

Registered
Federal Project

TUESDAY, AUGUST 16, 1977

PART IV



DEPARTMENT OF LABOR

Office of Federal Contract
Compliance Programs



WOMEN IN CONSTRUCTION

Proposed Goals and Timetables

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

[41 CFR 60-4]

CONSTRUCTION CONTRACTORS

Affirmative Action Requirements

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Proposed rule.

SUMMARY: Specific affirmative action standards for women in construction and the consolidation and standardization of requirements for construction contractors and subcontractors subject to Executive Order 11246 are proposed to promote equal opportunity for minorities and women.

DATE: Comments on this proposal will be received until September 30, 1977.

ADDRESSES: Send comments to the Director, Office of Federal Contract Compliance Programs, Room C3324, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210. Comments received will be available for inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT:

William Raymond, Associate Director, Construction Division, Office of Federal Contract Compliance Programs, Room N3402, Constitution Avenue NW., Washington, D.C., 20210, telephone 202-523-9447.

SUPPLEMENTARY INFORMATION: Executive Order 11246, as amended, prohibits covered Federal contractors and subcontractors from discriminating against any employee or applicant for employment based on race, color, religion, sex or national origin. In addition, contractors and subcontractors are required to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Section 201 of the Order provides that the Secretary of Labor shall adopt rules, regulations and orders as he deems necessary and appropriate to achieve the purposes of the Order. The proposed regulations would apply to Federal and federally assisted construction contractors and subcontractors.

Presently, all nonexempt Federal and federally assisted construction contractors are required to comply with the Equal Opportunity clause. See 41 CFR 60-1.4 (a) and (b). In addition, to implement the affirmative action obligations of Federal Contract Compliance Programs (OFCCP) has developed three different types of affirmative action programs. The programs include Imposed Plans, Hometown Plans, and Special Bid Conditions.

Imposed Plans for the most part cover major metropolitan areas where there is substantial Federal or federally assisted construction, and apply only to those projects which are in excess of \$500,000.

These areas include Philadelphia, Washington, D.C., San Francisco, St. Louis, Atlanta, Camden, New Jersey, and Chicago. Imposed Plans generally have been published in 41 CFR Chapter 60 but the Philadelphia Imposed Plan has not been codified in the Code of Federal Regulations.

Hometown Plans are tripartite agreements among the contractors and the unions in a local area and the local minority community. The three groups develop a plan for compliance with the Executive Order and present it to the OFCCP for approval. If the plan is approved it constitutes the contractors' obligations under the Executive Order and so long as they comply with the plan they also are in compliance with the Order. Presently, there are 42 Hometown Plans in operation.

Special Bid Conditions apply to contractors working on certain high impact projects which are being constructed in an area which is not covered by a Hometown or Imposed Plan.

These three types of affirmative action plans are not implemented through a regulatory scheme. Rather they are included in the solicitations which precede the award of contracts. One of the problems with this process is that substantial Federal or federally assisted construction is being conducted without benefit of specific affirmative action requirements. Also, contracting officers are confused by the different types of affirmative action plans and sometimes do not know which ones cover what areas or projects. In addition, some contracting agencies do not adhere to the different notices and formats developed by OFCCP. The imposed plans present a special problem because a number of contractors have failed to sign the certification which appears in the appendix of Imposed Plans. Failure to sign the certification frequently has been unrelated to the contractors' commitment to the affirmative action requirements. However, the certification has been held to be a material part of the bid and those bids which have not contained a signed certification have been rejected as non-responsive. A number of these rejected bids have been the low bids, and the result has been to increase the cost of construction to the Government.

Another deficiency in the present scheme is that no specific affirmative action standards are applicable to women in the construction industry. Although the word minority is defined to include minority women, that definition alone has had little or no impact with respect to women gaining access to the construction industry.

