

U.S. Department of Energy  
Washington, D.C.

ORDER

DOE 3220.2A

5-14-92

SUBJECT: EQUAL OPPORTUNITY IN OPERATING AND **ONSITE SERVICE**  
CONTRACTOR FACILITIES

1. **PURPOSE.** To provide policies, procedures, and assign responsibilities and authorities for the management of equal opportunity and affirmative action at Department of Energy (DOE) operating and onsite service contractor facilities.
2. **CANCELLATION.** DOE 3220.2, EQUAL OPPORTUNITY IN OPERATING AND **ONSITE SERVICE CONTRACTOR FACILITIES**, of 4-1-81.
3. **SCOPE.** The provisions of this Order apply to all Departmental Elements and contractors performing work for the Department as provided by law and/or contract and as implemented by the appropriate contracting officer.
4. **REFERENCES.**
  - a. Federal Procurement Regulations. 1-12.8 and DOE Procurement Regulations 9-12.8, "Equal Opportunity in Employment," of 6-30-79; and DOE Procurement Regulations 9-50.12, "Labor Relations" of 6-30-79, which implements Federal Procurement Regulations Subpart 1-12, for operating and onsite contractors.
  - b. DOE 3220.4, CONTRACTOR PERSONNEL AND INDUSTRIAL RELATIONS REPORTS, of 6-4-85, which provides for standardized reporting requirements in the industrial relations area.
  - c. DOE Procurement Regulations, 9-50.7, of 6-30-79, which provides contract clauses for determinations of allowable costs under various cost reimbursement type contracts.
  - d. DOE 1280. 1A, MEMORANDUMS OF UNDERSTANDING, of 11-15-91, which establishes policies, procedures, and authorities for preparing and executing memorandums of understanding and to define the term "memorandum of understanding" as used in the Department of Energy.
  - e. Executive Order 11246, "Non-discrimination in Federal Contracts," of 9-24-65, as amended, which governs non-discrimination and affirmative action in employment by Government contractors.
  - f. Executive Order 12086, "Consolidation of Contract Compliance Function" of 10-5-78, which consolidates into the Department of Labor, Office of Federal Contract Compliance Programs, compliance enforcement responsibility for equal opportunity programs of Federal contractors.

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Office of Procurement, Assistance  
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- g. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 2012), as amended, which requires Federal contractors with contracts of \$10,000 or more to take affirmative action to employ and advance qualified disabled veterans and veterans of the Vietnam era.
- h. Section 503 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 793) which requires Federal contractors with contracts in excess of \$2,500 to take affirmative action to employ and advance in employment qualified handicapped individuals.
- i. Code of Federal Regulations, 41 CFR 60, which implements the nondiscrimination and affirmative action requirements of Executive Order 11246, as amended; and the affirmative action requirements for covered veterans and handicapped individuals.
- j. Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination because of race, color, religion, sex, or national origin of employment practices, and is administered by the Equal Employment Opportunity Commission.
- k. Code of Federal Regulations, 10 CFR 1040, "Nondiscrimination in Federally Assisted Programs," of 6-13-80, which implements Federal statutes, including Title VI of the Civil Rights Act of 1964, prohibiting discrimination in programs and activities receiving Federal assistance from the Department of Energy.
5. **DEFINITIONS** For the purpose of this Order, the following definitions are applicable:
- a. **Operating and Onsite Contractor.** Contractors who manage or operate Department-owned or controlled laboratories, production plants, and research facilities; or, **onsite** service contractors who perform services of a continuing nature at Department-owned or -controlled sites, as defined in DOE Procurement Regulations 9-50-001.
- b. **Department of Energy Contractor or Contractor Facilities.** **Operating** and **onsite** service contractors as defined in paragraph 5a above.
- CO **Headquarters or Field Elements.** The program office having **contract** authority, or the **field** element responsible for the administration of contracts or management of projects at Government-owned or -controlled, contractor-operated facilities as defined in DOE Procurement Regulations 9-50-001.

