

Non discrimination in Employment by
Federal Contractors and Subcontractors

It is the policy of the Federal government to secure goods and services through Federal contracts in the most economical and efficient manner possible. Employment non-discrimination directly promotes efficient performance and productivity. The Federal Government has a vital interest in assuring that the largest pool of qualified workers be available for the fulfillment of its procurement needs. When Federal contractors and subcontractors engage in discrimination unrelated to work performance, the unavoidable consequence is a labor pool that excludes quality workers, which in turn results in a serious adverse impact upon the economy and efficiency of Federal Government procurement. In order to operate as effectively as possible, the Federal Government must ensure that the entities with which it has contractual relations not discriminate on the basis of sexual orientation.

Now therefore, to ensure the economical and efficient administration and completion of Federal Government contracts, and the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 486(a) and 3 U.S.C. 301, it is hereby ordered as follows:

Section 1. It is the policy of the Executive Branch to oppose all forms of discrimination, including discrimination on the basis of sexual orientation.

Section 2. It is the finding of the Executive Branch that discrimination on the basis of sexual orientation interferes with the economical and efficient administration and completion of Federal contracts and subcontracts.

Section 3. Federal agencies shall only contract with individuals and entities who do not engage in discrimination in employment on the basis of sexual orientation.

Section 4. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation to require each solicitation of offers for a contract to include a provision that:

(a) Prohibits non discrimination on the basis of sexual orientation by Federal contractors and subcontracts.

(b) Requires Federal contractors and subcontractors to develop a policy of equal employment opportunity under Federal contracts with respect to this Order. This policy

shall include, but not be limited to, the posting of notices to employees of the equal employment opportunity policies of this Order and the fostering of a work environment of non discrimination on the basis of sexual orientation.

(c) Provides that the Government may terminate the contract if the contractor or subcontractor fails to comply with the terms of the Order.

Section 5. For the purposes of this Order, it shall be considered “discrimination on the basis of sexual orientation” for a Federal contractor or subcontractor, or any organizational unit thereof,

(a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual’s sexual orientation;

(b) To limit, segregate, or classify the employees or applicants for employment of the employee in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee because of the individual’s sexual orientation; or

(c) To discriminate against any individual because of the sexual orientation of the individual in admission to or employment in, any program established to provide apprenticeship or other training.

Section 6. For purposes of this Order, “sexual orientation” means homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived.

Section 7. This Order does not, and the implementing regulations shall not, authorize or require:

(a) Adoption or implementation of a quota on the basis of sexual orientation;

(b) Preferential treatment for any individual on the basis of sexual orientation;

(c) Entering into an order or consent decree that includes a quota, or preferential treatment to an individual based on sexual orientation; or

(d) Collection of statistics on sexual orientation.

Section 8. The fact that an employment practice has a disparate impact, as that term is used in section 703(k) of the Civil Rights Act of 1964, on the basis of sexual orientation does not establish a prima facie violation of this Order, or the implementing regulations.

Section 9. This Order does not:

- (a) Repeal or modify any Federal, State, territorial, or local law, creating a special right or preference concerning employment or an employment opportunity for a veteran;
- (b) Prohibit the enforcement of rules regarding non private sexual conduct, if the rules of conduct are designated for, and uniformly applied to, all individuals regardless of sexual orientation; or
- (c) Require the provision of employee benefits to an individual for the benefit of the domestic partner of such individual.

Section 10. This Order shall not apply to a Federal contractor or subcontractor that is a religious organization, except that this Order shall apply to employment or an employment opportunity for an employment position of a Federal contractor that is a religious organization if the duties of the position pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under section 511 (a) of the Internal Revenue Code of 1986.