Under present procedures, compliance agencies develop Special Bid Conditions for high impact projects for which they have compliance responsibility. OFCCP approves the Bid conditions which have application only to the project for which they were approved. Accordingly, if a compliance agency fails to develop Special Bid Conditions for a project for which it has compliance responsibility the project is not covered by an affirmative action plan (i.e., if the project is not

in an area covered by a Hometown or an Imposed Plan). This would be true even though another project in the same labor market area may be covered by Special Bid Conditions. The Special Bid Conditions do apply, however, to a covered contractor's entire workforce working in the labor market area where the covered project is located although some employees may not work on the project.

To correct these deficiencies, the Department of Labor proposes to delete certain parts in 41 CFR, Chapter 60, to discontinue and terminate the use of certain practices and formats and to promulgate a new 41 CFR Part 60-4. This proposed Part 60-4, however, will not relieve contractors from the obligations it may have under State or local affirmative action or equal employment opportunity programs. Similarly, this proposed Part 60-4 will not relieve the contractor of local resident hiring requirements such as those in the Public Works Employment Act of 1977 and the Community Development Block Grant Program.

Specifically, Parts 60-5 through 60-8 and Parts 60-10 through 60-11 (the published Imposed Plans) are proposed to be deleted. Although Hometown Plans would be continued, signatories to those plans would be required to submit goals and timetables for women to the Director within 45 days from the effective date of the regulations. Or if the Hometown Plan is scheduled to expire prior to or shortly after the effective date of the regulations, signatories to the plan would be required to submit a new Plan which contains goals and timetables for women.

Imposed plans and Special Bid Conditions would be discontinued as a means of complying with the Executive Order. In addition, the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and federally assisted construction (41 FR 32482), commonly known as the Model Federal EEO Bid Conditions, would be discontinued.

The new Part 60-4 would apply to all Federal and federally assisted construction contractors and subcontractors holding Federal or federally assisted construction contracts or subcontracts in excess of \$10,000. Procedures also are established which all Federal contracting officers and applicants shall follow in awarding Federal or federally assisted construction contracts. The proposed regulations also would establish procedures administering agencies would follow in making grants which would result in the award of federally assisted construction contracts.

GOALS AND TIMETABLES

Proposed § 60-4.6 provides that the "Director, from time to time shall issue goals and timetables for minority and female participation" on Federal or federally assisted construction projects. The goals and timetables would cover specific geographical areas and will be based on appropriate workforce, demographic or other relevant data. Each nonexempt construction contract performed in an area in which such goals and timetables

have been issued shall be subject to the goals and timetables. However, a contractor participating in a Hometown Plan covering that same area would comply with the affirmative action requirements and goals and timetables of that plan in lieu of the goals and timetables established pursuant to § 60-4.6. (See proposed § 60-4.5.)

The goals and timetables are proposed to be published in the FEDERAL REGISTER as a notice to the public. Thereafter, all solicitations for Federal or federally assisted construction contracts to be performed in the covered area shall include the goals and timetables as part of the Notice required by proposed § 60-4.2.

As a general rule, the standard geographical unit will be the Standard Metropolitan Statistical Area (SMSA) and where there is no SMSA, a specific county or groups of counties. In some instances it may be necessary to establish goals for an area which may not always coincide with the SMSA, county or groups of counties.

It is not contemplated that goals and timetables will be issued for all areas immediately. It is proposed therefore that if goals are not issued immediately for areas presently covered by a Hometown Plan, Imposed Plan or Special Bid Condition, the goals and timetables contained in those plans or Bid Conditions will be inserted in the solicitations for offers on contracts to be performed in those areas until goals are issued pursuant to § 60-4.6.

NEW FORMATS ESTABLISHED

As indicated above, the proposed regulations create a new notice to be included in all solicitations for Federal and federally assisted construction contracts. (See proposed § 60-4.2.) In addition, a new clause is established which will be inserted in all nonexempt construction contracts (see proposed § 60-4.3(a)). The clause is in addition to the standard EEO clauses required by section 202 of the Executive Order and 41 CFR 60-1.4(a) and (b). The new clause contains specific affirmative action standards each construction contractor and subcontractor would be required to undertake as part of its contractual obligation.

