Additional Obligations as an Affirmative Action Employer

The checklist, details, and attachments in this document are applicable before March 24, 2014. Please click here for contractors' obligations as of March 24, 2014.

ANNUAL CHECKLIST

1. Keep a copy of last year’s AAP and its supporting employment activity data on file.
2. Create action plans to address any adverse impact identified in employment decisions.
3. Create action plans to address any goals established.
4. Review any statistically significant compensation disparities.
5. Assign and monitor “responsibilities” and “action plans.” Get managers involved.
6. Document all good faith actions.
7. Review Internet Applicant regulations, and be consistent in your use of the definition of an applicant.
8. Ensure that applicants have been and continue to be requested to self-identify race and gender. See Pre-Employment Information Form for Women & Minorities later in this document.
9. Ensure that new hires have been requested to self-identify disabled and veteran status. See Post Offer Information Form for Individuals with Disabilities and Eligible Veterans later in this document.
10. Make contact with minority, women, disabled and veterans’ organizations Annual contact, and document results. Those contacts that do not provide good referrals should be dropped, and alternatives should be chosen.
11. List all suitable employment openings (all positions except executive and top management, those positions that will be filled from within, and positions lasting three days or less) with the state or local labor department.
12. Review contracts to ensure that they include an EEO/affirmative action clause. See Purchase Orders/Contracts below.
13. Review your help wanted ads (including on-line) to ensure that they contain “M/F EEO/AA Employer” clauses. See Help Wanted Advertisements below. Keep examples of ads.
14. Review Union Agreements to ensure that they contain an affirmative action clause. See Notifying Labor Unions below.
15. Keep a list of disabled employees and any accommodations made for them.
16. Review your company’s newsletters and other publications to see if they include photos of women and minorities. Gather examples.
17. Make sure that your policy manual contains an EEO/affirmative action policy statement, sexual harassment and sex discrimination policies, and a religious observance policy.
18. Review job ads for sex bias.
19. Ensure that pregnancies are treated the same as other short-term disabilities.
20. Ensure that men and women receive the same benefits.
21. Investigate if there is evidence of sexual harassment in the workplace.
22. Reviewed job descriptions for essential requirements.
23. Monitor selection decisions based on pre-employment exams, considering who was rejected or placed in different position.
24. Have pre-employment tests validated.
25. Ensure that only military records that are relevant to job performance have been considered for employment purposes.
26. Ensure that the workplace is disabled accessible.
27. Ensure that medical information is kept confidential.
28. Ensure that EEO Posters are in place. See the heading Posters below.
29. Post notice that informs applicants and employees of where and when the AAP is available for viewing. See Availability of the AAP for Employee Inspection below.
30. The OFCCP suggests that you inform your vendors and suppliers of their AAP obligations. See Letters to Vendors, Subcontractors and Suppliers below.
31. Ensure that your online application process is accessible to disabled candidates.
32. Review your job application and other personnel forms for inappropriate questions and compliance with EEO laws.
33. Document requests and the outcome of reasonable accommodation due to disabilities and religious practices.
CHECKLIST DETAILS

PURCHASE ORDERS/CONTRACTS
An Equal Employment Opportunity (EEO) Clause must be incorporated into each non-exempt subcontract. The most common practice is to place the clause on all subcontracting documents without assessing on an individual basis whether each subcontractor is covered by affirmative action requirements. A sample EEO Clause is included in these materials. It should be placed on purchase orders and included in formal contracts.

EQUAL OPPORTUNITY POLICY STATEMENT
The Equal Opportunity Policy Statement, which reaffirms the commitment to qualified disabled individuals and covered veterans, must be posted on bulletin boards or other appropriate locations.

LETTER TO VENDORS, SUBCONTRACTORS & SUPPLIERS
Current regulations suggest contractors notify subcontractors, vendors and suppliers of its equal opportunity policy and request appropriate action on their part. A sample letter has been included.

POSTERS
Posters with specific EEO language and notice of employee rights under the NLRA must be posted, visible to both current employees and applicants. The Office of Federal Contract Compliance Programs (OFCCP) or the Equal Employment Opportunity Commission (EEOC) office in your area can help you obtain the official poster.

