52.222-26 Equal Opportunity.

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

Equal Opportunity (Sept 2016)

(a) *Definition*. As used in this clause.

Compensation means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, *overtime* pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, *insurance* and other benefits, stock *options* and awards, profit sharing, and retirement.

Compensation information means the amount and type of *compensation* provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; *market research* about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee *compensation*.

Essential job functions means the fundamental job duties of the employment position an individual holds. A job function *may* be considered essential if-

(1) The access to *compensation information* is necessary in order to perform that function or another routinely assigned business task; or

(2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including *compensation information*.

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.

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.

United States, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)

(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor *shall* comply with this clause, except for work performed outside the *United States* by employees who were not recruited within the *United States*. Upon request, the Contractor *shall* provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a

particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)

(1) The Contractor *shall* not discriminate against any employee or applicant for employment because of race, color, religion, sex, *sexual orientation*, *gender identity*, or national origin. However, it *shall* not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor *shall* take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, *sexual orientation*, *gender identity*, or national origin. This *shall* include, but not be limited to-

(i) Employment;

(ii) Upgrading;

(iii) Demotion;

(iv) Transfer;

(v) Recruitment or recruitment advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of *compensation*; and

(viii) Selection for training, including apprenticeship.

(3) The Contractor *shall* post in conspicuous places available to employees and applicants for employment the notices to be provided by the *Contracting Officer* that explain this clause.

(4) The Contractor *shall*, in all *solicitations* or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, *sexual orientation*, *gender identity*, or national origin.

(5)

(i) The Contractor *shall* not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the *compensation* of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the *compensation information* of other employees or applicants as a part of such employee's *essential job functions* discloses the *compensation* of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor *shall* disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this

clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by-

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor *shall* send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the *Contracting Officer* advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor *shall* comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor *shall* furnish to the *contracting* agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor *shall* also file Standard Form100 (EEO- 1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor *shall*, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor *shall* permit access to its premises, during normal business hours, by the *contracting* agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor *shall* permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that *may* be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract *may* be canceled, terminated, or suspended in whole or in part and the Contractor *may* be declared *ineligible* for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions *may* be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor *shall* include the terms and conditions of this clause in every subcontract or *purchase order* that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor *shall* take such action with respect to any subcontract or *purchase order* as the Director of OFCCP *may* direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor *may* request the *United States* to enter into the litigation to protect the interests of the *United States*.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.

(End of clause)

Alternate I (Feb 1999). As prescribed in 22.810 (e), add the following as a preamble to the clause:

Notice: The following terms of this clause are waived for this contract: _____ *[Contracting Officer shall list terms]*.

Parent topic: 52.222 [Reserved]