include the following components specified in the §60-2.17 of this part:

- (i) Designation of responsibility for implementation;
 - (ii) Identification of problem areas;
 - (iii) Action-oriented programs; and
 - (iv) Periodic internal audits.
- (c) *Documentation.* Contractors must maintain and make available to OFCCP documentation of their compliance with §§60-2.11 through 60-2.17.

§ 60-2.11 Organizational profile.

(a) *Purpose.* An organizational profile is a depiction of the staffing pattern within an establishment. It is one method contractors use to determine whether barriers to equal employment opportunity exist in their organizations. The profile provides an overview of the workforce at the establishment that may assist in identifying organizational units where women or minorities are underrepresented or concentrated. The contractor must use either the organizational display or the workforce analysis as its organizational profile:

(b) *Organizational display.* (1) An organizational display is a detailed graphical or tabular chart, text, spreadsheet or similar presentation of the contractor's organizational structure. The organizational display must identify each organizational unit in the establishment, and show the relationship of each organizational unit to the other organizational units in the establishment.

(2) An organizational unit is any component that is part of the contractor's corporate structure. In a more traditional organization, an organizational unit might be a department, division, section, branch, group or similar component. In a less traditional organization, an organizational unit might be a project team, job family, or