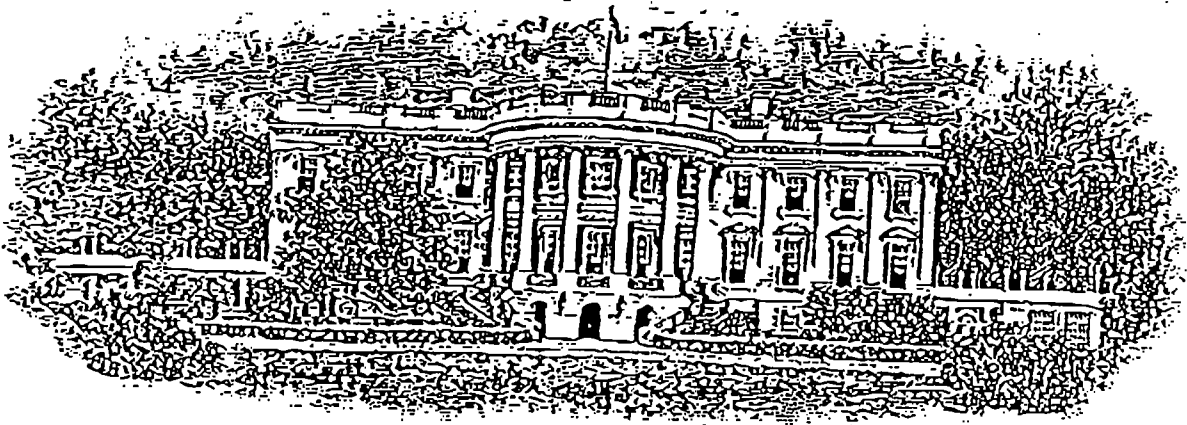
Section 11. Nothing in this order shall be construed to prohibit a covered entity from enforcing rules regarding non private conduct, if the rules of conduct are designated for, and uniformly applied to, all individuals regardless of sexual orientation.

Section 12. This Order shall apply only to contracts in excess of the Simplified Acquisition Threshold as defined in the Office of Federal Procurement Policy Act, 41 U.S.C. Section 403.

Section 13. This Order is effective for contracts resulting from solicitations issued on or after the effective date of final regulations promulgated pursuant to this Order.

Section 14. This order is intended only to improve the internal management of the Executive Branch, and does not create any rights or benefits, substantive or procedural, enforceable by law by a party against the United States, its agencies, its offerors, or any other person.

The White House



COUNSEL'S OFFICE

Facsimile Transmission Cover Sheet

Telephone 202 456-6229

Fax 202 456-2146

DATE: _____

TO: Heather Howard
Marilyn Stewart

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FROM: Mary Smith

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PAGES (WITH COVER): _____

COMMENTS: Executive Order

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Employment Nondiscrimination in Federal Contracts

Employment non-discrimination directly promotes efficient economic performance and productivity. When Federal contractors engage in discrimination on the basis of sexual orientation, the unavoidable consequence is a serious adverse impact upon the Federal Government's economy, efficiency, and cost of operations. In order to operate as effectively as possible, the Federal Government must demand that the entities with which it has contractual relations not discriminate on the basis of sexual orientation.

The adverse effects of employment discrimination on federal procurement are demonstrated by the straightforward application of basic principles of market economics. When Federal contractors discriminate, the supply of labor is artificially reduced. Other factors being equal, this decrease in supply will cause an increase in the cost of labor. It is the policy of the Federal government to secure goods and services, to complete Federal contracts, and to see federally assisted construction contracts completed in the most economical and efficient manner possible. Therefore, it is the policy of the Executive branch not to tolerate employment discrimination by Federal contractors.

Every President since Franklin Delano Roosevelt has recognized and acted on the force of this argument. In June 1941, President Franklin Roosevelt issued Executive Order 8802 forbidding race-based discrimination by Federal contractors. Less than three weeks after entering World War II, President Roosevelt issued Executive Order 9001 forbidding defense contractors to discriminate on the basis of race. Thus, when economical and efficient procurement has been most vital to the national interest, Presidents have insisted on the non-discrimination principle as crucial to maximizing our procurement efforts.

NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 436(a) and 3 U.S.C. 301, it is hereby ordered as follows:

Section 1. It is the policy of the executive branch to oppose all forms of discrimination, including discrimination on the basis of sexual orientation.

Sec. 2. It is the finding of the executive branch that discrimination on the basis of sexual orientation interferes with the economical and efficient administration and completion of Federal contracts and federally assisted construction contracts.

