

§ 265.9

involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Administrator, the recipient may request the United States to enter into such litigation.

§ 265.9 Affirmative action program—General.

Recipients of financial assistance under the Rail Acts and their contractors, as specified herein, shall develop and maintain an affirmative action program to insure that persons and businesses are not discriminated against because of race, color, national origin or sex in programs, projects and activities financed in whole or in part through financial assistance provided under the Rail Acts, and that minorities and MBEs receive a fair proportion of employment and contractual opportunities which will result from such programs, projects and activities.

§ 265.11 Submission of affirmative action program.

(a) Each application for financial assistance under any of the Rail Acts shall, as a condition to its approval and the extension of any financial assistance pursuant to the application, contain or be accompanied by two copies of a written affirmative action program for review by and approval of the Administrator. Recipients that have already entered into an agreement or other arrangement providing for such assistance shall, within 60 days after the effective date of this part, develop and submit to the Administrator two copies of a written affirmative action program for review by and approval of the Administrator and thereafter maintain such program.

(b)(1) Beginning 30 days after the effective date of this part, and until 120 days after such date, each recipient shall require any contractor, as a condition to an award of a contract, for \$50,000 or more for services or products on a project receiving federal financial assistance under a program covered by section 905 of the Act:

(i) To furnish to the recipient a written assurance that it will, within 90 days after the date of the award, develop and maintain a written affirmative action program meeting the re-

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quirements of this part for the project, program or activity covered by the contract,

(ii) To require each of its subcontractors receiving an award of a subcontract for \$50,000 or more within 120 days after the effective date of this part, to furnish to the contractor as a condition to such an award the written assurance described in paragraph (b)(1)(i) of this section.

(2) Beginning 120 days after the effective date of this part, each recipient shall require as a condition to the award of a contract or subcontract of \$50,000 or more that the contractor or subcontractor furnish a certificate to the recipient or contractor as appropriate that a written affirmative action program meeting the requirements of this part has been developed and is being maintained.

(3) Notwithstanding paragraphs (b)(1) and (2) of this section, each contractor or subcontractor having a contract or \$50,000 or more but less than 50 employees shall be required to develop and maintain a written affirmative action program only for contracts in accordance with § 265.13(c) of this part.

(4) A recipient or contractor shall not procure supplies or services in less than usual quantities or in a manner which is intended to have the effect of avoiding the applicability of this paragraph.

§ 265.13 Contents of affirmative action program.

(a) *General.* A prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and utilization of MBEs, and an evaluation of opportunities for utilization of minority group personnel and MBEs. Therefore, an affirmative action program to guarantee employment and contractual opportunities shall provide for specific actions keyed to the problems and needs of minority persons and MBEs including, where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full