HELP WANTED ADVERTISEMENTS
Help wanted solicitations must state that all qualified applicants will be considered without regard to race, color, religion, sex, or national origin. Companies typically use the abbreviation "Equal Opportunity Employer" or "EOE-M/F" to meet this obligation in advertisements. In addition to advertising you may undertake, you must also list all employment openings with your state Unemployment Security Commission (Job Service Center). “All employment openings” includes all positions except executive- and top management-level positions that are filled from within the contractor's organization, and positions that last three days or less. Listing with this agency does not require that you hire any particular applicant. To avoid excess paperwork, some companies limit the number of referrals they accept when placing their job openings with the agency. Companies that accept unsolicited applications find that Job Service postings are helpful; rather than taking the applications and having to log and track them, unsolicited applicants are referred to the Job Service Center to fill out applications there. When the company has openings, Job Service refers qualified applicants. Only those persons actually referred to the company are considered applicants for purposes of tracking in their applicant log.
NOTIFYING LABOR UNIONS
Government contractors must notify each labor union with which it has a current collective bargaining agreement of its commitment to take affirmative action to employ qualified disabled veterans and other protected veterans. Although it is not specifically required, most companies also note their commitment to employ the non-veteran disabled, as well as women, and minorities. A sample letter of notification has been included for your convenience.

AVAILABILITY OF THE AAP FOR EMPLOYEE INSPECTION
The Disabled and Veterans portion of the affirmative action plan must be available for inspection to any employee or applicant. The Women & Minorities narrative and statistical materials need not be made available for viewing. A notice identifying the location and hours during which employees and applicants have access to the Disabled and Veterans affirmative action plan must be posted. This is usually done by placing the notice on company letterhead on a company bulletin board next to the EEO poster. A sample notice is included in these materials.

RECORD RETENTION
Personnel and employment records made or kept by a contractor must be preserved for two years from the date of the record or from the date of the personnel action, whichever occurs later. However, the record retention period is one year if the contractor has fewer than 150 employees or does not have a federal contract of at least $150,000.

In addition, each establishment must maintain its current AAP and supporting documentation. Finally, each establishment must also keep the AAP and supporting documentation for the preceding plan year.

EMPLOYMENT ACTIVITY
Regulations require that contractors maintain support data for the affirmative action plan, such as progression line charts, seniority rosters (if applicable), applicant flow data, adverse impact analysis reports, promotion data, transfer data, and termination data. The government most closely scrutinizes applicant flow and rejection data during an audit. Their purpose of the scrutiny is to identify minority or female applicants who were more qualified than white or male applicants who were hired. If a company cannot prove that persons who were hired were more qualified than those who were not hired, the auditor may insist that rejected applicants be offered positions and be given back pay to the date they were initially, wrongfully rejected.

COMPENSATION
Yocom & McKee offers several salary reports that can be run by job title, salary grade, job group, or EEO Category to help identify potential problem areas and salary differences that may be flagged by OFCCP during an audit. Where there are potential problem areas, attempt to identify non-discriminatory factors such as duties, responsibilities, seniority, time-in-position, education, and performance ratings that might explain the differences in salary. A Salary Regression Analysis is a very useful tool that can factor in these explanatory variables and a first step in determining if the salary disparity is statistically significant. A comprehensive cohort analysis is the next step to help identify potential problem areas.
SELF-IDENTIFICATION FORMS

Attached is a sample voluntary identification form, The Pre-employment Information Form for Women and Minorities that should be given to each applicant to complete. Information from this form is intended to be entered into an applicant flow log. Once logged, the Voluntary Identification forms should be kept in a file separate from other applicant/employee information.

The government allows contractors to visually determine race and sex when applicants refuse to self-identify. The contractor may directly log this information on the applicant flow log. This method is less defensible if questions arise about your visual determinations.

The Vietnam Era Veterans Readjustment Assistance Act and the Rehabilitation Act requires affirmative action employers to invite all disabled applicants and disabled veterans and other eligible veterans to identify themselves. A form similar to the attached sample, The Post-Offer Information Form For Individuals with Disabilities, Disabled Veterans, & Other Eligible Veterans, should be given to all new-hires after they have been offered the job but before they begin their first day of work.

HIRING PRACTICES

An analysis of hiring practices must be performed at least annually. This should include an adverse impact analysis of minority and female hires.

