

Compliance Assistance for Construction Contractors



OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
UNITED STATES DEPARTMENT OF LABOR

Presenters

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Agenda

- Overview of OFCCP
- Federal Construction Jurisdiction
- Geographic Locations and Participation Goals
- Affirmative Action Obligations
- 16 Affirmative Action Steps
- Federal Acquisition Regulations (FAR)
- Recordkeeping Requirements
- Preparing for a Compliance Evaluation
- Written AAPs for Section 503 and VEVRAA
- Additional Requirements
- Questions and Answers

Overview of OFCCP

- OFCCP's Mission
- Laws Enforced by OFCCP
 - Executive Order 11246, as amended
 - Includes pay transparency
- Section 503 of the Rehabilitation Act of 1973, as amended
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended

Federal Construction Definitions

- Construction Work Defined
- Types of Federal Construction Contractors
 - Prime Contractor
 - Subcontractor
- Types of Federal Construction Contracts
 - Direct Federal Contract
 - Federally Assisted Contract

Geographic Locations and Participation Goals

- Geographic Locations
 - Standard Metropolitan Statistical Area or SMSA
 - Non-Standard Metropolitan Statistical Area or Non-SMSA
- Participation Goals for Women and Minorities
 - National Participation Goal for Women: 6.9%
 - Participation Goals for Minorities: Depends on the geographic location where construction work is performed.

Affirmative Action Obligations - Required Postings, Listings, and Notices

The following is a list of the required postings, listings, and notices:

- EEO is the Law and the EEO is the Law Supplement
- Pay Transparency Nondiscrimination Provision
- Notice to Unions
- Job Advertisement Taglines
- Listing with Employment Service Delivery System (ESDS)
- Notification of Construction Contract Award

Federal Acquisition Regulations

The following are the three types of formal notices in bids and contracting documents:

- Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)
- Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)
- Equal Opportunity Clauses (Executive Order 11246, Section 503, and VEVRAA)

16 Affirmative Action Steps

- Recruitment Practices
- Training
- EEO Policy Implementation
- Personnel Operations
- Contracting Activity

Recruitment Practices

- Establish and maintain a current list of recruitment sources
- Provide written notification to community organizations, schools, and training organizations (i.e. track responses)
- Maintain a record of the organization's responses (i.e. track applicants)
- Encourage employees to recruit women and minorities
- Notify OFCCP if union referral process impedes EEO

Training

- Provide on the Job Training
- Develop Opportunities
- Participate in Training Programs

EEO Policy Implementation

- Notice to unions and training programs
- Policy manual and collective bargaining agreement
- Company newspaper, annual report, etc.
- Review of the policy with employees at least once a year
- Post on bulletin boards

Personnel Operations

- Evaluate Promotion Opportunities for Women and Minorities
- Ensure and maintain a working environment free harassment, intimidation, and coercion
- Conform to the Uniform Guidelines on Employee Selection Procedures (UGESP)
- Monitor Personnel Practices for Unintended Discriminatory Effects
- Ensure Non-segregated Facilities

Contracting Activity

- Document Solicitations from Minority and Female Contractors

Examples:

- Contractors should use small disadvantaged businesses or disadvantaged business enterprises as subcontractors and should document their efforts.
- Contractors should make solicitations to small disadvantaged businesses and disadvantaged business enterprises on the same bases as solicitations to larger contractors.
- Contractors should retain retrievable electronic records of all solicitations of offers for subcontracts from construction contractors and suppliers that are small disadvantaged businesses or disadvantaged business enterprises, including circulations of solicitations to minority and women's contractor associations.

Mandatory Recordkeeping

- What Records to Keep
- Invitation to Self-Identify
 - Executive Order 11246
 - Section 503
 - VEVRAA

Mandatory Recordkeeping Cont'd

- Internet Applicants and Traditional Applicants
- Format for Keeping Records
- How Long to Keep Records

Preparing for a Compliance Evaluations

- OFCCP conducts compliance evaluations to determine whether:
 - A contractor's affirmative action efforts comply with regulatory requirements.
 - A contractor can demonstrate good faith efforts in meeting its affirmative action requirements.
 - A contractor's employment policies and practices are free of discrimination.
 - A contractor can provide reasonable accommodations to qualified individuals with disabilities where doing so would not impose an undue hardship on the contractor.
 - A contractor needs technical assistance to understand the evaluation process or to ensure that its affirmative action efforts are complete and effective.
 - How to best remedy any discriminatory practices or other regulatory violations.