These two proposed formats are designed to serve the same purposes which the Bid Conditions now serve. The contract specifications proposed in § 60-4.3(a) would, however, make the most of the present good faith steps of contract requirements. The proposed regulations, for example, require the contractor to implement the standards set forth in paragraph 7 of the contract specifications in § 60-4.3(a) as minimum affirmative action obligations.

This process is expected to eliminate confusion and to bring about greater uniformity in the construction contract compliance program. In addition, it is expected to establish a system by which a contractor's affirmative action efforts can be measured and demonstrated concretely.

AFFIRMATIVE ACTION STANDARDS FOR WOMEN IN CONSTRUCTION

The Department's experience with affirmative action has demonstrated that goals and timetables are the most concrete and effective system for implementing the affirmative action obligation in the Executive Order. Since the Executive Order was amended to include sex as a protected class, nonconstruction contractors have been required to take the same types of affirmative action, including goals and timetables, for women as they have for minorities. Construction contractors, however, have not been required to establish goals and timetables for women.

According to the 1970 Census of Population, women constituted 37 percent of the experienced civilian labor force, and 19 percent of all persons 18 years or older with vocational training in trades or crafts. At the same time, however, women constituted only 5 percent of the experienced labor force in craft and kindred occupations, and only 1.2 percent of the experienced construction labor force. The gross disparity between the percentage of women in the labor force and the percentage of women in the construction trades undoubtedly will continue until positive action is taken to ensure that construction jobs are made available to women. A system of goals and timetables for women in construction will, based on prior experience, help to rectify the near total exclusion of female representation in the construction trades.

The interest of women in the construction trades and their availability for employment has been clearly demonstrated. In October, 1975, for example, the OFCCP conducted fact-finding hearings in Baltimore, Maryland, specifically relating to equal employment opportunity in the construction industry. Representatives from EEOC, various women's organizations, and academic institutions testified that discrimination and not the lack of available and interested female applicants is keeping the percentage of women in the construction trades at such a low level. Typical situations described in that testimony involved women trained as construction workers who gained membership in a union local but who were not hired although they stood at the front of the hall or at the top of the referral list, and who were subsequently told at a job site that they would never be hired because they were women. In another typical case a woman gained employment in a craft in which her husband already worked; subsequently both were laid off and after numerous attempts to find work the man was informed that he would not find a job until his wife left the craft.

Further evidence of the interest of and discrimination against women in the construction industry was presented at recent hearings held in California and Washington on the amendments of their State laws to include goals and time-

tables for women in apprenticeships. The growing number of organizations across the country whose purpose is the placement of women in the construction trades illustrates the high degree of interest and the large number of women interested in pursuing careers in the construction trades.

The longstanding reputation of the trades for excluding women discourages many women from applying for construction jobs. Thus, although many women are inclined toward jobs in the trades, far fewer actually apply. A study by two Stanford University psychologists demonstrates that the number of women applying for jobs in the construction trades would substantially increase were there goals for women. In that study, two groups of female job seekers were given three detailed job descriptions and were asked to rate their interest in the jobs on a scale of 1 to 5, from "not interested" to "extremely interested." Two of the three jobs described were traditionally female jobs and one was a construction job. Half of the booklets contained the following statement under the title of the construction job: "Equal Opportunity for Women, Note: Federal Law Now Requires That Companies Train and Hire a Certain Percentage of Women for the Job of [carpenter] Each Year." The other half of the booklets contained no statement about affirmative action. In the affirmative action group 33 percent of the women indicated a strong interest in the construction job, twice the percentage indicating a strong interest in the other group. Seventy percent of the women in the affirmative action group expressed some degree of positive interest in construction jobs, one and one half as many as the other group. Clearly, there exists an available pool of women interested in applying for construction jobs.

