§ 36.4392 38 CFR Ch. I (7–1–03 Edition)

**§ 36.4392 Certification requirements.**

In any case in which §§ 36.4390 through 36.4393 are applicable, as set forth in § 36.4391, no action will be taken by the Department of Veterans Affairs on any request for appraisal re-lating to proposed construction, site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon, or for a direct loan fund reservation commit-ment unless the builder, sponsor or de-veloper has furnished the Department of Veterans Affairs a signed certifi-cation in form as follows:

To induce the Department of Veterans Af-fairs to act on any request submitted by or on behalf of the undersigned for site approval of land to be improved for the construction of housing thereon to be financed with loans guaranteed, insured or made by the Depart-ment of Veterans Affairs, or for establish-ment by the Department of Veterans Affairs of reasonable value relating to proposed con-struction or for direct loan fund reservation commitments, the undersigned hereby agrees that it will incorporate or cause to be incorporated into any contract for construc-tion work or modification thereof, as defined in the rules and regulations of the Secretary of Labor relating to the land or housing in-cluded in its request to the Department of Veterans Affairs the following equal oppor-tunity clause:   
 During the performance of this contract the contractor agrees as follows:   
 (1) The contractor will not discriminate against any employee or applicant for em-ployment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treat-ed during employment without regard to their race, color, religion, sex or national or-igin. Such action shall include, but not be limited to the following: Employment, up-grading, demotion or transfer; recruitment or recruitment advertising; layoff or termi-nation; rates of pay or other forms of com-pensation; and selection for training, includ-ing apprenticeship. The contractor agrees to post in conspicuous places, available to em-ployees and applicants for employment, no-tices to be provided setting forth the provi-sions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consider-ation for employment without regard to race, color, religion, sex or national origin. (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agree-

ment or other contract or understanding, a notice to be provided advising the said labor union or workers’ representative of the con-tractor’s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in con-spicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of Sep-tember 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all informa-tion and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to as-certain compliance with such rules, regula-tions and orders.

(6) In the event of the contractor’s non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this con-tract may be canceled, terminated or sus-pended in whole or in part and the con-tractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies in-voked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as other-wise provided by law.

(7) The contractor will include the provi-sions of paragraphs (1) through (7) in every subcontract or purchase order unless ex-empted by rules, regulations or orders of the Secretary of Labor issued pursuant to sec-tion 204 of Executive Order 11246 of Sep-tember 24, 1965, so that such provisions will be binding upon each subcontractor or ven-dor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may di-rect as a means of enforcing such provisions, including sanctions for noncompliance: *Pro-vided, however,* That in the event a con-tractor becomes involved in, or is threatened with, litigation with a subcontractor or ven-dor as a result of such direction by the agen-cy, the contractor may request the United States to enter into such litigation to pro-tect the interests of the United States.

Except in special cases and in subcontracts for the performance of construction work at the site of construction, the clause is not re-quired to be inserted in subcontracts below the second tier. Subcontracts may incor-porate by reference the equal opportunity clause.

686

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| VerDate jul<14>2003 | 01:39 Jul 29, 2003 | Jkt 200137 | PO 00000 | Frm 00686 | Fmt 8010 | Sfmt 8010 | Y:\SGML\200137T.XXX | 200137T |

Department of Veterans Affairs § 36.4393

The undersigned further agrees that it will be bound by the above equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government.

The undersigned agrees that it will cooper-ate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontrac-tors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may re-quire for the supervision of such compliance, and that it will otherwise assist the admin-istering agency in the discharge of the agen-cy’s primary responsibility for securing com-pliance. The undersigned further agrees that it will refrain from entering into any con-tract or contract modification subject to Ex-ecutive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and will carry out such sanctions and penalties for violation of the equal op-portunity clause as may be imposed upon the contractors and subcontractors by the ad-ministering agency or the Secretary of Labor pursuant to Part II, Subpart D of Ex-ecutive Order 11246.

In addition, the undersigned agrees that if it fails or refuses to comply with these un-dertakings such failure or refusal shall be a proper basis for cancellation by the Depart-ment of Veterans Affairs of any outstanding master certificates of reasonable value or in-dividual certificates of reasonable value re-lating to proposed construction, except in re-spect to cases in which an eligible veteran has contracted to purchase a property in-cluded on such certificates, and for the rejec-tion of future requests submitted by the un-dersigned or on his or her behalf for site ap-proval, appraisal services, and direct loan fund reservation commitments until satis-factory assurance of future compliance has been received from the undersigned, and for referral of the case to the Department of Justice for appropriate legal proceedings.

[31 FR 8745, June 24, 1966, as amended at 40 FR 34596, Aug. 18, 1975]

**§ 36.4393 Complaint and hearing pro-** **cedure.**

(a) Upon receipt of a written com-plaint signed by the complainant to the effect that any person, firm or enti-ty has violated the undertakings re-ferred to in § 36.4392, such person, firm or other entity shall be invited to dis-cuss the matter in an informal hearing

with the Director of the Department of Veterans Affairs regional office or cen-ter.

(b) If the existence of a violation is denied by the person, firm or other en-tity against which a complaint has been made, the Director or designee shall conduct such inquiries and hear-ings as may be deemed appropriate for the purpose of ascertaining the facts. (c) If it is found that the person, firm or other entity against which a com-plaint has been made has not violated the undertakings referred to in § 36.4392, the parties shall be so noti-fied.

(d) If it is found that there has been a violation of the undertakings re-ferred to in § 36.4392, the person, firm or other entity in violation shall be re-quested to attend a conference for the purpose of discussing the matter. Fail-ure or refusal to attend such a con-ference shall be proper basis for the ap-plication of sanctions.

(e) The conference arranged for dis-cussing a violation shall be conducted in an informal manner and shall have as its primary objective the elimi-nation of the violation. If the violation is eliminated and satisfactory assur-ances are received that the person, firm or other entity in violation will comply with the undertakings pursu-ant to § 36.4392 in the future, the parties concerned shall be so notified.

(f) Failure or refusal to comply and give satisfactory assurances of future compliance with the equal employment opportunity requirements shall be proper basis for applying sanctions. The sanctions shall be applied in ac-cordance with the provisions of Execu-tive Order 11246 as amended and the regulations of the Secretary of Labor.

(g) Upon written application, a com-plainant or a person, firm or other en-tity against which a complaint has been filed may apply to the Under Sec-retary for Benefits for a review of the action taken by a Director. Upon re-ceiving such application, the Under Secretary for Benefits may designate a representative or representatives to conduct an informal hearing and to make a report of findings. The Under Secretary for Benefits may, after a re-view of such report, modify or reverse an action taken by a Director.

687

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| VerDate jul<14>2003 | 01:39 Jul 29, 2003 | Jkt 200137 | PO 00000 | Frm 00687 | Fmt 8010 | Sfmt 8010 | Y:\SGML\200137T.XXX | 200137T |