Sec. 3. All Federal contractors are hereby forbidden to engage in discrimination on the basis of sexual orientation.

Sec. 4. The Office of Management and Budget is directed to issue regulations to enforce this Executive Order. These regulations shall establish:

(a) procedures by which individual allegations that a Federal contractor has engaged in

discrimination on the basis of sexual orientation may be received, investigated, and resolved;

(b) protections for individuals who make an allegation under subsection (a) against retaliation by a Federal contractor;

(c) specific measures to respond to a determination that a Federal contractor has engaged in discrimination on the basis of sexual orientation. These measures should include, without limitation, termination of contract(s) for convenience, suspension, and debarment; and

(d) mechanisms to encourage equal employment opportunity practices by Federal contractors. These mechanisms may include posting of notices to employees of the equal employment opportunity policies of this Order and positive incentives to Federal contractors that foster a work environment of non-discrimination on the basis of sexual orientation.

The Director shall issue these regulations within 60 days of the effective date of this order.

Sec. 5. For the purposes of this Order, it shall be considered "discrimination on the basis of sexual orientation" for a Federal contractor, or any organizational unit thereof,

(a) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's sexual orientation;

(b) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee because of the individual's sexual orientation; or

(c) to discriminate against any individual because of the sexual orientation of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

Sec. 6. For the purposes of this Order, "sexual orientation" means homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived.

Sec. 7. This Order does not, and the implementing regulations shall not, authorize or require:

- (a) adoption or implementation of a quota on the basis of sexual orientation;
- (b) preferential treatment for any individual on the basis of sexual orientation;
- (c) entering into an order or consent decree that includes a quota, or preferential treatment to an individual based on sexual orientation; or
- (d) collection of statistics on sexual orientation.

Sec. 8. The fact that an employment practice has a disparate impact, as that term is used in section 703(k) of the Civil Rights Act of 1964, on the basis of sexual orientation does not establish a prima facie violation of this Order, or the implementing regulations.

Sec. 9. This Order does not:

- (a) repeal or modify any Federal, State, territorial, or local law, creating a special right or preference concerning employment or an employment opportunity for a veteran;
- (b) prohibit the enforcement of rules regarding nonprivate sexual conduct, if the rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation; or
- (c) require the provision of employee benefits to an individual for the benefit of the domestic partner of such individual.

Sec. 10. This Order shall not apply to a Federal contractor that is a religious organization, except that this Order shall apply to employment or an employment opportunity for an employment position of a Federal contractor that is a religious organization if the duties of the position pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under section 511(a) of the Internal Revenue Code of 1986.

Sec. 11. Nothing in this Order shall be construed to prohibit a covered entity from enforcing rules regarding nonprivate sexual conduct, if the rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation.

Sec. 12. Each contracting department and agency shall cooperate with the Office of Management and Budget and provide such information and assistance as it may require in the performance of the its functions under this Order.

Sec. 13. The Director of the Office of Management and Budget may delegate any function or duty under this order to any officer in the Office of Management and Budget or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

Sec. 14. This Order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

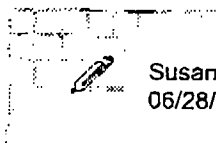
Sec. 15. This Order shall apply only to contracts in excess of the Simplified Acquisition Threshold.

Sec. 16. This Order is effective immediately.

WILLIAM J. CLINTON


THE WHITE HOUSE,

DATE

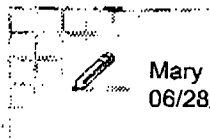


Susan E. Alesi
06/28/2000 03:06:54 PM

Record Type: Record

To: Mary L. Smith/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Conference call on executive order 

3PM is ifne. I will need a copy of the draft EO faxed to X55105. Thanks.
Mary L. Smith



Mary L. Smith
06/28/2000 02:55:10 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Conference call on executive order

We will have a conference call on Thursday, July 6 at 3p.m. regarding a possible executive order to prohibit discrimination by federal contractors based on sexual orientation. We have a draft of the executive order. If you need a copy, please email me or Paul Oetken with your fax number. The dial-in number will be forthcoming. Thanks, Mary

Message Sent To:

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