The Maritime Administration which oversees enforcement of the Executive Order in the shipbuilding industry has provided the Department with some very useful documentation on both the availability of women for construction-related jobs and the positive impact of goals and timetables on the employment of women in those jobs. A number of the jobs in the shipbuilding industry are comparable to jobs in construction; the Maritime experience therefore is particularly useful. In early 1972 the Maritime Administration began requiring goals and timetables for women by shipbuilding contractors. Their experience was that as more women were employed, more women applied. Once women knew that they would be hired without regard to sex, they applied in large numbers. In at least one shipyard the applicant flow is now running at the rate of the normal workforce rate of women in that area. Unquestionably, the key reason for the increase of women in that industry is goals and timetables.

The results achieved in locations where goals for women have been set have been dramatic. In Seattle, Washington, since the imposition of goals for women in city construction, nearly every city construc-

tion project has had at least one woman working on the construction site. In California, the imposition of goals has resulted in the placement of 50 percent more women in construction jobs by Women in Apprenticeship, an outreach program operating in San Francisco designed to help place women in the skilled trades. Similarly, although there were only two women on Madison, Wis., construction jobs in 1975, there were, in 1976, after the imposition of goals, 15 women in those jobs.

The exclusion of women from well-paying jobs in the construction industry exists despite persistent efforts among women to break into construction work. Although women have made substantial gains in other nontraditional jobs, the above statistics demonstrate that the exclusion of women from construction work will not be corrected and that the objectives of the Executive Order will not be realized unless positive steps are taken to bring together the female worker and the construction job. Accordingly, it is necessary to establish specific standards of affirmative action for women in the construction industry under Executive Order 11246, as amended. Therefore, the specific affirmative action requirements incorporated into these proposed regulations include specific requirements for ensuring equal employment opportunities for women as well as for minorities.

This document was prepared under the direction and control of William Raymond, Associate Director, OFCCP.

Accordingly, the Department of Labor proposes to revamp the obligations of construction contractors and subcontractors by deleting 41 CFR Parts 60-5, 60-6, 60-7, 60-8, 60-10, and 60-11 and by amending 41 CFR Chapter 60 by adding a new Part 60-4 as set forth below.

Dated: August 8, 1977.

RAY MARSHALL,
Secretary of Labor.

DONALD ELISBURG,
Assistant Secretary, Employment
Standards Administration.

WELDON J. ROUGEAU,
Director, OFCCP.

PART 60-4—GENERAL OBLIGATIONS OF CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

Sec.	
60-4.1	Scope and application.
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AUTHORITY: The provisions of this Part 60-4 issued pursuant to sec. 201, E.O. 11246 (30 FR 12319) and E.O. 11375 (32 FR 14303).

§ 60-4.1 Scope and application.

This part applies to all contractors and subcontractors which hold Federal or federally assisted construction contracts or subcontracts in excess of \$10,000. The regulations in this part are applicable to a construction contractor's or

subcontractor's construction employees who are engaged in performing work at the construction site. This part also establishes procedures which all Federal contracting officers and all applicants, as applicable, shall follow in soliciting for and awarding Federal or federally assisted construction contracts in excess of \$10,000. Procedures also are established which administering agencies shall follow in making any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of Executive Order 11246, as amended.

§ 60-4.2 Solicitations.

All Federal contracting officers and all applicants shall include the notice set forth below and the specifications set forth in § 60-4.3 of this part in all solicitations for offers involving Federal and federally assisted construction projects, as applicable, designated by the Director pursuant to § 60-4.6 of this part and in all solicitations for offers on Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part. Administering agencies shall require the inclusion of the notice set forth below and the specifications set forth in § 60-4.3 of this part as a condition of any grant, contract, loan, insurance or guarantee in excess of \$10,000 involving federally assisted construction on a project or in a geographical area designated by the Director pursuant to § 60-4.6 of this part.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for each construction trade, are as follows:

Construction trade(s)	Goals for minority participation	Goals for female (minority and nonminority participation)
List individual trades.	Insert ranges for each year.	Insert goals for each year.

