Subpart 922.8—Equal Employment Opportunity

Parent topic: PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

922.800 Scope of subpart.

This subpart implements 48 CFR part 22, subpart 22.8. It applies to all DOE contracts and subcontracts.

922.802 [Reserved]

922.803 Responsibilities.

(a) The Director, Office of Federal Contract Compliance Programs of the Department of Labor has been delegated authority and responsibility for carrying out the requirements of Executive Order 11246, as amended. In conjunction with the delegation, contracting officers shall be familiar with existing and any updated provisions of 41 CFR Ch. 60, and assist the Department of Labor in its compliance responsibilities. DOE contracting officers will include the applicable Equal Employment Opportunity (EEO)) and Affirmative Action Program (AAP) requirements in their solicitations and obtain the applicable reports of compliance from the Office of Federal Contract Compliance Programs (OFCCP) (when required) prior to awarding of contracts. The provisions of 41 CFR Ch. 60, are applicable to all DOE contracts.

(d) The OFCCP requires that requests for pre-award clearances be directed to the OFCCP Regional Office in which the contractor's facility is (to be) located. If OFCCP finds the contractor in compliance, the contracting officer will be notified. Findings of non-compliance can be communicated to the contracting officer by the OFCCP or Headquarters Director or his designee. The appropriate Regional Office will provide the appropriate contact point in cases of non-compliance. The Director, Office of Civil Rights (DOE HQ), when requested, will provide assistance to contracting officers resolving non-compliance issues by providing assistance in obtaining a final decision from the OFCCP.

922.804 [Reserved]

922.804-1 Nonconstruction.

In the event a prospective contractor or subcontractor is entering into its first contract containing the Equal Opportunity clause, the contracting officer shall determine that the prospective contractor understands and appears able to conform to the requirements of the EEO clause.

922.804-2 Construction.

(a) Construction contracts, including cost-sharing contracts, are subject to OFCCP orders applicable in particular areas.

(1) When a proposed nonexempt construction contract is within a geographic area where construction is subject to the provisions of Federal EEO Bid Conditions, Part I or Part II, the solicitation shall contain those bid conditions. The contracting officer shall include in such solicitation a provision that “the offeror shall adhere to the affirmative action plan (bid conditions) set forth in this solicitation.”

(2) Lists of areas for which OFCCP has designated specific affirmative action requirements are available through the Procurement Executive. Contracting officers should assure that this list and copies of pertinent orders are made available to all concerned DOE offices and to DOE contractors and construction subcontractors for work to be performed in the specified geographical areas.

(b) *Other nonexempt construction contracts.*

(1) When a proposed nonexempt construction contract is not in a “plan area” and is in the amount of $10,000 or more, offerors must agree to comply with the Equal Employment Opportunity clause.

(2) When proposed nonexempt contracts of $1,000,000 or over are not in plan areas and have not been designated as high impact, offerors also must submit to the contracting officer details regarding specific affirmative action steps to be taken by the offeror in connection with all work under the contract. Such details shall include estimates of the percentage of minority group persons expected to be employed in each craft involved in the performance of the contract work. All solicitations for construction contracts shall reference the affirmative action requirements and the offeror's obligation to make good faith efforts to employ women in craft positions.

(3) Pursuant to the OFCCP order dated August 30, 1976, agencies shall develop “Special Bid Conditions” for use on high impact projects in non-plan areas. These special bid conditions will include mandatory goals and timetables for the utilization of minorities. The Procurement Executive using the criteria issued by OFCCP will determine those projects that are “high impact.” The contracting officer is responsible for compliance with policies and procedures contained in the OFCCP “Construction Compliance Program Operations Manual.” Language for inclusion in solicitations or contracts contained in the manual may be modified, provided all of the requirements are retained. The contracting officer shall develop the goals and timetables and shall confer with the appropriate OFCCP regional office. The Office of Civil Rights will provide assistance as necessary, when requested. Special bid conditions will be submitted by the contracting officer to the appropriate OFCCP regional office for approval unless otherwise directed by the Procurement Executive. When special bid conditions are applicable, adequate presolicitation lead time should be allowed for submission of the special bid conditions to OFCCP national and regional offices.

(c) An attempt to limit in any major respect the equal opportunity requirements included in an invitation for bids or request for proposals for a construction contract shall constitute grounds for a determination that the offeror does not qualify as a responsible offeror and for rejection of the bid or proposal. In the case of construction acquisition by DOE prime contractors, this determination shall be made only with the approval of the DOE contracting officer.

922.807 Exemptions.

(c) Contracting officer requests for exemption from E.O. 11246 should be directed to the Procurement Executive for submission to the Director, OFCCP.