

22.807 Exemptions.

(a) Under the following exemptions, all or part of the requirements of *E.O.11246* may be excluded from a contract subject to *E.O.11246*:

(1) *National security*. The *agency head* may determine that a contract is essential to the national security and that the award of the contract without complying with one or more of the requirements of this subpart is necessary to the national security. Upon making such a determination, the agency shall notify the *Deputy Assistant Secretary in writing* within 30 days.

(2) *Specific contracts*. The *Deputy Assistant Secretary* may exempt an agency from requiring the inclusion of one or more of the requirements of *E.O.11246* in any contract if the *Deputy Assistant Secretary* deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the *Deputy Assistant Secretary* finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of *E.O.11246*.

(b) The following exemptions apply even though a contract or *subcontract* contains the *Equal Opportunity clause*:

(1) *Transactions of \$10,000 or less*. The *Equal Opportunity clause* is required to be included in prime contracts and *subcontracts* by 22.802(a). Individual prime contracts or *subcontracts* of \$10,000 or less are exempt from application of the *Equal Opportunity clause*, unless the aggregate value of all prime contracts or *subcontracts* awarded to a *contractor* in any 12-month period exceeds, or can reasonably be expected to exceed, \$10,000. (Note: Government bills of lading, regardless of amount, are not exempt.)

(2) *Work outside the United States*. Contracts are exempt from the requirements of *E.O.11246* for work performed outside the *United States* by employees who were not recruited within the *United States*.

(3) *Contracts with State or local governments*. The requirements of *E.O.11246* in any contract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the contract.

(4) *Work on or near Indian reservations*. It shall not be a violation of *E.O.11246* for a *contractor* to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. *Contractors* extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, *sexual orientation*, *gender identity*, or tribal affiliation, and the use of such preference shall not excuse a *contractor* from complying with *E.O.11246*, rules and regulations of the Secretary of Labor, and applicable clauses in the contract.

(5) *Facilities not connected with contracts*. The *Deputy Assistant Secretary* may exempt from the requirements of *E.O.11246* any of a *contractor's* facilities that the *Deputy Assistant Secretary* finds to be in all respects separate and distinct from activities of the *contractor* related to performing the contract, provided, that the *Deputy Assistant Secretary* also finds that the exemption will not interfere with, or impede the effectiveness of, *E.O.11246*.

(6) *Indefinite-quantity contracts*. With respect to indefinite-quantity contracts and *subcontracts*, the *Equal Opportunity clause* applies unless the *contracting officer* has reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The applicability of the *Equal Opportunity clause* shall be determined by the *contracting officer* at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the *Equal Opportunity clause* shall be applied to the contract whenever the amount of a single order exceeds \$10,000. Once the *Equal Opportunity clause* is determined to be applicable, the contract shall continue to be subject to such clause for its duration regardless of the amounts ordered, or reasonably expected to be ordered, in any year.

(7) *Contracts with religious entities*. Pursuant to E.O. 13279, Section 202 of E.O. 11246, shall not apply to a Government *contractor* or *subcontractor* that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such *contractors* and *subcontractors* are not exempted or excused from complying with the other requirements contained in the order.

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the *contracting officer* shall submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of E.O.11246. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section shall be submitted to the *Deputy Assistant Secretary* for approval.

(d) The *Deputy Assistant Secretary* may withdraw the exemption for a specific contract, or group of contracts, if the *Deputy Assistant Secretary* deems that such action is necessary and appropriate to achieve the purposes of E.O.11246. Such withdrawal shall not apply-

(1) To contracts awarded before the withdrawal; or

(2) To any sealed bid contract (including restricted sealed bidding), unless the withdrawal is made more than 10 days before the bid opening date.

Parent topic: Subpart 22.8 - Equal Employment Opportunity