BACKGROUND:
Four (4) Prongs of the Internet Applicant Definition

Four (4) Prongs of the Internet Applicant Definition

1. The job seeker submits an expression of interest in employment through the *internet or related electronic data technologies*;

2. The contractor *considers* the job seeker for employment in a *particular position*;

3. The job seeker's expression of interest indicates the individual possesses the *basic qualifications* for the position; and

4. The job seeker at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, *removes himself or herself from further consideration* or otherwise indicates that he or she is no longer interested in the position

Prong 1: Expression of Interest

Examples – E-mail, fax, job boards, electronic scanning, *etc.*

If the contractor allows for the electronic collection or submittal of applications then the internet applicant definition applies . . . even if no applications are collected that way.

If the contractor *only* accepts hard copy applications for a position, the old definition still applies to that position.

IMPORTANT: For their own benefit, contractors should consider including language in job advertisements indicating that it will accept resumes/applications electronically or in hard copy.

Prong 2: Considers

- "Considering" means "<u>assessing the substantive information</u> provided in the expression of interest with respect to <u>any</u> qualifications." This means opening up and reviewing, looking, etc.

- An employer is **not** required to consider expressions of interest that either are not submitted in accordance with the contractor's standard procedures for applying for a job or are not submitted with respect to a particular position.

Prong 2: Considers (Cont'd.)

- The new definition also allows employers to control the number of potential applicants.

- If there are a large number of expressions of interest, the employer has not "considered the individual for employment in a particular position" if it uses <u>data management techniques</u> that:

  – *do not* depend on an assessment of qualifications (such as random sampling or absolute numerical limits to reduce the number of expressions of interest to be considered)

  – produce an appropriate (reflective) sample in terms of the pool of those submitting expressions of interest

Prong 2 Considers (Cont'd)

- are facially neutral
- do not have an adverse impact

For example, an employer could decide it will only look at:
    the first 100 applicants
    the first 10% of applicants
    every 10th applicant
    a random sampling of applicants

Employers can also control the number returned by searching for "interest" or "lack of interest"….

Prong Three (3): Basic Qualifications

- Qualifications that the contractor advertises to potential applicants that they must possess in order to be considered for the position, **or**

- Qualifications that are <u>preset</u> queries or search criteria used by the contractor (or recruiter) for positions not advertised, such as pulling resumes from an external resume database.

- Qualifications MUST be established in advance.

Prong Three (3): Basic Qualifications (Cont'd.)

In addition to the foregoing, "basic qualifications" must meet each of the following three (3) conditions:

1. The qualifications must be *noncomparative* features of a job seeker (*e.g.,* two year experience requirement would be acceptable; a requirement that the individual be one of the top five individuals in terms of experience would not be acceptable).

2. The qualifications must be *objective* in that they do not depend on the contractor's subjective judgment (*e.g.,* a requirement of a college degree in accounting is acceptable whereas a requirement that the individual have a degree from a "good school" would not be).

3. The qualifications must be *relevant to the performance of the particular position and* enable the contractor to *accomplish business-related goals* (*e.g.,* requirement of accounting degree may not be acceptable for a human resources position).

Prong Three (3): Basic Qualifications (Cont'd.)

- A job seeker must meet **all** of a company's **basic** qualifications in order to be an "Internet Applicant."

- The OFCCP stresses the fact that **employment tests** used as employee selection procedures, including on-line tests, are not considered basic qualifications under the rule.

- Likewise, factors such as an individual's salary requirements, willingness to travel, willingness to work certain shifts, *etc.* are **not** basic qualifications, but they can be used to assess interest or lack of interest in a position.

Prong Four (4): Removal From Consideration

- The new definition allows contractors to remove as applicants any individual who, prior to receiving an offer of employment from the contractor, removes himself or herself from consideration or otherwise indicates that he or she is no longer interested in the position.

- **Express** statement that they are no longer interested; **or**

- **Passive** demonstration of disinterest shown through repeated non-responsiveness to inquiries from the contractor about the position in question (e.g., failure to respond to telephone calls and/or letters, failure to appear for an interview/test, etc.)

Prong Four (4): Removal From Consideration (Cont'd.)

- Companies may infer lack of interest from information on the applicant's resume or application form (provided that the employer is consistent in not considering similarly situated individuals):
  - Salary and/or shift requirements
  - Unable to relocate
- Make sure to fully document and retain information regarding an applicant's voluntary withdrawal from the selection process:
  - Lack of response to multiple efforts to contact the applicant
  - No show for test/interview
  - Salary/shift/location requirements
- Anticipate scrutiny by the OFCCP during a compliance review *so document . . . document . . . document.*