- d. Equal Opportunity Clause. Provisions covering non-discrimination and affirmative action requirements for Government contracts contained in FPR 1-12.8 and required to be part of all Federal contracts covered by Executive Order 11246.
- e. Affirmative Action Clauses. Clauses included in Federal contracts subcontracts detailing the affirmative action requirements for disabled veterans, Vietnam era veterans, and handicapped workers.
- f. Discrimination. An **illegal** difference in the treatment of person, either intentionally or unintentionally, based on race, color, religion, sex, national origin, age, handicap, or veteran status.
- g. Affirmative Action. Results-oriented and imaginative actions which a contractor, by virtue of its Federal contracts, must take to ensure equal employment opportunity. Where appropriate, it includes goals to correct under utilization of minorities and women and to correct it may also include relief for those protected by equal opportunity laws, such as back pay, retroactive seniority, makeup goals and timetables.
- h. Affirmative Action Program. A written, results-oriented program, **meeting** the requirements of **applicable** regulations of the **Office of Federal Contract Compliance** Programs. "

6. BACKGROUND.

- a. Contracts for the operation of Department of Energy facilities contain provisions whereby the operating and **onsite** service contractors agree to establish and implement affirmative action programs to provide equal opportunities. Those provisions are mandated and are consistent with DOE policies. Although the contractor is responsible for managing the operation of the facility, including providing a work force, the Department of Energy has a significant degree of authority over major policies related to programs of research, development, and production and exercises a significant oversight role to assure that the contractor adheres to Department policies and contractual **commitments**. This includes equal opportunity and affirmative action policies and commitments. Thus, DOE continually reviews contractor performance in equal opportunity and affirmative action programs in the same way as other aspects of human resource management.
- b. The Department of Energy will assure, through its contractual arrangements, that contractor performance in human resource management: (1) effectively implements Department and national policy objectives and programs and the contractual **commitment** of the contractor; and (2) is achieved in a cost effective manner by the prudent expenditure of Federal funds.

7. POLICY AND OBJECTIVES

- a. **Policy.** It is DOE policy that there will be no discrimination at contractor facilities because of race, **color**, religion, sex, national origin, age, physical or mental handicap, or covered veteran status, and that affirmative actions will be taken to achieve the full realization of equal opportunity.
- b. **Objectives.** To accomplish this policy, the Department will promote affirmative action and assess the effectiveness of contractor efforts to:
  - (1) Attain **full** equality of opportunity in all aspects of recruitment, hiring, retention, and advancement; in training, educational assistance, opportunities for research, and cooperative arrangements with schools and colleges; and in other activities which provide motivation and enhance upward mobility.
  - (2) Achieve full utilization of minority and women personnel and other protected groups in all job groups and at all organizational levels.
  - (3) Encourage public and private activities to assure equal opportunity in housing, education, recreation, welfare, and other community services.
  - (4) Achieve the aims of Executive Order 11246, as amended; the Age Discrimination in Employment Act; the Equal Pay Act; and applicable Office of Federal Contract Compliance Programs **affirmative** action regulations for veterans and handicapped **workers**.
  - (5) Cooperate with Federal, State, and local agencies in the performance of their duties to enforce civil rights and fair employment practice laws.
  - (6) Develop voluntary affirmative action programs which will provide maximum employment opportunities for minorities, women, and other protected groups.

8. RESPONSIBILITIES AND AUTHORITIES

- a. **Director of Procurement.** Assistance and **Program** Maria\_ has overall authority for establishing policies designed to promote affirmative action and assess management performance on the part of contractors who operate and **service** Department of Energy-owned or -controlled facilities.

