

Equal Employment Opportunity Guideline - 3.6.G (09/08/04)

[Last Update: \(09/08/04\) ABachicha:kma - 3.6.G.0](#)

[Procedures - 3.6.G.1](#)

[Affirmative Action Program Requirements - 3.6.G.2](#)

[Other Equal Employment Opportunity Requirements - 3.6.G.3](#)

[EEO Preaward Clearance - 3.6.G.4](#)

[Reference - 3.6.G.5](#)

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This guideline was extensively revised to address administrative changes throughout the document.

Procedures - 3.6.G.1

Sandia's Equal Opportunity clause is included in Section II, Standard Terms and Conditions (Ts&Cs) for all types of contracts and Purchase Orders (POs). The clause applies if the transaction exceeds \$10K. The clauses, rules, and regulations prescribed by EO 11246 are also incorporated by reference in Sandia's Straight Bill of Lading, SF 6424-A.

Under the Equal Opportunity clause in the Section II Ts&Cs, the Contractor agrees:

- not to discriminate against any employee or applicant for employment because of race,

color, religion, sex or national origin,

- to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin,
- to furnish certain information and reports and permit access to Contractor's records to show compliance with requirements,
- to comply with EO 11246 and the rules, regulations, and relevant orders of the Secretary of Labor, and
- to flow down the requirements of the clause in its subcontracts and orders, unless an exemption applies.

Exemptions - 3.6.G.1.a

The following exemptions apply even if an order/contract contains the Equal Opportunity clause:

- transactions of \$10K or less,
- work performed outside of the United States by employees not recruited within the United States, and
- specific contracts determined by Department of Energy/National Nuclear Security Administration (DOE/NNSA) to be exempt based on national security or national interest considerations.

Violation Sanctions - 3.6.G.1.b

Among the sanctions for violation of the requirements of the Equal Opportunity clause or EO 11246, are cancellation of the contract and debarment from eligibility for future government contracts/subcontracts by being placed on the Debarred List.

Debarred List - 3.6.G.1.c

The Consolidated List of Debarred, Suspended and Ineligible Contractors, which is maintained and published by General Services Administration (GSA), includes Contractors that have not complied with Equal Opportunity requirements. Contractors appearing on this list will not be awarded POs, contracts, or subcontracts without the prior written approval of DOE/NNSA. (See Guideline 2.5 – Debarred, Suspended, and Ineligible Contractors.)

Affirmative Action Program

Requirements - 3.6.G.2

Each nonconstruction Contractor/subcontractor with fifty (50) or more employees and any contracts/subcontracts for \$50K or more must have written affirmative action programs for each establishment. Such programs must be developed within 120 days of receipt of the first contract/subcontract for \$50K or more. Also, the Contractor/subcontractor must file annual compliance reports.

Construction Contractors/subcontractors are not required to develop affirmative action programs since they do not perform work in fixed geographic areas. However, goals and timetables for minority and female utilization are assigned to construction contracts performed in specific geographical areas. Contractors must implement affirmative action steps to ensure equal employment opportunity and must make good faith efforts to achieve the assigned goals which are set forth in the solicitation and contract. There are various notice and report requirements involved. (See Guideline 5.5 – Construction Contracting.)

Other Equal Employment Opportunity Requirements - 3.6.G.3

Other sources of Equal Employment Opportunity (EEO) requirements that Sandia Contractors/subcontractors are subject to:

- **The Civil Rights Act of 1964**, as amended by the Equal Opportunity Act of 1972, prohibits employers with fifteen (15) or more employees and employment entities of labor organizations affecting interstate commerce to discriminate because of race, color, religion, sex, or national origin. No implementing contract clause is required to bring this policy to the attention of Contractors/subcontractors.
- **EO 11141** prohibits Contractors/subcontractors from discriminating against employees or potential employees based on age, except upon the basis of a bonafide occupational qualification, retirement plan, or statutory requirement. No implementing contract clause is required to bring this policy to the attention of Contractors and subcontractors.

In addition, the following clauses relating to Equal Opportunity should be included in solicitations and contracts as follows (unless an exemption or waiver applies):

- **The Affirmative Action For Handicapped Workers** clause is included in all Section II Standard Ts&Cs as applicable for transactions over \$2,500.
- **The Affirmative Action For Disabled Veterans and Veterans of the Vietnam Era** clause is included in all Section II Standard Ts&Cs as applicable for transactions over \$10K (except for Consultant Agreements).

- **Construction.** For construction contracts exceeding \$10K the following clauses are included in the SF 6432-CN, Section II Ts&Cs as applicable:
 - Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246),
 - Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246),
 - Affirmative Action to Ensure Equal Employment Opportunity, and
 - Goals and Timetables for Affirmative Action.
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EEO Preaward Clearance - 3.6.G.4

Nonconstruction contracts of \$10 million or more, and revisions which cause the cumulative value of a nonconstruction contract to reach or exceed \$10 million, require preaward clearances by the Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP). The OFCCP has established a national registry of Contractors which are in compliance with the EEO regulations. This registry is accessible at OFCCP's website: <http://www.dol-esa.gov/preaward/>. (Once at this site, click on Preaward Registry," type in Contractor's name and click on submit.) If the specific Contractor receiving the contract is listed, then the Sandia Contracting Representative (SCR) is not required to request a preaward clearance.

If the Contractor is not listed, an advance notification of each contract or revision must be sent to DOE/NNSA as soon as the awardee has been selected, or the SCR knows that a revision will cause the total contract value to reach or exceed \$10 million. The notification may send as a hardcopy using the Preaward Clearance Form (form can be found in "Guideline Documents") or transmitted electronically using the same format. DOE/NNSA is required to give the DOL thirty (30) days to respond to Preaward Clearance Requests. To ensure that DOL has adequate time, the SCR should send the notice to DOE/NNSA approximately forty-five (45) days prior to the anticipated date of contract award. Under exceptional circumstances, when the urgency of the procurement dictates, DOE/NNSA may be able to expedite the process by requesting verbal approval from DOL.

Notes:

1. The SCR must obtain information regarding Questions 8 and 9 on the Preaward Clearance Form for submittal to DOE/NNSA. This information may be obtained verbally from the Contractor since written Reps & Certs are no longer required.
- 2: The above policy and procedures will normally be applied to the following types of transactions even though the initial award amount is below the \$10 million threshold:
 - a letter contract for nonconstruction which is less than \$10 million, but the definitizing contract is expected to be \$10 million or more, or

- a services contract which is less than \$10 million for the initial period of performance, but will be for \$10 million or more when/if options are unilaterally exercised by Sandia.

Waiver of Preaward Clearance - 3.6.G.4.a

On an exceptional basis when warranted by special or unusual circumstances and when approved by the Procurement Department Manager, the SCR may waive the preaward clearance requirement for individual transactions of this type. Such waivers apply only to initial awards under \$10 million. If not obtained initially, the required preaward clearance must be obtained when the contract value reaches or exceeds \$10 million.

Compliance Review - 3.6.G.4.b

A procurement subject to preaward clearance requirements may not be awarded unless a compliance review of the Contractor has been conducted within twelve (12) months prior to the award and the Contractor is found to be in compliance with the Affirmative Action Program Requirement of EO 11246. Once a preaward clearance has been granted for a particular contract, the clearance is valid for the life of the contract regardless of subsequent changes to the contract, unless the contract is assigned or transferred to another Contractor.

Reference - 3.6.G.5

- Guideline 5.5 - Construction Contracting
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Send feedback on ideas and information on this page to the Process Expert, Adolph Bachicha.



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