

# FEDERAL ACQUISITION INSTITUTE



## Equal Employment Opportunity

Responsibilities of Federal Procurement Officers: An Update

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

2015, February 18



Jeffrey B. Birch, *Acting Director*  
[www.fai.gov](http://www.fai.gov)





# Presenters

- **Melissa L. Speer**, Regional Director Southwest and Rocky Mountain Region (SWARM)
- **Herman Narcho**, Branch Chief for Enforcement, Division of Program Operations, National Office, OFCCP



# 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

FEDERAL  
ACQUISITION  
INSTITUTE





# 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

- Contact Us 1-800-397-6251 (TTY: 1-877-889-5627)
- Division of Policy, Regulations Line **202-693-0103**
- E-mail OFCCP-Public@dol.gov (DO NOT submit pre-awards requests to this address. Use the procedures in the "Federal Procurement Officer Corner" section above.)
- Find Your Local Office:
- Attend a local seminar or workshop
- Freedom of Information Act (FOIA)

### Featured Initiatives



Green Jobs



Recovery



- Worker Fact Sheets
- Frequently Asked Questions
- Informational Brochures
- Submit Question to OFCCP
- Check Status of Question or Complaint

### Federal Contractor Corner

#### Technical Assistance Guides (TAG)

- Small Business Guide [PDF] [HTML]
- Construction Participation Goals for Minorities and Females [PDF]

#### Workplace Posters

- EEO Is the Law
- EO 13496

#### File a Report

- EEO-1 Report
- VETS-100/100A Report

#### Section 503 and VEVRAA Resources

- Find Section 503 and VEVRAA Contractor Resources
- Self-Identification Form
- ODEP Advisor
- Disability and Veterans Community Resource Directory

#### Frequently Asked Questions

#### Other Resources

- Sample Affirmative Action Program AAP [PDF] [HTML]
- Employment Resource Referral Directory
- Compensation Guidance
- elaws Federal Contractor Advisor
- EO 13496 Information
- Notice for Contractors on the 2006-2010 Census Tab

#### Non-Retaliation Policies

- Non-Retaliation Policy for Federal Contractors
- Small Business Regulatory Enforcement Fairness Act (SBREFA) Notice

### Federal Contracting Officer Corner

- Preaward Clearance Requests
- National Pre-Award Registry
- Construction Contract Notification
- Register for Training Webcast – Equal Employment Opportunity Responsibilities of Federal Procurement Officers: An Update **◀ NEW**
- Debarred Listings

### Latest Numbers

Federal Minimum Wage  
\$7.25 Current  
(p) preliminary; (c) corrected  
Unemployment Rate: 5.6% in  
December 2014

### Seminar and Workshop Calendar

◀ Previous **January 2015** Next ▶

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10



# Prospective Bidders Requirements

- o **Certify Compliance**
  - o **Developed an Affirmative Action Program**
  - o **Filed an EEO-1 Report**
  - o **Filed a VETS-100 Report**
- o **Participated in any previous contract subject to the Equal Opportunity Clause**

[FAR 52.219-2: Equal Low Bids](#)

[FAR 52.222-18: Certification Regarding Knowledge of Child Labor for Listed End Products](#)

[FAR 52.222-22: Previous Contracts and Compliance Reports](#)

**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.

[FAR 52.222-25: Affirmative Action Compliance](#)

**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.

[FAR 52.222-48: Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification](#)

[FAR 52.222-52: Exemption from Application of the Service Contract Labor Standards to Contracts for Certain ServicesâCertification](#)

[FAR 52.223-4: Recovered Material Certification](#)

[FAR 52.223-9: Estimate of Percentage of Recovered Material Content for EPA-Designated Items \(Alternate I\)](#)

[FAR 52.225-2: Buy American Certificate](#)



## ***Question:***

***What resources are available to contracting officers if a bidder/offeror 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



Subscribe to [E-mail Updates](#)

Enter E-mail Address

SUBSCRIBE

All DOL

OFCCP

[Advanced Search](#)

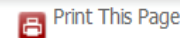
Find It In DOL

SEARCH

[A to Z Index](#) | [Site Map](#) | [FAQs](#) | [DOL Forms](#) | [About DOL](#) | [Contact Us](#)

[DOL Home](#) > [OFCCP](#) > National Pre-Award Registry

Office of Federal Contract Compliance Programs



Print This Page



Text Size



E-mail This Page

[Compliance Assistance](#)

[Regulatory Library](#)

[About OFCCP](#)

[Contact Us](#)

[Subscribe to E-mail Updates](#)

## 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?***

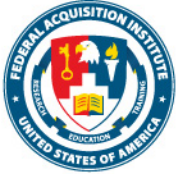






## ***Answer:***

***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

- o Solicitation
- o Pre-Award
- o 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

# 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

Equal Employment Opportunity is  
**THE LAW**

**Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations**  
Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

**RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**  
Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

**DISABILITY**  
Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

**AGE**  
The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

**SEX (WAGES)**  
In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

**GENETICS**  
Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

**RETALIATION**  
All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

**WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED**  
There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:  
The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at [www.eeoc.gov](http://www.eeoc.gov) or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at [www.eeoc.gov](http://www.eeoc.gov).

# Referring Complaints



Referral of inquires 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>

- Help Desk:

**(800) 397-6251**