- (1) Disseminates procurement policy guidelines and requirements from the Office of Federal Contract Compliance Programs, reading provisions of **41 CFR**, Chapter 60, **for** compliance by Department contracting officers.
- (2) Coordinates Departmental review and comments on proposed Office of Federal Contract Compliance Programs requirements for applicability to and potential impact on DOE procurement and contract management activities.
- (3) Develops procurement policies and procedures concerning Departmental equal opportunity and affirmative action objectives, in coordination with the Director of Contractor Human Resource Management.
- (4) Coordinates any responses to inquiries with appropriate Headquarters Elements as to the allowability of costs of equal opportunity programs and related activities.

b. **Director of contractor Human Resource Management.**

- (1) Develops and implements policies and procedures related to overall management of the contractor human resource management function, including equal opportunity and affirmative action.
- (2) Assures that requirements and guidelines for evaluating the adequacy of equal opportunity and affirmative action performance by contractors are developed and implemented.
- (3) Provides advice, guidance, and assistance to applicable Headquarters and field elements regarding Departmental policy and keeps them informed of significant development.
- (4) Advises and assists the Heads of Headquarters and field elements in the administration of equal opportunity and affirmative action policies and procedures regarding contractors, and appraises the effectiveness of such administration.
- (5) **Maintains** liaison with the national office of the Office of Federal Contract Compliance Programs on matters within the scope of this directive, including efforts to resolve disputes or impasses reached during the conduct of compliance reviews.
- (6) Maintains liaison with other Federal agencies having equal opportunity and affirmative action responsibilities and with private organizations concerned with equal opportunity programs.

- (7) Reviews for concurrence all proposed DOE permanent directives and similar **Departmentwide** issuances applicable to the contractor human resource management program to assure their consistency with the objectives of this Order.
- (8) Reports to the Director of Procurement, Assistance and Program Management, or Headquarters element, as appropriate, any issuance of sanctions by Federal equal opportunity enforcement agencies which may have a significant adverse affect **on** contractor operations.
- (9) Reviews reports required of Headquarters and field elements and contractors, including contractor affirmative action programs, and provides consolidated reports and analyses of equal opportunity status and progress at contractor facilities; disseminates summary and other **equal** opportunity information within the Department.
- (10) Reviews **eva**'uations of the equal opportunity posture and performance of Department contractors and provides **recommendat**'ions to the Headquarters or field elements for improvement.
- (11) Schedules, develops, and conducts conferences and workshops for Department and contractor personnel to achieve understanding of equal opportunity and affirmative action policies and requirements and to improve skills in their administration.
- (12) Develops and provides opportunities to implement affirmative action training and development programs to increase opportunities for minorities and women and other protected groups in the contractor work force.
- (13) Recommends to the Office of Congressional and Intergovernmental Affairs to enter into Memoranda of Understanding with Government enforcement agencies when such agreements will assist the Department of Energy in meeting its objectives.
- (14) Prepares or coordinates Department responses to correspondence and inquiries from Congress, State or local governments, Federal agencies, and civil rights organizations relating to operating contractors equal opportunity matters.

- c. General Counsel and Field Chief Counsels.
  - (1) Review and advise on policies affecting the Department's equal opportunity and affirmative action objectives for legal sufficiency and suitability.
  - (2) Provide legal advice and assistance on equal opportunity matters within the scope of this directive.
- d. Director of Civil Rights.
  - (1) Consults with and advises the Director of Contractor Human Resource Management regarding civil rights laws, policies, and procedures administered by the Office of Civil Rights that apply to contractor operations covered by this Order.
  - (2) Determines the compliance status of recipients or applicants for Federal assistance grants from the Department of Energy with civil rights laws and regulations governing equal treatment in Federal grants programs (10 CFR 1040). This includes programs conducted in conjunction with Department-owned, contractor-operated national laboratories, production, and research facilities.
- e. Program Secretarial Officers shall assure that the policy and program objectives, as stated in this Order, are encouraged and supported by contractors and other program participants.
- f. Heads of Headquarters or Field Elements Administering Operating and Onsite service on contracts.
  - (1) Exercise direct responsibility in the negotiation and administration of contracts, for encouraging contractor management to achieve the Department's equal opportunity and affirmative action objectives, and for exercising oversight role to assure adherence to the equal opportunity clause set forth in Federal Procurement Regulations 1-12.8.
  - (2) Identify those contractors covered by this Order and advise them of the Departmental policy and objectives.
  - (3) Maintain continuing contacts with contractor management to provide advice and guidance and technical assistance on the equal opportunity clause and implementing regulations of the Secretary of Labor.