What is a Compliance Evaluation?

- A compliance review is a comprehensive analysis and evaluation of the hiring and employment practices of the contractor. This includes maintaining required written AAPs and the results of the affirmative action efforts undertaken by the contractor.
- An off-site review of records consists of OFCCP analyzing and evaluating all or part of the written AAPs the contractor is required to maintain, supporting documentation, and other documents relevant to a determination of whether the contractor has complied with the requirements of the regulations implementing the Executive Order, Section 503, and VEVRAA.
- A compliance check is conducted to determine whether the contractor has maintained records consistent with the recordkeeping requirements found in 41 CFR 60-1.12, 60-741.80 and 60-300.80, as applicable.
- A focused review is restricted to one or more components of the contractor's organization, or one or more aspects of the contractor's employment practices.

Section 503 Requirements

- Prohibits Discrimination on the Basis of Disability
- Requires Reasonable Accommodations
- Requires Affirmative Action
- Must include the EO Clause in covered subcontracts and purchase orders.

Section 503 Equal Opportunity Clause

Include the EO Clause in covered subcontracts and purchase orders.

41 CFR 60-741.5 requires contractors to:

- Provide notice to employees and applicants
- Include tag line in job advertisements

Section 503 Outreach and Recruitment

41 CFR 60-741.44(f) requires outreach and recruitment

- Requires evaluation of the effectiveness of each activity and the totality of its efforts.
- If totality of efforts not effective, must identify and implement alternative efforts.
- Retain these records for 3 years.

Section 503 Data Collection Analysis

41 CFR 60-741.44(k) requires contractors to document and update annually:

- Number of applicants who are individuals with disabilities;
- Total numbers of job openings and jobs filled;
- Total number of applicants for all jobs;
- Number of applicants with disabilities hired; and
- Total number of applicants hired.

Maintain these records for 3 years.

Section 503 Utilization Goal

41 CFR 60-741.45 requires contractors to establish a nationwide 7% utilization goal.

- Apply goal to each job group annually, except if 100 or fewer employees, may apply goal to entire workforce.
- If goal not met, determine if impediments to EEO exist; take steps to correct any identified problems.
- Failure to meet goal is NOT itself a violation and does NOT carry penalties.

VEVRAA Requirements

- Prohibits discrimination against protected veterans
- Requires mandatory listing of opportunities with appropriate employment service delivery system (ESDS)
- Requires affirmative action

VEVRAA Equal Opportunity Clause

Include the EO Clause in covered subcontracts and purchase orders.

41 CFR 60-300.5 requires contractors to:

- Provide notice to employees and applicants
- Include tag line in job advertisements
- List employment opportunities with the ESDS

VEVRAA Mandatory Job Listing

- 41 CFR 60-300.5 requires that contractors provide job listings “in any manner and format permitted by the appropriate employment service delivery system.”
- Contractors must provide additional information including status as a federal contractor, contact information, and its request for priority referrals.

VEVRAA Outreach and Recruitment

41 CFR 60-300.44(f) requires outreach and recruitment; provides examples.

- Requires evaluation of the effectiveness of each activity and the totality of its efforts.
- If totality of efforts not effective, must identify and implement alternative efforts.

Retain these records for 3 years.

VEVRAA Data Collection Analysis

41 CFR 60-300.44(k) requires contractors to document and update annually:

- Number of protected veteran applicants
- Total numbers of job openings and jobs filled
- Total number of applicants for all jobs
- Number of protected veteran applicants hired
- Total number of applicants hired

Maintain these records for 3 years.

VEVRAA Hiring Benchmark

41 CFR 60-300.45 requires contractors to:

- Set annually – As of March 31, 2021, the hiring benchmark is 5.6%
- Two methodologies for setting the benchmark:
 - Establish a benchmark equaling the national percentage of veterans in the civilian labor force (currently 5.6%); or
 - Establish an individual benchmark by taking into account the five factors in 41 CFR 60-300.45(b)(2).

Maintain these records for 3 years.

Additional Requirements

- EEO-1 Component 1 Report
- VETS-4212 Federal Contractor Veterans' Employment Report
- Notice of Employee Rights under the National Labor Relations Act

Questions?



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Contact Information

Contractor Compliance Institute:
<https://ofccptraining.dol.gov>

Help Desk: (800) 397-6251
TTY: (877) 889-5627

OFCCP Web site:
<https://www.dol.gov/agencies/ofccp>



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