

# SMITH ANDERSON

## SELECTION PROCESS JUSTIFICATION: TALKING POINTS

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- I. As a federal contractor, the company is required by federal law to keep records on the race and gender of persons considered for all positions and calculate the selection ratios on an annual basis.
- At a minimum, we must know the size of the pool of persons considered for each selection decision, the race/gender make-up of this pool and the race/gender of those selected.
  - To be in a position to avoid liability for the non-selection of minorities/women, we need records to demonstrate that:
    - 1 - The pool of applicants/candidates from which we made these specific selections reflects a racial/gender composition that approximates the one calculated in the company's federally mandated availability analysis which is updated each year.
    - 2 - The company consistently followed a documented selection process for each selection that applied job-related criteria to all candidates in a uniform manner.
    - 3 - It is very important that if any deviations from the process occurred, the decision to deviate from the process was based on job-related (or at least nondiscriminatory) reasons and made in advance and approved by authorities outside the selection process.
    - 4 - We can justify each non-selection of a particular minority/female candidate and produce documentation to corroborate our justification. It is essential that our justification reflect that we, in fact, followed our documented selection process and that the same criteria were applied in the same manner to all candidates (especially the non-selected minorities and females and successful non-minorities and men).

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II. It is important that line management understand that, as a federal contractor, the company's supervisors and managers are responsible for working toward the elimination of underutilization of minorities/females in any areas under their responsibility. Currently, these areas include: [insert underutilized areas].

III. It is important that HR understand that, as a federal contractor, HR is responsible for monitoring the (i) records on applicants, hires, promotion, transfers and terminations to ensure that they are being maintained and are nondiscriminatory and (ii) selection, promotion and training procedures to ensure that they are nondiscriminatory.

IV. As a federal contractor, the company has represented to the federal government that "all personnel having any part in the selection process are chosen with special care and receive training to ensure that this process remains nondiscriminatory."

V. Failure to follow these steps will subject the company to the type of exposure recently suffered at the Bayer plant in Clayton where OFCCP uncovered "an aberrant practice" in hiring which resulted in that company agreeing to settle the accusations by paying \$400,000 in backpay, extending 21 job offers to minority candidates and reserving 17 job openings for women.

VI. The good news is that the process that we are called upon to put into place and follow does not require that we prefer or select persons who are not the best qualified candidates for the position in question.

- Rather, it allows us to put together a process that we believe, if followed, will allow us to use job-related criteria to select the **best** qualified candidates without any preference or regard to race, gender, religion, national origin or veteran status.
- Selecting the **best** qualified candidate for each position is the company's goal because it is best for our business.