GUIDE TO EEO COMPLIANCE

Notice for Federal Contractors
SMACNA contractors who work on federal contracts have certain equal employment opportunities (EEO) obligations imposed upon them that may not apply to contractors who do not work on federal contracts. It is important for contractors to understand those obligations, as well as the steps necessary to show compliance should the contractor ever be subject to an EEO audit by the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP).

Background

Executive Order 11246, issued by President Lyndon B. Johnson, prohibits federal contractors from discriminating “against any employee or applicant for employment because of race, color, religion, sex, or national origin.” On July 21, 2014, President Obama amended Executive Order 11246 to add sexual orientation and gender identity to the list of protected categories. This change went into effect on April 8, 2015, and applies to any and all Federal contracts entered into or modified after that date.

Executive Order 11246 governs federal contractors and federally-assisted construction contractors and subcontractors who have federal contracts or subcontracts that exceed $10,000. The Order is administered and enforced by the OFCCP.

Under the amended regulations, Federal contractors are prohibited from discriminating against job applicants and employees on the basis of their race, color, religion, sex, national origin, sexual orientation, or gender identity. Further, Federal contractors are required to take affirmative steps to ensure that applicants are employed, and that employees are treated without regard to their sexual orientation or gender identity during their employment.

OFCCP 16 Steps to Compliance

The OFFCP has identified 16 “minimum” steps that covered federal contractors and subcontractors must take to affirmatively meet their EEO obligations. They are:

1) Contractors and subcontractors must maintain a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor’s employees are assigned. When possible, Contractors will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site 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 such sites or in such facilities. (41 CFR 60-4.3(a)7.a.)

2) Contractors and subcontractors must establish and maintain current lists of minority and female recruitment sources; provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available; and maintain a record of the organizations’ responses. (41 CFR 60-4.3(a)7.b.)

3) Contractors and subcontractors must maintain current files containing the names, addresses and telephone numbers of each minority or female off-the-street applicant and minority or female referral from a union, recruitment source or community organization and of what action was taken with
respect to each individual. Occasionally, contractors/subcontractors will send individuals to the union hiring hall for referral back to the contractor. If the union did not refer the individual to the contractor or if the individual was referred but was not hired, the contractor/subcontractor must keep a record of the actions taken, along with the reason(s) why the referral or hiring did not occur. (41 CFR 60-4.3(a)7.c.)

4) Contractors and subcontractors must immediately notify the Deputy Assistant Secretary in writing when the union or unions with which the contractor/subcontractor has a collective bargaining agreement has not referred a woman or minority individual sent by the contractor/subcontractor. Similarly, contractors/subcontractors must notify OFCCP when the contractor/subcontractor has other information that the union referral process has impeded the contractor’s efforts to meet its EEO and affirmative action obligations. (41 CFR 60-4.3(a)7.d.)

5) Contractors and subcontractors must develop on-the-job training opportunities or participate in training programs for the job area(s) which expressly include minorities and women. Contractors’ actions must include upgrading programs, apprenticeships and trainee programs relevant to the contractor’s employment needs, especially those programs approved by the Department of Labor. Contractors and subcontractors must provide notice of these training opportunities and job programs to recruitment sources compiled under Specification 2 above. (41 CFR 60-4.3(a)7.e.)

6) Contractors and subcontractors must disseminate EEO policies by:

- Providing notice of the policies to unions and training programs and requesting their cooperation and assistance in meeting EEO obligations;
- Including EEO policy statements in all policy manuals and collective bargaining agreements;
- Publicizing these policies in company newsletters, the annual report, etc.;
- Specifically reviewing the policy with all management personnel and with all minority and female employees at least once a year; and,
- Posting the EEO policy on bulletin boards accessible to all employees at each location where construction work is performed. (41 CFR 60-4.3(a)7.f)

7) At least once a year, contractors and subcontractors must review EEO policies and affirmative action obligations (under these specifications) with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions. These EEO policies and affirmative action obligations must be specifically reviewed with on-site supervisory personnel such as superintendents, general foremen, etc., prior to starting construction work at any job site. Contractor/subcontractor personnel must maintain records that identify the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. (41 CFR 60-4.3(a)7.g.)

8) Contractors and subcontractors must disseminate EEO policies externally by including them in any advertising in the news media (including minority and female news media). Contractors and subcontractors must also provide written notification to and discuss EEO policies with other contractors and subcontractors with whom the contractor/subcontractor does or anticipates doing business. (41 CFR 60-4.3(a)7.h.)

9) Contractors and subcontractors must 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. Contractors/subcontractors must send notice to its recruitment sources for women and minorities announcing acceptance of applications for apprenticeship or other training. This notice must be sent no later than one month before the date for the acceptance of applications for apprenticeship or other training. Notices must describe the openings, screening procedures and tests to be used in the selection process. (41 CFR 60-4.3(a)7.i.)

10) Contractors and subcontractors must encourage current minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both at the work site and in other areas of the contractor’s work force. (41 CFR 60-4.3(a)7.j.)

11) Contractors and subcontractors must validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3, the “Uniform Guidelines on Employee Selection Procedures (1978).” (41 CFR 60-4.3(a)7.k.). Recordkeeping burdens relating to compliance vary by the number of people employed by the contractor. (41 CFR 60-3.15A(1))

12) At least once a year, contractors and subcontractors must inventory and evaluate all minority and female personnel for promotional opportunities. Contractors must also encourage these employees to seek or prepare for, through appropriate training, etc., promotional opportunities. (41 CFR 60-4.3(a)7.l.)

13) Contractors and subcontractors must 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 EEO policies and contractors’ obligations under these specifications or steps are being carried out. (41 CFR 60-4.3(a)7.m.)

14) Contractors and subcontractors must ensure that all facilities and company activities are non-segregated, except that separate or single-user toilets and necessary changing facilities designed to assure privacy between the sexes shall be provided. (41 CFR 60-4.3(a)7.n.)

15) Contractors and subcontractors must document and maintain records of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations. (41 CFR 60-4.3(a)7.o.)

16) At least once a year, contractors and subcontractors must conduct a review of all supervisors’ adherence to and performance under the company’s EEO policies and affirmative action obligations. (41 CFR 60-4.3(a)7.p.)

In addition to the above steps, covered contractors and subcontractors must keep requisite records about their entire onsite construction trade workforce within each covered area in which they perform any construction work (both federal and non-federal). See 41 CFR 60-1.12(a) and 60-4.3(a)14.

What Should a Union Contractor Do?

There are some very basic steps that will lead a federal contractor to complying with many of the 16 steps above. They are:
• Prevent discrimination. Act quickly to investigate discrimination claims and remedy any violations you discover.

• Develop an EEO policy and ensure it is distributed to all supervisors and managerial employees. Make knowledge of and compliance with the EEO policy part of supervisors' job description.

• Post EEO posters.

• Include an EEO tagline in employment advertising.

• Identify agencies or groups that service protected classes of workers and send job announcements to them when seeking to fill positions outside the union hiring hall.

• Notify the union and the local JATC of your status as a federal contractor and your EEO policy needs. Request their assistance in meeting your EEO obligations.

SMACNA contractors are encouraged to meet with local legal counsel in developing their EEO policy and procedures to ensure it not only meets their obligations as federal contractors but also addresses any local and state obligations the contractor may have as well.