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Affirmative Action Compliance Consultants

AAP FOR MINORITIES AND WOMEN

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AFFIRMATIVE ACTION PROGRAMS FOR MINORITIES AND WOMEN

In accordance with 41 CFR §60-2 – Affirmative Action Programs
By Thomas H. Nail, THOMAS HOUSTON associates, inc.

The intent of the practice of affirmative action is to “remedy the effects of past discrimination”. A written Affirmative Action Program (AAP) helps identify and analyze potential problems in the participation and utilization of minorities and women in the workforce and includes specific procedures / efforts that will be followed to ensure equal employment opportunity.

Definition of an AAP

The Office of Federal Contract Compliance Programs (OFCCP) defines an AAP as “a management tool designed to ensure equal employment opportunity.” This definition may be found at Title 41 of the Code of Federal Regulations in Chapter 60 (41 CFR §60-2.10(a)). The basic intent of an AAP is that absent discrimination, over time, a workforce will reflect the labor pools from where recruitment and selection is made. An AAP institutionalizes the responsibility of evaluating, and updating as necessary, company practices to ensure equal employment opportunity is achieved.

The AAP Requirement

Each non-construction (supply and service) federal contractor/subcontractor with 50 or more employees is required to develop an AAP for each of its establishments within 120 days from the start of the Federal contract, if it:

- has a Federal contract or subcontract of \$50,000 or more;
- has government bills of lading which in any 12-month period total, or can reasonably be expected to total, \$50,000 or more;
- serves as a depository of Federal funds in any amount; or
- is a financial institution that is an issuing and paying agent for U.S. savings bonds and savings notes in any amount. Note: this requirement is expected to be modified on 1-1-2012.

Once established, an AAP must be reviewed and updated annually on the plan date (initially no more than 120 days from the start of contract).

The AAP Components

The AAP for minorities and women contains both statistical and written components that illustrate prior plan year results of actions undertaken and proposed efforts for the upcoming plan year.

A. The Statistical Component

The statistical component of an AAP is used to assess the current utilization of minorities and women as compared to their availability in the labor pools from where recruitment and selection is made. If it is determined that the employment representation percentage of women or minorities within a job group is less than what would be reasonably expected given their determined availability, (a.k.a. underutilization), an annual percentage goal must be established. Remembering that the ultimate objective is that the workforce reflects the available labor pools, the goal should be at least equal to the availability figure derived. It is also important to remember that the determination of underutilization or the requirement of a placement goal does not constitute a finding nor an admission of discrimination. Rather the required analyses are intended to be an affirmative action management tool in promoting equal employment.

I. Organizational Profile §60-2.11

An Organizational Profile is required in order to depict the staffing patterns within the workforce. This may be done in one of two ways. The first option is the Organizational Display, which is a detailed graphical or tabular chart, text, spreadsheet or similar presentation of your company's organizational structure. The regulations detail specific requirements of the Organizational Display. The second option is the Workforce Analysis, which is a listing of each job title, within each department, ranked from the lowest to highest paid, including department supervision. For each job title, total incumbents must be cross-referenced by gender and individual race.

II. Job Group Analysis §60-2.12

The Job Group Analysis is the first step in comparing workforce representation to labor pool availability. In the Job Group Analysis, all titles in the workforce that have "similar content, wage rates, and opportunities" must be combined to form job groups within EEO-1 category definitions. The Job Group Analysis must include a list of all titles in each job group.

III. Placement of Incumbents in Job Groups §60-13

The Placement of Incumbents in Job Groups is used to state the workforce representation percentage of minorities and women employed in each job group as of the plan date.

IV. Determining Availability §60-2.14

Determining availability is required to estimate the number of qualified minorities and women available for employment in each job group. Determined final availability is expressed as a percentage and is used as the comparison to the representation percentage established for each job group (see Placement of Incumbents in Job Groups above).

The OFCCP has established two factors to be used in determining availability; external and internal. The external factor requires data (i.e. from the U.S. Bureau of Census), based on job titles, which is then applied to the company's local/national recruiting patterns. The internal factor requires a determination of the qualified minorities and women available within the organization; those employees promotable, transferable and trainable. After obtaining and determining the "raw" availability for the two factors, "weighted" availability is determined using value weight assignments. Value weight assignments, which are based on placement patterns and history, must equal 100%. Final availability is the total of the weighted availabilities for the two factors. Determining availability is required to be done separately for minorities and women within each job group in the workforce.

V. Comparing Incumbency to Availability §60-2.15

Comparing incumbency to availability is the comparison of the actual employment representation percentage of minorities and women in each job group (see Placement of Incumbents in Job Groups above) with the corresponding final availability percentage determined (see Determining Availability above) for minorities and women. If it is determined that the employment representation percentage of women or minorities within a job group is "less than what would be reasonably expected" given their determined final availability, (a.k.a. "underutilization"), an annual percentage goal must be established. "Less than what would reasonably be expected" is the term used in the OFCCP regulations. Although no margin or threshold is specified to define this term, there are several different statistical analyses that have been historically acceptable (i.e., "any difference", 80%, fractional underutilization, 2 standard deviations).

