

§ 60-2.15 Comparing incumbency to availability.

(a) The contractor must compare the percentage of minorities and women in each job group determined pursuant to § 60-2.13 with the availability for those job groups determined pursuant to § 60-2.14.

(b) When the percentage of minorities or women employed in a particular job group is less than would reasonably be expected given their availability percentage in that particular job group, the contractor must establish a placement goal in accordance with § 60-2.16.

§ 60-2.16 Placement goals.

(a) Purpose: Placement goals serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work. Placement goals also are used to measure progress toward achieving equal employment opportunity.

(b) A contractor's determination under § 60-2.15 that a placement goal is required constitutes neither a finding nor an admission of discrimination.

(c) Where, pursuant to § 60-2.15, a contractor is required to establish a placement goal for a particular job group, the contractor must establish a percentage annual placement goal at least equal to the availability figure derived for women or minorities, as appropriate, for that job group.

(d) The placement goal-setting process described above contemplates that contractors will, where required, establish a single goal for all minorities. In the event of a substantial disparity in the utilization of a particular minority group or in the utilization of men or women of a particular minority group, a contractor may be required to establish separate goals for those groups.

(e) In establishing placement goals, the following principles also apply:

(1) Placement goals may not be rigid and inflexible quotas, which must be met, nor are they to be considered as either a ceiling or a floor for the employment of particular groups. Quotas are expressly forbidden.

(2) In all employment decisions, the contractor must make selections in a nondiscriminatory manner. Placement

goals do not provide the contractor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's employment status, on the basis of that person's race, color, religion, sex, or national origin.

(3) Placement goals do not create set-asides for specific groups, nor are they intended to achieve proportional representation or equal results.

(4) Placement goals may not be used to supersede merit selection principles. Affirmative action programs prescribed by the regulations in this part do not require a contractor to hire a person who lacks qualifications to perform the job successfully, or hire a less qualified person in preference to a more qualified one.

(f) A contractor extending a publicly announced preference for American Indians as is authorized in 41 CFR 60-1.5(a)(6) may reflect in its placement goals the permissive employment preference for American Indians living on or near an Indian reservation.

§ 60-2.17 Additional required elements of affirmative action programs.

In addition to the elements required by § 60-2.10 through § 60-2.16, an acceptable affirmative action program must include the following:

(a) *Designation of responsibility.* The contractor must provide for the implementation of equal employment opportunity and the affirmative action program by assigning responsibility and accountability to an official of the organization. Depending upon the size of the contractor, this may be the official's sole responsibility. He or she must have the authority, resources, support of and access to top management to ensure the effective implementation of the affirmative action program.

(b) *Identification of problem areas.* The contractor must perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. At a minimum the contractor must evaluate:

(1) The workforce by organizational unit and job group to determine whether there are problems of minority or female utilization (*i.e.*, employment in

§ 60-2.18

the unit or group), or of minority or female distribution (*i.e.*, placement in the different jobs within the unit or group);

(2) Personnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are selection disparities;

(3) Compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities;

(4) Selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women; and

(5) Any other areas that might impact the success of the affirmative action program.

(c) *Action-oriented programs.* The contractor must develop and execute action-oriented programs designed to correct any problem areas identified pursuant to §60-2.17(b) and to attain established goals and objectives. In order for these action-oriented programs to be effective, the contractor must ensure that they consist of more than following the same procedures which have previously produced inadequate results. Furthermore, a contractor must demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results.

(d) *Internal audit and reporting system.* The contractor must develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. The actions listed below are key to a successful affirmative action program:

(1) Monitor 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) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;

(3) Review report results with all levels of management; and

(4) Advise top management of program effectiveness and submit rec-

41 CFR Ch. 60 (7-1-05 Edition)

ommendations to improve unsatisfactory performance.

§ 60-2.18 Equal Opportunity Survey.

(a) *Survey requirement.* Each year, OFCCP will designate a substantial portion of all nonconstruction contractor establishments to prepare and file an Equal Opportunity Survey. OFCCP will notify those establishments required to prepare and file the Equal Opportunity Survey. The Survey will provide OFCCP compliance data early in the compliance evaluation process, thus allowing the agency to more effectively identify contractor establishments for further evaluation. The Survey will also provide contractors with a useful tool for self-evaluation.

(b) *Survey format.* The Equal Opportunity Survey must be prepared in accordance with the format specified by the Deputy Assistant Secretary. The Equal Opportunity Survey will include information that will allow for an accurate assessment of contractor personnel activities, pay practices, and affirmative action performance. At a minimum, this will include such data elements as applicants, hires, promotions, terminations, compensation, and tenure by race and gender. As use of the EO Survey develops and evolves, the Department may at some time determine that one or more of the data elements currently included in the EO Survey should be altered or deleted. In the event consideration is given to changing a data element requirement, the following circumstances must exist:

(1) The Secretary must clearly demonstrate through statistical analyses of EO Survey submissions that the data element in question is no longer of value; and

(2) The Secretary must follow Notice and Comment procedures.

(c) *How, when, and where to file.* Contractors are encouraged to submit the Equal Opportunity Survey via the Internet. The Equal Opportunity Survey may also be submitted via facsimile to the telephone number indicated in the Survey instructions. Paper versions of the Equal Opportunity Survey must be mailed to the address indicated in the Survey instructions. The