SUPPORT DATA FOR HIRING PRACTICES

Copies of various job requisition requests, solicitations, and referral sources should be retained as support data for the AAP. Sample letters to these sources have been included in these materials.
SAMPLE LETTER - DISSEMINATED TO UNION

Dear ________________:

(Company) strives to comply with the requirement of Executive Order 11246, as amended, related to affirmative action; Section 503 of the Rehabilitation Act and the Americans with Disabilities Act, covering the employment of the disabled; and Section 402 of the Vietnam Era Readjustment Assistance Act of 1974, covering the employment of veterans. Please consider this letter as official notice that we will comply with all applicable Federal laws, regulations, and rulings in our hiring and employment activities.

We appreciate your cooperation in our effort to fully comply with these Federal requirements.

Sincerely,

(Name)
EEO Coordinator
SAMPLE LETTER - COLLEGE RECRUITMENT

Dear ________________:

In light of our recruitment efforts at your institution, we would like to take this opportunity to reaffirm (Company Name) position as an Equal Opportunity - Affirmative Action Employer. We request that among the applicants referred to us for interviews, you include qualified minority, women, veteran, and disabled individuals.

We appreciate your efforts and assistance in this area.

Sincerely,

(Name)
EEO Coordinator
SAMPLE LETTER - RECRUITMENT SOURCE

Dear ________________:

(Company Name) has a long standing policy of Equal Opportunity in employment. Our practice is to fill positions by selecting applicants who can perform the work in a competent and professional manner. We do not discriminate on the basis of age, sex, race, color, religion, national origin, disabled, or veteran status. Our continued dealing with any community assistance group, agency, institute of higher learning, or placement service is predicated on an understanding of and compliance to this policy.

We expect your services to include active recruitment and referral of qualified minorities, women, disabled and veteran individuals.

Sincerely,

(Name)
EEO Coordinator
PURCHASE ORDER/SUBCONTRACT CLAUSES
(Incorporated by Reference)

(The following clauses must be included in all Purchase Orders unless the contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order 11246 and 13496, as amended.)

"The Equal Employment Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and other protected veterans, set forth in 41 CFR 60-300.5, the affirmative action clause for disabled workers, set forth in 41 CFR 60-741.5, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this purchase order. By accepting this purchase order, vendor certifies that it complies with the authorities cited above, and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8."

Alternative Language:

The parties hereby incorporate the requirements of 41 C.F.R. Section 60-1.4(a)(7), 60-300.5 and 60-741.5, if applicable.
NOTICE OF AFFIRMATIVE ACTION PLAN
FOR INDIVIDUALS WITH DISABILITIES, DISABLED VETERANS
AND OTHER ELIGIBLE VETERANS

It is the policy of this Company to seek and employ qualified individuals at all locations and facilities, and to provide equal employment opportunities for all applicants and employees in recruiting, hiring, placement, training, compensation, insurance, benefits, promotion, transfer, and termination. To achieve this, we are dedicated to taking affirmative action to employ and advance in employment qualified individuals with disabilities, disabled veterans, and other eligible veterans.

The objective in adopting the Affirmative Action Program is to place qualified individuals with disabilities, disabled veterans and other eligible veterans in all job classifications. This Affirmative Action Program is available for inspection by any applicant or employee by contacting the Company's EEO Coordinator, in the Human Resources office, Monday through Friday, 8am to 5pm.

(This Notice must be posted where employees and applicants will view it.)
PRE-EMPLOYMENT INFORMATION FORM
FOR WOMEN AND MINORITIES

Name: ____________________________________________
Position Applied for: ________________________________
Race/Ethnic Group: ________________________________

Are you Hispanic/Latino? [ ] If yes, check box and skip to Gender. Others use the race categories below:

[ ] White
[ ] Black
[ ] Asian
[ ] Am Indian/Alaska Native
[ ] Hawaiian/Pacific Islander
[ ] Two or More Races

Gender: Male: _____ Female: ______

Signature: ________________________________________

Qualified applicants are considered for employment, and employees are treated during employment, without regard to race, color, religion, sex, national origin, age, marital status, medical condition, or disability.

