Equal Employment Opportunity

Responsibilities of Federal Procurement Officers: An Update

Presented by the Office of Federal Contract Compliance Programs (OFCCP)

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Presenters

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Agenda

- Introduction to OFCCP
- Relationship to the Federal Acquisition Regulations (FAR)
- Responsibilities of Federal Contracting and Procurement Officers
What is OFCCP?

- A federal civil rights agency enforcing laws prohibiting covered federal contractors from discriminating in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran
OFCCP’s Six Regions

Pacific

Midwest

Northeast

Mid-Atlantic

Southeast
What are the Laws OFCCP Enforces?

- Executive Order 11246, as amended
- Section 503 of the Rehabilitation Act of 1973, as amended
- Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA) of 1974, as amended
Who is Covered?

Executive Order 11246

- Contracts and subcontracts in excess of $10,000
- Non-construction employers with contracts of $50,000 or more and 50 or more employees must develop and maintain a written Affirmative Action Program
Who is Covered?

Section 503

- Contracts and subcontracts in excess of $15,000
- Contractors with contracts of $50,000 or more and 50 or more employees must develop and maintain a written Affirmative Action Program
Who is Covered?

VEVRAA

- If the contract is $100,000 or more, contractors are subject to VEVRAA.
- If the contractor has 50 or more employees, they are required to develop and maintain an Affirmative Action Program.
What Does OFCCP Do?

- Conducts compliance evaluations
- Investigates discrimination complaints
What Does OFCCP Do?

- Provides technical assistance
- Engages in outreach and public education
Federal Acquisition Regulations (FAR)

- Equal Employment Opportunity (EEO) requirements are incorporated into the FAR
- Set of regulations governing all acquisitions and contracting procedures in the federal government

https://acquisition.gov/far/index.html
Federal Acquisition Regulations (FAR)

- FAR 22.8 Equal Employment Opportunity
- FAR 22.804 Affirmative Action Programs
  - Non-construction
  - Construction
- FAR 22.805 Procedures
Federal Acquisition Regulations (FAR)

- Subpart 22.13 – Equal Opportunity for Veterans – prescribes policies and procedures for VEVRAA
- Subpart 22.14 – Employment of workers with disabilities – prescribes policies and procedures for implementing Section 503
Responsibilities of Federal Procurement Officers

- Solicitation
- Pre-Award
- Post-Award
Solicitation

- Include Specific Provisions in Solicitations
  - Attestation of Previous Contract Participation
  - Attestation of Filing Previous Compliance Reports
    - EEO-1 Report
    - 4212 Report (formerly VETS 100/100A)
  - Notice of Requirement for Affirmative Action Obligations
  - Notice of Pre-award On-site Evaluation

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Prospective Bidders Requirements

- Certify Compliance
  - Developed an Affirmative Action Program
  - Filed an EEO-1 Report
  - Filed a VETS-100 Report
- Participated in any previous contract subject to the Equal Opportunity Clause
Previous Contracts and Compliance Reports (Feb 1999)

(a) It √ has It □ has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;

(b) It √ has It □ has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

The offeror represents that-

(i) It √ has developed and has on file, It □ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It □ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.
Question:

What resources are available to contracting officers if a bidder/offoror has questions about the equal employment opportunity and affirmative action obligations?
Answer:

- OFCCP’s Web site
- OFCCP’s Help Desk
- OFCCP’s Field Offices
Responsibilities of Federal Procurement Officers

- Solicitation
- Pre-Award
- Post-Award
Pre-Award

Ensure contractor or subcontractor is eligible
Contracts of $10 million or more - Request EEO clearance of contractors
Exception to Pre-Award Clearances

- Listed on OFCCP’s National Pre-Award Registry
  - Within 24 months of an OFCCP Notice of Compliance
  - Contracting Officer Documents the Registry Review
National Pre-Award Registry

Search Registry

Overview

The National Pre-Award Registry provides information concerning Federal Contractors, that have been reviewed by the Office of Federal Contract Compliance Programs (OFCCP). These Federal Contractors have been found to be "In Compliance" with the Equal Employment Opportunity (EEO) regulations that the OFCCP is mandated to enforce. The information contained in this Registry is for a past two-year period from today. The Registry is updated nightly and facilities reviewed more than 2 years ago are removed as new ones are added.