- (4) Evaluate the effectiveness of each contractor's management of its equal opportunity and affirmative action clause and implementing regulations of the Secretary of Labor.
- (5) Review and approve reasonable and allowable costs associated with equal opportunity and affirmative action support, such as funding special training programs and support for community equal opportunity activities related to contract performance.
- (6) Require contractors to keep them **fully** informed of scheduled compliance reviews; complaint investigations; proposed settlements and pending litigation or monetary claims imposed by equal opportunity enforcement agencies; and all other significant equal opportunity issues that affect the Department's operations.
- (7) Approve, in conjunction with the Office of General Counsel, reasonable and allowable costs under the contract with respect to equal opportunity claims and litigation. Determine the extent of proposed resolution of issues raised by enforcement agencies or the courts which have cost or programmatic impact.
- (8) Encourage contractors to establish internal audit systems that provide for a review of employee complaints of discrimination and attempts at preventive management before complaints are filed with enforcement agencies.
- (9) Assure the submission, review, and evaluation of program reports required by DOE 3220.4, CONTRACTOR PERSONNEL AND INDUSTRIAL RELATIONS REPORTS, and other reports and information as may be required by the Office of Contractor Human Resource **Management**.
- (10) Promote contractor participation in training and personnel development programs to increase opportunities for under represented groups in the contractor work force, and to support affirmative action generally.
- (11) Adhere to preaward** equal opportunity requirements contained in FPR 1-12.8, in DOE Procurement Regulations 9-12.8, 'Equal Opportunity in Employment,' and 9-50.12, **"Labor Relations."**
- (12) Assess, during the contract renewal process: the contractor's equal opportunity and affirmative action performance; any violations of the Department's prescribed equal opportunity objectives; and the timeliness and manner



of correction. Willful violations, or refusal or failure to correct violations, of enforcement agency regulations or agreements, or Departmental objectives, may be justification for contract termination.

- (13) Assure that DOE staff is properly instructed and trained to assist in carrying out assigned responsibilities.
- (14) Maintain liaison and cooperate with regional and area offices of the Office of Federal Contract Compliance Programs, Equal Employment Opportunity Commission, and other Federal agencies and local and State government agencies having equal opportunity responsibilities.
- (15) Maintain liaison, as appropriate, with organizations concerned with equal opportunity.
- (16) Assure that facilities under their control that are to be utilized by operating and onsite service contractors do not restrict those contractors from satisfying Civil Rights requirements with regard to accessibility and use by handicapped persons.

g. Department of Energy Employees shall assure that actions are consistent with the equal opportunity policy and program objectives of the Department in their contacts with contractor operations and in their actions involving contractors.

h. Director of Minority Economic Impact.

- (1) Consults with and advises the Director of Contractor Human Resource Management regarding responsibilities of the Office of Minority Economic Impact to advise the Secretary on the effect of energy policies, programs, regulations, and other actions of the Department and its components on minorities and on ways to participate fully in the Department's energy programs.
- (2) Receives for concurrence policy and regulation issuances of the Office of Contractor Human Resource Management and confers on analyses and data on minority employment at DOE contractor facilities provided by the Director of Contractor Human Resource Management.

8. PROCEDURES AND REQUIREMENTS.a. Affirmative Action Programs (Operating and Onsite Service Contractors.

- (1) Contractors with 50 or more employees and a contract of **\$50,000** or more are required to develop and update their affirmative action programs each fiscal year or other annual basis as agreed upon with the Office of Federal Contract Compliance Programs.
- (2) Requirements for the programs are established by the Department of Labor through its **Office** of Federal Contract Compliance Programs and are detailed in 41 **CFR**, Chapter 60. Enforcement of these requirements is vested in the Office of Federal Contract Compliance Programs. As part of their ongoing contract management responsibilities, Headquarters or field elements will use the affirmative action program to appraise and assess contractor performance in the area of equal opportunity.
- (3) Within 30 days of the effective date of an affirmative action program, or within the time frame agreed upon with the cognizant Headquarters or field element, the contractor **will submit two** copies of the program to the head of the cognizant DOE element. The program will be reviewed to determine if it adequately addresses the objectives of this Order; but is not approved by the Department. The Headquarters or field element may offer guidance to assist the contractor in meeting the published requirements of 41 **CFR**, Chapter 60, and the objectives of this Order. Clarification or modification of the contractor's plan will be obtained, if appropriate.
- (4) **Within** 60 days after the effective date of the affirmative action program, the Headquarters or field element will submit one copy of the program to the Director of Contractor Human Resource Management, for ongoing analyses of the equal opportunity status and progress at individual and consolidated Department contractor operations.