These goals shall be used as a measure of the Contractor's efforts to fulfill its specific affirmative action obligations set forth in the specifications for this contract. With respect to women, a single goal without ranges is established and compliance with the goal will be measured against the total work hours performed during each 12-month period.

3. Any successful offeror shall submit the following information to the Contracting Officer or a duly authorized representative within seven (7) calendar days of award of a contract containing these specifications. The Contracting Officer shall provide all such information to the appropriate Executive Order 11246 Compliance Agency in a timely fashion.

(a) A list of the construction trades which will be used, either directly or through subcontractors at any tier, in the performance of the work covered by this solicitation; and

(b) A list of all current construction contracts to which it is a party in any capacity in the covered area or on the project.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" or "project" is (insert description).

§ 60-4.3 Equal opportunity clauses.

(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in all nonexempt Federal contracts and subcontracts including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers and all applicants, as applicable, shall include the specifications set forth below in all Federal and federally assisted construction contracts for projects designated by the Director pursuant to § 60-4.6 of this part and in all Federal or federally assisted construction contracts to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

a. The "covered area" or "project" means the geographical area or project described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Compliance Agency" means the agency designated by the Director on a contractor, geographical, industry or other basis to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of Executive Order 11246 as the Director may determine to be appropriate.

d. "Minority" includes:

(i) *Black* (All persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) *Hispanic* (All persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture of origin, regardless of race);

(iii) *Asian and Pacific Islander* (All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) *American Indian or Alaskan Native* (All persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall (a) notify the responsible compliance agency and (b) physically include in each such subcontract exceeding \$10,000 the provisions of these specifications and the Notice setting forth the applicable goals for minority and female participation set forth in the solicitation from which this contract resulted.

3. If the Contractor is participating in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations shall be in accordance with that Plan.

4. The Contractor shall implement the specific affirmative action standards provided in 7 (a) through (o) of these specifications. The goals set forth in the solicitations from which this contract resulted shall be used to measure the Contractor's efforts to meet the affirmative action standards. The goals are expressed as percentages of the total hours of employment and training of minority and female employees the Contractor should achieve in each construction trade on all the Contractor's construction work in the covered area. The percentage of work hours for minority and female employment and training shall be substantially uniform for each craft. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the nonreferral of minorities and women by the union with whom the Contractor has a collective bargaining agreement shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The compliance of the Contractor with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall fully document these efforts and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to the construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain records regarding the organizations' response.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant or minority or female referral from a craft union, recruitment source and community organization to the Contractor and make note of what action was taken with respect to each such referred individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, not employed by the Contractor, this shall be documented in the

file with the reasons, therefore, along with whatever additional actions the Contractor may have undertaken.

d. Provide immediate written notification to the responsible Compliance Agency and OFCCP when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the Contractor, or the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs, and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7(b) above.

f. Disseminate the Contractor's EEO policy by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; by posting the company's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed; and by providing notice of the policy to unions and training programs for dissemination.

g. Reviewing the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions at least every three months, including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, Foremen, etc., prior to the initiation of construction work at any job site. Minutes shall be recorded identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media; and by providing written notification to and documenting discussions regarding the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, women's and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Three months prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth—both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct an inventory and evaluation of all minority and female personnel for promotional opportunities on a quarterly basis and encourage these employees to seek or to

prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities must be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. To the degree that the efforts of a contractor association, joint contractor-union or contractor-outreach program, or other similar group, of which the Contractor is a member and participant, impacts favorably on the Contractor's obligations under paragraph 7 of these specifications, the compliance agency shall consider such efforts in determining the contractor's compliance with the Order, the regulations and these specifications. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women is acceptable unless a particular group is employed in a substantially disparate manner in which case separate goals shall be established for such group. Such separate goals would be required, for example, if a specific minority group of women were under utilized even though the Contractor had achieved its standards for women generally.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. If any work under this contract takes place in a period later than the latest period for which goals are provided, the highest goal for that latest period shall apply.

