52.222-27 Affirmative Action Compliance Requirements for Construction.

As prescribed in 22.810(f), insert the following clause:

Affirmative Action Compliance Requirements for *Construction* (Apr 2015)

(a) *Definitions*. As used in this clause-

Covered area means the geographical area described in the *solicitation* for this contract.

Deputy Assistant Secretary, means the *Deputy Assistant Secretary* for the Office of Federal Contract Compliance Programs, U.S. Department of Labor, or a designee.

Employer identification number, means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

Minority, as used in this clause, means-

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any *construction* trade, each such subcontract in excess of $10,000 *shall* include this clause and the Notice containing the goals for *minority* and female participation stated in the *solicitation* for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a *covered area*, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) *shall* comply with the plan for those trades that have unions participating in the plan. Contractors *must* be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each

trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor *shall* implement the affirmative action procedures in paragraphs (g)(1) through (16) of this clause. The goals stated in the *solicitation* for this contract are expressed as percentages of the total hours of employment and training of *minority* and female utilization that the Contractor *should* reasonably be able to achieve in each *construction* trade in which it has employees in the *covered area*. If the Contractor performs *construction* work in a geographical area located outside of the *covered area*, it *shall* apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer *minorities* or women *shall* excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees *must* be employed by the Contractor during the training period, and the Contractor *must* have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees *must* be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor *shall* take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause *shall* be based upon its effort to achieve maximum results from its actions. The Contractor *shall* document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each *construction* project. The Contractor *shall* ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to *minority* or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for *minority* and female recruitment. Provide written notification to *minority* and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each *minority* and female off-the-street applicant, referrals of *minorities* or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this *shall* be documented in the file, along with whatever additional actions the Contractor *may* have taken.

(4) Immediately notify the *Deputy Assistant Secretary* when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a *minority* or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include *minorities* and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor *shall* provide notice of these programs to the sources compiled under paragraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by-

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all *minority* and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where *construction* work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating *construction* work at a job site. A written record *shall* be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including *minority* and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to *minority*, female, and community organizations, to schools with *minority* and female students, and to *minority* and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present *minority* and female employees to recruit *minority* persons and women. Where reasonable, provide after-school, summer, and vacation employment to *minority* and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all *minority* and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are

being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas *shall* be provided to assure privacy between the sexes.

(15) Maintain a record of *solicitations* for subcontracts for *minority* and female *construction* contractors and suppliers, including circulation of *solicitations* to *minority* and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that *may* assist in fulfilling one or more of the affirmative action obligations contained in paragraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant *may* be asserted as fulfilling one or more of its obligations under paragraphs (g)(1) through (16) of this clause, provided, the Contractor-

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of *minorities* and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's *minority* and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation *shall* not be a defense for the Contractor's noncompliance.

(i) A single goal for *minorities* and a separate single goal for women *shall* be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all *minority* groups, both male and female, and all women, both *minority* and nonminority. Consequently, the Contractor *may* be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor *shall* not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, *sexual orientation*, *gender identity*, or national origin.

(k) The Contractor *shall* not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor *shall* carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including *suspension*, termination, and cancellation of existing subcontracts, as *may* be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered *shall* be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause *shall* implement affirmative action

procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the *Deputy Assistant Secretary shall* take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor *shall* designate a responsible official to-

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as *may* be required by the Government; and

(3) Keep records that *shall* at least include for each employee the name, address, telephone number, *construction* trade, union affiliation (if any), employee identification number, social security number, race, sex, status (*e.g.,* mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records *shall* be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein *shall* be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (*e.g.,* those under the Public Works Employment Act of1977 and the Community Development BlockGrant Program).

(End of clause)

Parent topic: 52.222 [Reserved]