b. Coordination with Other Federal Agencies.(1) Compliance Reviews.

- (a) Heads of Headquarters or Field Elements will include the applicable equal opportunity and affirmative action program requirements in preaward solicitations

and obtain the applicable reports of compliance from the Office of Federal Contract Compliance Programs, when required, prior to awarding contracts.

- (b) For contracts subject to the extend or compete decision requirements of DOE Procurement Regulations 9-50.303 and 9-50.304, contracting officers may provide the appropriate regional office of the Office of Federal Contract Compliance Programs with sufficient notice to conduct and complete a compliance review within 18 months prior to the contract termination date.
- (c) Heads of Headquarters or Field Elements will require contractors to keep the cognizant organization fully and promptly aware of the scheduling and significant developments that arise during the conduct of compliance reviews. Such information will be sufficient for Headquarters or field elements to determine the extent of compliance review findings and proposed contractor actions. Copies of pertinent correspondence between contractor and compliance agency to be forwarded to the cognizant organization, will include, but not be limited to:
  - 1** The notification letter scheduling the compliance review.
  - 2** Transmittal of findings and deficiencies in the contractor's compliance with the enforcement agencies' implementing rules, regulations, or orders.
  - 3** Recommended remedial actions for the correction of identified deficiencies and the contractor's response(s) to the recommendations.
  - 4** Notification of proposed sanctions.
  - 5** Proposed conciliation agreements, letters of **commitment**, and actions leading to claims or litigation.
  - 6** Notification of compliance review **results**.
- (d) Heads of Headquarters or Field Elements **will** transmit, promptly, a copy of all pertinent correspondence between the contractor and compliance agency and between Headquarters or field elements and the contractor to the Director of Contractor Human Resource Management. The Director will be advised by

telephone of any notification from the Office of Federal Contract Compliance Programs that alleges noncompliance by the contractor with its contractual equal opportunity and affirmative action clauses.

- (e) Headquarters or field elements may contact directly the appropriate regional office of the Office of Federal Contract Compliance Programs to determine the reasons for delay in completing **preaward** compliance reviews and to offer assistance in the resolution of issues raised in findings of noncompliance. The Director of Contractor Human Resource Management will assist contracting officers when a noncompliance finding has escalated to the national office of the Office of Federal Contract Compliance Programs and the Director's assistance in obtaining a final decision is desired.

(2) Cooperation with Enforcement Agencies.

- (a) Headquarters or field elements will cooperate with and assist equal opportunity enforcement agencies in the performance of their responsibilities and furnish information as requested.
- (b) The Heads of Headquarters or Field Elements, in consultation with their appropriate legal counsel, will determine the manner and scope for the disclosure of contractor affirmative action programs in the Department's possession which are requested by the public, local, State, or other Federal agencies. In this respect, the provisions of Department regulations implementing the Freedom of Information Act, as amended, will be followed. Requests under the Freedom of Information Act for disclosure of correspondence, conciliation agreements, settlement reports, and similar documents which were prepared by the Office of Federal Contract Compliance Programs, Equal Employment Opportunity **Commission**, or other enforcement agencies are to be referred to the originating agency for action.
- (c) In conjunction with Headquarters and field elements, the Office of Contractor Human Resource Management is responsible for developing and issuing supplementary guidance for coordination efforts with other Federal agencies.

c. Complaint of Discrimination.