This system provides information only for the specific Contractor Facility(s) requested. It does not provide information on the Parent Organization or other facility locations that have not been reviewed within the past two years. If a given facility is found to be "In Compliance", this does not imply that other sibling facilities under the same parent organization received the same favorable finding.

This Registry contains information on Federal Contractors that have been reviewed by and found to be "In Compliance" by OFCCP. If the Contractor Facility you are looking for is not found in this Registry, contact the appropriate OFCCP Pre-Award Clearance Officer in your Regional area. If you do not know whom to contact, call the OFCCP National Office, in Washington D. C., at area code (202) 693-0101.

This Registry provides two primary functions:

- A search Engine that will enable you to search the Registry (in ascending or descending order) using the Name of the Contractor Facility; and
- The capability to download the entire Registry (about 1 Mb) to your location. Once downloaded, this information can then be imported into any word processor, spreadsheet, or database software package.

If you require further assistance in using this Registry, Help is available and can provide additional explanation in constructing a query and tips for better results.
Question:

What about “option year” contracts? If the initial award is less than $10 million but the award’s option years could potentially meet the $10 million threshold, is pre-award clearance required?
Answer:

Yes – consider the total value of the contract including any options to determine the $10 million threshold.
Requesting Pre-Award Clearance

- Submit request at least 30 days before
- Regional Office for the Place of Performance
- Information Needed
  - Contact Information for the Proposed Contractor
  - Contact Information for Proposed Subcontractors
  - Anticipated Date of Award
  - Place of Performance
  - Estimated Dollar Amount
Question:

Which regional office should I send the pre-award clearance request to?
Answer:

It depends...
Responsibilities of Federal Procurement Officers

- Solicitation
- Pre-Award
- Post-Award
Post-Award

- Incorporating the Equal Opportunity Clauses into the Contract
- Providing the EEO is the Law Poster
- Referring Inquiries and Complaints to OFCCP
- Notifying OFCCP of Construction Contract Awards
Equal Opportunity Clauses

- Incorporate the Equal Opportunity (EO) Clauses in all nonexempt solicitations and contracts
- The EO Clauses:
  - Prohibits Discrimination
  - Requires Affirmative Action
  - Requires Notification to Employees and Subcontractors
  - Provides Access to OFCCP

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EO Clause (Example)

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.
EEO is the Law Poster

- Provide Notices for Contractors
Referring Complaints

Referral of inquiries and complaints regarding status or violation of OFCCP laws to OFCCP regional office.
Referring Inquiries

- Inquiries from labor unions regarding the revision of a collective bargaining agreement in order to comply with any of OFCCP’s Laws
Notification of Construction Awards

Contracting officers are required to give written notice to OFCCP within 10 working days of an award of a construction contract or subcontract in excess of $10,000
Content of Notification

- This notification of a construction award should include:
  - Name, address, telephone number of contractor
  - Employer Identification Number
  - Dollar amount of contract; Contract number
  - Estimating starting and completion dates
  - Geographical area(s) in which work will be performed
Key Takeaways

- Significant Role in Ensuring EEO and Affirmative Action in Federal Contracting

- Incorporate Equal Opportunity clauses from the three regulations in solicitations

- Contracting officers must check the pre-award registry and SAM for contracts that meet the threshold

- OFCCP as a Resource
Contact Information

- **Website:** [http://www.dol.gov/ofccp](http://www.dol.gov/ofccp)

- **Help Desk:**
  (800) 397-6251