Please complete this information to assist us in complying with equal opportunity/affirmative action record keeping and reporting requirements. Providing this information is voluntary, refusal to provide the information will not result in any adverse treatment. This Information Form will be kept in a separate, confidential file and will be used only for safety and government reporting purposes.
POST-OFFER INFORMATION FORM
FOR INDIVIDUALS WITH DISABILITIES & ELIGIBLE VETERANS

Name: ____________________________________________ Date: ________________________

Position Applied for: ____________________________________________________________

☐ Disabled?
☐ Disabled Veteran?
☐ Other Protected Veteran?
☐ Recently Separated Veteran? (Date of Discharge ___ / ___ / ______)
☐ Armed Forces Service Medal Veteran?

Check All That Apply

This employer is a government contractor subject to section 503 of the Rehabilitation Act of 1973, as amended, and section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, which requires government contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities, disabled veterans, and other eligible veterans. If you have a disability or are a covered veteran and would like to be considered under the affirmative action program, please fill out and return this form.

You may inform us of your desire to benefit under the program at this time and/or at any time in the future. This information may assist us in placing you in the appropriate position and in making any necessary reasonable accommodation.

It is the policy at [Contractor’s Name] to provide equal employment and advancement opportunities to all qualified individuals. To achieve this goal, [Contractor’s Name] is dedicated to taking affirmative action to employ and advance in employment, qualified disabled persons, disabled veterans, and other eligible veterans. All personnel actions, including recruitment, hiring, training, and promoting persons in all job titles, will be administered without regard to disability or covered veteran status, and all employment decisions are based solely on valid job requirements.

Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. Information you submit about your disability or veteran status will be kept confidential, except that (1) supervisors and managers may be informed regarding restrictions on the work or duties of individuals with disabilities, and regarding necessary accommodations; (2) first aid and safety personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment; and (3) government officials engaged in enforcing discrimination laws may be informed. The information provided will not be used in a manner inconsistent with section 503 of the Rehabilitation Act of 1973 and section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974.

If you are an individual with a disability, a disabled veteran, or a covered veteran, we would like to include you in our affirmative action program. It would assist us if you tell us about (1) any special methods, skills, and procedures which qualify you for positions that you might not otherwise be able to do because of your disability so that you might be considered for any available positions of that kind, and (2) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, provision of personal assistance services or other accommodations.
Definitions:

“Disabled” A person is disabled if he or she has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

“Disabled Veteran” (1) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or (2) A person who was discharged or released from active duty because of a service-connected disability.

“Other Protected Veteran” means a veteran who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the Department of Defense.

“Recently Separated Veterans” means any veteran who served on active duty in the U.S. military, ground, naval or air service during the three-year period beginning on the date of such veteran’s discharge or release from active duty.

“Armed Forces Service Medal Veteran” means any veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.
SAMPLE LETTER – SUBCONTRACTORS, VENDORS & SUPPLIERS

Dear ________________:

It is the policy at (Company) to provide equal employment and advancement opportunities to all qualified individuals. To achieve this goal, (Company) is dedicated to taking affirmative action to employ and advance in employment qualified women, minorities, disabled persons, disabled veterans, and other protected veterans, in compliance with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (2001) ("Section 4212" or "VEVRAA") and the implementing regulations. (Company) is committed to take voluntary, positive action in providing affirmative action and equal employment opportunity to women, minorities, disabled persons, disabled veterans, and other protected veterans. All personnel actions, including compensation, benefits, recruitment, hiring, training, and promoting persons in all job titles, will be administered without regard to race, ethnicity, national origin, gender, disability, veteran, or other protected status, and all employment decisions are based solely on valid job requirements. In addition, employees and applicants are protected from harassment, threats, coercion, intimidation, interference or discrimination for:

(1) Filing a complaint;
(2) Assisting or participating in an investigation, compliance review, hearing, or any other activity under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 or any other law requiring equal opportunity for disabled persons, and other protected veterans;
(3) Opposing any practice made unlawful by these laws, or
(4) Exercising any other right protected by these laws.

As a federal government contractor, (Company) expects all of its subcontractors, suppliers and vendors to comply with all of their applicable obligations under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 or any other law requiring equal opportunity for disabled persons, and other protected veterans. Further, the equal employment opportunity clauses set forth in 41 CFR 60-1.4(a), 41 CFR 60-250.5(a) and 41 CFR 60-741.5(a) are hereby incorporated by reference into all of the transactions between our companies.

We appreciate your cooperation in our effort to fully comply with these Federal requirements.

Sincerely,

(Name)

EEO Coordinator