

26, and the rules, regulations, and orders issued pursuant to EO 11246 by the Secretary of Labor or a designee.

*Government contract*, as used in this subpart, means any agreement or modification thereof between a Government contracting agency and any person for the furnishing of supplies or services, or for the use of real or personal property including lease arrangements. The term does not include (a) agreements in which the parties stand in the relationship of employer and employee and (b) contracts for the sale of real and personal property by the Government.

*Prime contractor*, as used in this subpart, means any person who holds, or has held, a Government contract subject to EO 11246.

*Recruiting and training agency*, as used in this subpart, means any person who refers workers to any contractor or subcontractor or provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

*Site of construction*, as used in this subpart, means the general physical location of any building, highway, or other change or improvement to real property that is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to a Government contract or subcontract.

*Subcontract*, as used in this subpart, means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee) (a) for the furnishing of supplies or services or for use of real or personal property, including lease arrangements, that, in whole or in part, is necessary to the performance of any one or more Government contracts or (b) under which any portion of the contractor's obligation under any one or more Government contracts is performed, undertaken, or assumed.

*Subcontractor*, as used in this subpart, means any person who holds, or has held, a subcontract subject to EO 11246. The term *first-tier subcontractor* means

a subcontractor holding a subcontract with a prime contractor.

*United States*, as used in this subpart, means the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and the possessions of the United States.

#### **22.802 General.**

(a) Executive Order 11246, as amended, sets forth the Equal Opportunity clause and requires that all Government contracting agencies (1) include this clause in all nonexempt Government prime contracts and subcontracts (see 22.807), and (2) act to ensure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

(b) No contract or modification involving new acquisition shall be entered into, and no subcontract shall be approved by a contracting officer, with a person who has been found ineligible by the Director for reasons of non-compliance with the requirements of EO 11246.

(c) No contracting officer or contractor shall contract for supplies or services in a manner so as to avoid applicability of the requirements of EO 11246.

(d) Contractor disputes related to compliance with its obligation shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (see 41 CFR 60-1.1).

#### **22.803 Responsibilities.**

(a) The Secretary of Labor is responsible for the—

(1) Administration and enforcement of prescribed parts of EO 11246; and

(2) Adoption of rules and regulations and the issuance of orders necessary to achieve the purposes of EO 11246.

(b) The Secretary of Labor has delegated authority and assigned responsibility to the Director for carrying out the responsibilities assigned to the Secretary by EO 11246, except for the issuance of rules and regulations of a general nature.

(c) The head of each agency is responsible for ensuring that the requirements of this subpart are carried out within the agency, and for cooperating

with and assisting the OFCCP in fulfilling its responsibilities.

(d) In the event the applicability of EO 11246 and implementing regulations is questioned, the contracting officer shall forward the matter through agency channels for resolution.

**22.804 Affirmative action programs.**

**22.804-1 Nonconstruction.**

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and (a) a contract or subcontract of \$50,000 or more or (b) Government bills of lading that in any 12-month period, total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

**22.804-2 Construction.**

(a) Construction contractors that hold a nonexempt (see 22.807) Government construction contract are required to meet (1) the contract terms and conditions citing affirmative action requirements applicable to covered geographical areas or projects and (2) applicable requirements of 41 CFR 60-1 and 60-4.

(b) Each contracting agency shall maintain a listing of covered geographical areas that are subject to affirmative action requirements that specify goals for minorities and women in covered construction trades. Information concerning, and additions to, this listing will be provided to the principally affected contracting officers in accordance with agency procedures. Any contracting officer contemplating a construction project in excess of \$10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the OFCCP regional office, or as otherwise specified in agency regulations, before issuing the solicitation.

(c) Contracting officers shall give written notice to the OFCCP regional office within 10 working days of award

of a construction contract subject to these affirmative action requirements. The notification shall include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by the OFCCP regional office, the contracting officer shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities.

**22.805 Procedures.**

(a) *Preaward clearances for contracts and subcontracts of \$1 million or more (excluding construction).* (1) Except as provided in 22.805(a)(7) below, if the estimated amount of the contract, subcontract, or basic ordering agreement is expected to aggregate \$1 million or more or to increase the aggregate value of an existing contract to \$1 million or more, the contracting officer shall request the appropriate OFCCP regional office to determine whether a contractor is awardable before (i) award of any contract, including any indefinite delivery contract or letter contract, (ii) modification of an existing contract for new effort that would constitute a contract award, or the (iii) issuance of any basic ordering agreement.

(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of \$1 million or more shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed in writing.

(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward review to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home