- (1) Heads of Headquarters or Field Elements are to refer written complaints which allege discrimination because of race, color, religion, sex, national origin, age, handicap or veterans status at contractor facilities received in their office to the regional office of the Office of Federal Contract Compliance Programs that covers the contractor site involved. The Office of Federal Contract Compliance Programs, as appropriate, transmits complaints filed with it to the cognizant office of the Equal Employment Opportunity Commission.
- (2) Contractors are to be encouraged to maintain internal audit and preventive management systems that provide for review and prompt resolution of employees' equal opportunity problems.
- (3) Contractors will be required to keep Headquarters or field elements fully informed of complaints filed against the contractor and investigated by enforcement agencies; to submit copies of correspondence relating to the investigation; and to obtain prior approval from the Department on proposed settlements, pending litigation or monetary claims, and other issues relating to complaints of discrimination.
- (4) Headquarters or field elements will provide copies of correspondence relating to class action complaints involving contractor's employees or applicants to the Director of Contractor Human Resource Management upon receipt at the appropriate office. Such complaints will continue to be reviewed and coordinated with the Office of General Counsel or Field Chief Counsel, as appropriate.
- (5) Responses to correspondence citing equal opportunity problems at contractor facilities which are received at Headquarters will be coordinated by the Director of Contractor Human Resource Management. This office may request that Headquarters or field elements assess factual data on certain problems to determine if they indicate systemic problems at contractor operations which need timely resolution.
- (6) Copies of significant correspondence on individual complaints will be provided to the Director of Contractor Human Resource Management, upon request.

- (7) Headquarters or field elements will monitor the status of charges of discrimination filed against contractor operations. Reports of the status will be provided to the Director of Contractor Human Resource Management, upon request.

d. Appraisal of Contractor's Management Performance.

- (1) Heads of Headquarters or Field Elements will establish and implement an appraisal process to evaluate contractor management performance *inequal* opportunity and affirmative action programs.
- (2) Contractor's performance in equal opportunity and affirmative action shall be evaluated as other aspects of human resource management are evaluated under the contract. The objective is to assure that contractors' overall management performance conform with DOE policies, Federal equal opportunity laws, and is cost effective.
- (3) The appraisal process will provide Headquarters or field management with information necessary to evaluate:
  - (a) Contractor performance in equal opportunity and affirmative action programs, including significant achievement and deficiencies;
  - (b) Contractor policies and procedures, management control and support, and staffing;
  - (c) Result of adherence to contract provisions, Federal equal opportunity laws, and DOE policies and procedures.
- (4) **Heads** of Headquarters or Field Elements will be responsible **for:**
  - (a) **Overall** management appraisals **of** contractor performance under cost-plus-fixed-fee contracts; or
  - (b) Performance evaluation procedures for determination of award fee for cost-plus-award-fee contracts.
- (5) Specific procedures for appraisal of contractor performance, will be developed by Headquarters or field elements, in keeping with their general management performance evaluation programs for operating and **onsite** service contracts and with guidelines issued by the Office of Contractor Human Resource Management. Appraisals will not duplicate the compliance review coverage adhered to by the Office of Federal Contract Compliance **Programs** in enforcing 41 CFR, Chapter 60. The

emphasis in the appraisal process is on significant results, rather than on the detailed processes by which the results are achieved.

- (6) Written appraisal evaluations will be made available upon request by the Director of Contractor Human Resource Management. Such appraisal evaluations will be made available by the Director of Contractor Human Resource Management to the Director of Procurement, Assistance and Program Management and cognizant Headquarters Elements for any appropriate action.
- (7) Headquarters or field elements shall review and forward to the Director of Contractor Human Resource Management DOE F 3230.1, "Contractor Employment and Labor Turnover," submitted by contractor in accordance with DOE 3220.4.
- (8) The Office of Contractor Human Resource Management will review the completed DOE F 3230.1 and provide analyses, special studies, and reports on equal employment at contractor operations.

BY ORDER OF THE SECRETARY OF ENERGY:



DONALD W. PEARMAN, JR.  
Acting Director  
Administration and Human  
Resource Management



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