12. The Contractor shall not enter into any subcontract with any person or firm debarred from or known not to be a responsible bidder for Government contracts pursuant to Executive Order 11246, except as provided by regulations in 41 CFR Chapter 60. The Contractor shall have the responsibility to determine whether or not such person or firm has been declared not to be a responsible bidder.

13. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the agency or the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

14. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action, at least as extensive as those standards prescribed in paragraph No. 7 of these specifications, so as to achieve maximum results from its efforts

to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the compliance agency shall proceed in accordance with 41 CFR 60-4-8.

15. The Contractor shall designate a responsible official to (a) monitor all employment related activity to ensure that the company EEO policy is being carried out and (b) to submit reports relating to the provisions hereof as may be required by the Government and (c) to keep records. Records shall at least include for each employee: name, construction trade name, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, and locations at which work was performed. (Clarification of means of displaying these data requirements may be obtained from the responsible Compliance Agency.)

16. Nothing herein provided shall be construed as a limitation upon the application of State or local affirmative action or equal opportunity requirements which establish higher standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program), for work performed pursuant to this contract.

(b) The notice set forth in § 60-4.2 of this part and the specification set forth in § 60-4.3 of this part replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form Shall not be used after the regulations in this part become effective.

§ 60-4.4 Affirmative action requirements.

(a) To implement the affirmative action requirement of Executive Order 11246 in the construction industry, the Office of Federal Contract Compliance Programs previously has approved affirmative action programs commonly referred to as "Hometown Plans," has promulgated affirmative action plans referred to as "Imposed Plans" and has approved "Special Bid Conditions" for high impact projects constructed in areas not covered by a Hometown or an Imposed Plan. All solicitations for construction contracts made after the effective date of the regulations in this part shall include the notice specified in § 60-4.2 of this part and the specifications in § 60-4.3 of this part in lieu of the Hometown and Imposed Plans (including the Revised Philadelphia Plan (see 41 FR 1578)) and Special Bid Conditions. Until the Director has issued an

order pursuant to § 60-4.6 of this part establishing goals and timetables for minorities in the appropriate geographical areas or for a project covered by Special Bid Conditions, the goals and timetables for minorities to be inserted in the Notice required by 41 CFR 60-4.2 shall be the goals and timetables contained in the Hometown Plan, Imposed Plan or Special Bid Conditions presently covering the respective geographical area or project involved. Except as provided in paragraph (b) of this § 60-4.4, and until further notice, the goals and timetables for women to be inserted in the Notice required by 41 CFR 60-4.2 shall be those goals published this same date in the FEDERAL REGISTER.

(b) Signatories to a Hometown Plan shall have 45 days from the effective date of the regulations in this part to submit goals and timetables for women to the Director for approval. If the Hometown Plan is scheduled to expire prior to or shortly after the expiration of the 45-day period, the signatories should submit for approval a new plan which contains goals and timetables for women. Failure of the signatories to submit goals for women or a new plan, as appropriate, shall result in an automatic termination of the Office of Federal Contract Compliance Program's approval of the Hometown Plan. At any time the Office of Federal Contract Compliance Programs terminates or withdraws its approval of a Hometown Plan, the Contractors signatory to the Plan shall be covered automatically by the specifications set forth in § 60-4.3 of this part and by the goals and timetables established for that geographical area or project pursuant to § 60-4.6 of this part.

§ 60-4.5 Hometown plans.