VI. Placement Goals §60-2.16

Placement Goals serve as targets for the upcoming affirmative action program year and must be established where underutilization (workforce representation less than final availability) is determined. Placement goals are expressed as percentages and should be at least equal to the determined final availability. As an example, if minorities are underutilized in a job group where the determined final availability for minorities is 50%, then the placement goal for minorities in that job group should be at least 50% (5 of 10 placements). Good faith efforts to recruit and promote minorities and women where underutilization has been determined must then be undertaken as a means of achieving placement goals in the coming AAP

year and for making the entire affirmative action program work. All good faith efforts should be documented in order to measure the results and/or need for change.

B. The Written Component

In order to comply with §60-2.17 – Additional required elements of affirmative action programs the written component should contain the following elements:

I. Designation of Responsibility §60-2.17 (a)

This element requires the assignment of an individual who has responsibility for implementation of the AAP. Although ultimate responsibility and accountability for directing and implementing the AAP lies with the chief executive officer or senior site executive, this executive should designate a specific individual(s) who is responsible for AAP implementation. That individual(s) should be identified by name and job title in the AAP.

II. Identification of Problem Areas §60-2.17 (b)

An in-depth analysis of the total employment process must be completed in order to determine where impediments to equal employment opportunity may exist. This process requires analyses (i.e. Impact Ratio Analyses, Compensation Analysis) in addition to those specifically required in the statistical component of the regulations. The results of the Identification of Problem Areas process must be documented in the written component of the AAP and, at a minimum, should evaluate the following:

- 1) the workforce by job group to determine whether there are potential problems areas specific to female or minority underutilization or female or minority distribution within the department or organizational unit;
- 2) personnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are indicators of selection disparities;
- 3) compensation system(s) to determine whether there are indicators of gender, race, or ethnicity-based disparities;
- 4) selection, recruitment, referral, and other personnel processes to determine whether they are potential barriers to the employment or advancement of minorities or women.

III. Action-Oriented Programs. §60-2.17 (c)

The AAP must present action-oriented programs designed to correct identified problem areas and attain any goals established. The presentation of action-

oriented plans should include specific steps to be taken which “consist of more than following the same procedures which have previously produced inadequate results.”

IV. Internal Audit and Reporting System §60-2.17 (d)

An internal audit and reporting system that periodically measures the effectiveness of the affirmative action program must be developed and may be presented in the written component of the AAP. This system should include the following practices / procedures:

- 1) monitoring records of all personnel activity, including referrals, placements, transfers, promotions, terminations, and compensation, at all levels to ensure the nondiscriminatory policy is carried out;
- 2) reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are obtained;
- 3) reviewing report results with all levels of management; and
- 4) advising top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

V. Report Results of the Prior Year Program

Although not specifically cited in §60-2 – Affirmative Action Programs, all compliance evaluations include a request for information on affirmative action goals for the preceding AAP year and progress made. This information should include:

- 1) job group representation at the start of the AAP year,
- 2) the percentage goals established at the start of the AAP year,
- 3) the actual number of placements (hires plus promotions) into each job group with established goals for minorities and women,
- 4) for goals not attained, a description of specific good faith efforts made to achieve them.

VI. Compliance with Sex Discrimination Guidelines §60-20

This section is not technically required to be addressed in the AAP. However, compliance with this regulation is expected and recognition of the requirement is important. This section should recognize personnel policies and practices that comply with guidelines codified in OFCCP's regulations at 41 CFR § 60-20. This section should specifically state that it has been and continues to be the policy not to discriminate on the basis of sex, with respect to: recruitment and advertisement,

job policies and practices, seniority systems, and wages. It should also specifically state an affirmative action commitment to recruit women for jobs from which they have been previously excluded and to include women in management trainee programs.

VII. Compliance with Guidelines on Discrimination Because of Religion or National Origin §60-50

Similarly, presentation of compliance with OFCCP's Religion and National Origin Discrimination Guidelines §60-50 is not a required part of an AAP. Nevertheless many companies include a separate section indicating their compliance with this regulation.

VIII. The AAP should be signed by an "executive official"

The regulations state that affirmative action should be "part of the way that the contractor regularly conducts its business". In order to reflect that commitment, the OFCCP strongly encourages the indication of approval and support of the AAP by signature of an "executive official". This executive official is often the CEO of the company. However, depending on company size, the "executive official" may also be the senior site executive with overall responsibility for work performed by those individuals covered under the scope of the AAP.

IX. Non-required Elements

Although the following provisions are not a part of the mandatory requirements, they are considered to be fundamental necessities of an AAP and documentation of the execution of these provisions is expected by the OFCCP:

- 1) Reaffirmation of Equal Employment Opportunity Policy - This statement of policy should be, signed, dated, and distributed each year to each facility.
- 2) Dissemination of Policy – Regular communication of EEO/Affirmative Action policies should be undertaken. Internally, the EEO policy may be published in the employee handbook and / or posted on company bulletin boards. Externally the policy may be included in all employment advertisements ("an Equal Opportunity-Affirmative Action Employer"), purchase orders, recruiting materials, etc.
- 3) Support of Community Action Programs - This may be demonstrated through involvement in community activities that result in a larger pool of qualified minority and female candidates.
- 4) Consideration of Minorities and Women Not Currently in the Work Force - This may be demonstrated by establishing programs that assist underprivileged minority youth (i.e. scholarship fund), or financially

supporting organizations committed to developing skills for minorities and women.

The regulations at 41 CFR §60-1, "Obligations of Contractors and Subcontractors" and 41 CFR §60-2, "Affirmative Action Programs" provide an expanded explanation of the required components. Further guidance is also available through the professional consulting services offered by THOMAS HOUSTON associates, inc.

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