

State of Wisconsin - Department of Workforce Development

Workforce Solutions
Job Service Bureau
201 E. Washington Ave., Rm G200
Madison, WI 53707

FAX COVER SHEET

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TO:	James C Pierce	FROM:	Bruce Markert
AGENCY/COMPANY:	OFCCP	RE:	RIN number 1215-AB46
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Special Instructions (optional): Urgent Review/Comments Response Required FYI

Attached are comments to the proposed amendment to the Federal Contracting law.

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Federal Register RIN Number 1215-AB46

Office of Federal Contract Compliance Programs
Division of Policy, Planning, and Program Development
ATTN: James C. Perce, Acting Director

Proposed Rules – Comments

Subpart A – Preliminary Matters, Equal Opportunity Clause

Section 60-300.5 Equal opportunity clause.

(a) Government contracts.

Comment: The gray area that is need of a better definition is the role of government agencies as to when they meet the definition of federal contractor or subcontractor. While many government agencies receive grants, others do receive contracts yet very few of these government agencies see themselves as federal contractors and don't provide affirmative action hiring of veterans under the Federal Contracting Law. Most view 'veteran's preference' as what they are required to address. In addition, OFCCP has little knowledge of what agencies receive contracts vs. grants.

We need a better mechanism to identify which government agencies receive contracts and must follow the federal contracting law.

Subpart A – Preliminary Matters, Equal Opportunity Clause

Section 60-300.5 Equal Opportunity clause

6. As Used in this Clause:

6ii. Executive and senior management means any employee: (a) whose primary duty consist of the management of the enterprise in which... (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees...

Comment: The definition for executive and senior management appears to be written to include most low level managers and supervisors?

Definition for this group should only be defined as positions which direct company policy and direction and not be hinged to supervision of employees.

As the definition now reads, many company positions that would provide the level of pay and security to veterans could be excluded.

Subpart B Discrimination Prohibited

Section 60-300.21 Prohibitions.

(c) Contractual or Other Arrangements.

(2) Contractual or other arrangement defined. An employment or referral agency; a labor organization....

Comment: Many federal contractors and subcontractors use Temporary (Temp) agencies to recruit for the contracting company and who are not by definition subcontractors to the federal contractor. OFCCP lists these agencies as "Agents" for the company recruiting potential employees. Many of these "Temp" agencies don't follow the contractor law since many will send what they have "on-file" and those sent by employment agencies are used by the "Temp" agencies to register within their database files.

To better serve veterans either "Temp" agencies should be considered as subcontractors or companies need to list a job order with the employment agency for positions over and beyond there contract with the "Temp" agencies.

Subpart C – Affirmative Action Program

Section 60-300.40 Applicability of the affirmative action program requirement.

(a) ...AAP requirements are applicable to "every Government contractor that has 50 employees and a contract of \$100,000 or more."

Comment: Many times employers contact the LVERs at the Job Centers (One-Stops) specifically requesting assistance in developing AAP plans. Are there any "draft" guidelines established that would help employers complete this type of plan? Some employers are not large enough to have a Human Resource Department. Who do employers contact to obtain assistance in developing these plans?

Subpart C – Affirmative Action Program

Section 60-300.42 – Invitation to self identify.

(a) Disabled veterans. Addresses the obligation of contractors to invite "disabled veterans" to self-identify as a veteran covered under VEVRAA who wishes to benefit from the contractor's affirmative action program.

Comment: While most companies have an additional separate form that requests self-identification which is separate from the job application or resume, many disabled veterans chose not to self identify because of the fear of being excluded from being hired.

How can we better help the company identify these veterans and ensure to disabled veterans that it will not be used against them during the hiring process?

Maybe it should be required to have companies include segments of the Federal Contracting Law that deals with Discrimination i.e. Subpart B, 60-300.21 (Prohibitions) and 60-300.23 (Medical examinations and inquiries).

Submitted By:

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