A contractor participating, either individually or through an association, in a Hometown Plan shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the Hometown Plan. If a contractor is not participating in a Hometown Plan it shall comply with the specifications set forth in § 60-4.3 of this part and with the goals and timetables for the appropriate area or project as listed in the Notice required by 41 CFR 60-4.2. For the purposes of this part 60-4 a contractor is not participating in a Hometown Plan if it:

(a) Ceases to be signatory to a Hometown Plan;

(b) Is signatory to a Hometown Plan but is not party to a collective bargaining agreement;

(c) Is signatory to a Hometown Plan but is party to a collective bargaining agreement with labor organizations

which are not or cease to be signatories to the same Hometown Plan;

(d) Is signatory to a Hometown Plan and is party to collective bargaining agreements with labor organizations but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan;

(e) Is participating in a Hometown Plan which is no longer acceptable to the Office of Federal Contract Compliance Programs;

(f) Is signatory to a Hometown Plan but is party to collective bargaining agreements with labor organizations which together have failed to make a good faith effort to comply with their obligations under the Hometown Plan.

§ 60-4.6 Goals and timetables.

The Director, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data and which shall cover specific construction projects or specific geographical areas. The goals shall be applicable to a covered contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables. Such goals and timetables shall be published as notices in the Federal Register, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2.

§ 60-4.7 Effect on other regulations.

The regulations in this part are in addition to the regulations contained in this chapter which apply to construction contractors and subcontractors generally. See particularly 41 CFR 60-1.7, 60-1.8, 60-1.26, 60-1.29, 60-1.30, 60-1.32, 60-1.41, 60-1.42, 60-1.43 and 41 CFR Part 60-3, Part 60-20, Part 60-30, Part 60-40 and Part 60-50.

§ 60-4.8 Show cause notice.

If an investigation or compliance review reveals that a construction contractor or subcontractor has violated the Executive Order, any contract clause, specifications or the regulations in this chapter, the compliance agency shall issue to the contractor or subcontractor a notice to show cause which shall contain the items specified in (1)-(iv) of 41 CFR 60-2.2(c)(1). If the contractor does not show good cause within 30 days, it shall take corrective action. If the contractor does neither, the compliance agency shall follow the procedure in subparagraph (2) of 41 CFR 60-2.2(c).

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DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

WOMEN IN CONSTRUCTION UNDER EXECUTIVE ORDER 11246, AS AMENDED
Proposed Goals and Timetables Pursuant to Proposed Rule

Regulations (41 CFR Part 60-4) proposed by the Department of Labor in the FEDERAL REGISTER today would authorize the Director of the Office of Federal Contract Compliance Programs (OFCCP) to issue goals and timetables for minority and female participation on Federal or federally assisted construction projects. The goals would be based on workforce, demographic or other relevant data of Standard Metropolitan Statistical Areas, counties, or groups of counties, or some other geographical area in which the construction is being performed.

Under the proposed regulations, the goals and timetables would be published in the FEDERAL REGISTER in a notice of general information to the public but would not be published for public comment. However, because the OFCCP previously had not required goals for women in the construction industry under the Executive Order program, and because of the general interest in this subject, public comment is invited on this proposed notice until September 30, 1977.

A review of statistics relating to the construction industry shows a virtual exclusion of women from employment in the construction industry. Continued reliance by contractors on established hiring practices may reasonably be expected to result in continued exclusion of women. Accordingly, to implement the provisions of Executive Order 11246, as amended by Executive Order 11375, and to achieve a program of equal employment opportunity in the construction industry for women, it is proposed to develop goals and timetables for female participation in the construction industry. OFCCP has examined and considered a number of approaches for developing affirmative action goals for women. Some such methods include the female workforce, different proportions of the female workforce, and female representation in apprenticeship positions. Thought also has been given to establishing a pilot program for the purpose of developing a data base on which female goals could be developed. Each of these methods, however, suffers from certain deficiencies but basically they would establish initial goals either so high or so low that the result would be meaningless. The proposal adopted here considers both the relevant characteristics of the construction industry as they relate to developing goals and timetables for women, and the need to establish an effective implementation of the Executive Order.

Under this proposal, goals for women in construction would be established for a period of three years. The goals would be 3.1 percent, 5.0 percent, and 6.9 percent for the first, second and third years, respectively. These goals were developed using two sets of statistics. First, according to the 1970 census, the female workforce in the construction industry is 1.2 percent. Also, according to the 1970 census, women constitute 5 percent of all craft and kindred workers. This latter group of workers are in occupations which are similar to construction occupations, and possess educational levels, skills and abilities comparable to those possessed by employees working in the construction industry. It is reasonable to expect therefore that within a two-year period the construction industry, with active recruitment, could achieve a 5 percent female participation goal. This same effort would raise the goal to 6.9 percent in the third year. The statistics on which these goals are based, of course, are national in scope and are not presently available in usable form on an SMSA or county basis. It is proposed therefore that a single goal for female participation in the construction industry be adopted. Contractors are advised however, that where higher State, local or other jurisdictional goals for women are in effect, compliance with the goals and timetables proposed herein would not relieve the contractor of its obligation to comply with the higher local goal. Similarly, the proposal does not affect or limit in any way the application of requirements providing for the employment of local residents such as those contained in the Community Development Block Grant and the Public Works Employment Act grant programs.

The goals would be applied in all geographical areas and on all projects which have goals and timetables for minorities. Also, under the proposed regulation governing construction contractors under Executive Order 11246 published today in the FEDERAL REGISTER, Hometown Plans would be allowed to submit goals for women to the Director for approval. It is proposed that no goals lower than the ones proposed herein would be approved. If the Hometown Plans do not submit female affirmative action goals within the specified period and receive approval, it is proposed that the Department's approval of the plan will be automatically withdrawn and the goals proposed herein would be applicable in those Hometown areas.

These initial goals are intended to provide immediate equal employment opportunity for women in the industry until more meaningful goals based on appropriate female workforce figures can be developed and implemented. Toward this latter end and in order to develop goals and timetables for women in construction on a more permanent basis, a working committee is proposed to be established to make recommendations to the

Director, OFCCP, on the total involvement of women in the construction industry. The exact structure and composition of the committee has not been determined, and comments specifically are invited on this issue. It is contemplated, however, that the committee would work closely with outreach and community groups and would operate for a period of at least five years. It also would receive input from the general public and examine the progress of women in the construction industry. In addition, at least six months before the expiration of the third year goal proposed herein, the committee would recommend meaningful female goals to the Director of the OFCCP to cover, at the minimum, an additional three-year period. The Director would, pursuant to 41 CFR 60-46, proposed in the FEDERAL REGISTER today, issue meaningful goals and timetables based on the committee's recommendations or on other appropriate data.

It is intended that the final Notice which would establish the goals would list those geographical areas and projects for which goals for minorities and women shall be applicable. These areas would include those currently covered by Imposed Plans and those projects covered by Special Bid Conditions. And as indicated in the regulations proposed in the FEDERAL REGISTER today, the goals and timetables contained in those plans and Bid Conditions would constitute the initial goals and timetables for minorities.

Accordingly, it is proposed to establish goals and timetables for women in the construction industry for use on projects and in geographical areas as designated by the Director, Office of Federal Contract Compliance Programs, as follows:

Time frame:	Goals (in percent)
1st year.....	3.1
2d year.....	5.0
3d year.....	6.9

These goals would apply to a covered contractor's or subcontractor's entire workforce which is working on construction projects in an area covered by the goal. Compliance with the goal will be measured against the total work hours performed during each 12-month period. The goal would apply to the contractor's entire workforce in that area notwithstanding that not all employees would be working on the Federal or federally assisted construction project.

Send comments to Weldon J. Rougeau, Director, Office of Federal Contract Compliance Programs, Room C-3324, 200 Constitution Avenue, N.W., Washington, D.C., 20210. Comments received will be available for inspection during regular working hours at the above address.

Dated: August 8, 1977.

WELDON J. ROUGEAU,
Director, OFCCP.

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