

OFCCP Promises Stricter Affirmative Action Plan Requirements for Contractors

Aerospace & Defense Group Newsletter

With the Office of Federal Contract Compliance Program's pledge to strengthen affirmative action requirements through regulatory reform, federal contractors and subcontractors must reevaluate their approach to affirmative action compliance. Federal contractors and subcontractors are required to have an Affirmative Action Plan for women, minorities and disabled individuals if they employ 50 or more employees and have a contract or subcontract in excess of \$50,000. Contractors are required to have an Affirmative Action Plan for veterans if they employ 50 or more employees and have a contract or subcontract in excess of \$100,000. Contractors must have an Affirmative Action Plan for all of their facilities, not just those at which the government contract or subcontract is to be performed.

Federal contractors and subcontractors are also cautioned not to ignore the additional compliance obligations beyond maintaining an Affirmative Action Plan. Contractors with a contract in excess of \$10,000 must ask applicants for employment to self-identify their race and gender and ask employees to self-identify their status as a disabled individual; maintain employment records regarding hiring, promotion, termination and other employment actions for at least 2 years; post the OFCCP "Equal Employment Opportunity is the Law" poster in a conspicuous place to be seen by applicants and employees; provide notice of its EEO obligations to each labor union or other worker representative with which it has a contract; and include certain clauses in subcontracts or purchase orders resulting from the government contract. Additionally, contractors with a contract in excess of \$100,000 must annually submit a VETS-100/100A Report; post job openings with State employment service offices; and ask applicants for employment to identify their veteran status and employees to identify their status as a disabled veteran.

Working in strengthened collaboration with the Department of Labor, Department of Justice and Equal Employment Opportunity Commission, the OFCCP has vowed to work for the American workforce to ensure that individuals are being assessed on skill alone and,

particularly, to conduct more focused reviews on the treatment of veterans and disabled individuals and on pay inequities. OFCCP will no longer accept a good-faith effort on the part of a contractor or subcontract, but instead, expects compliance in all areas of affirmative action. Contractors and subcontractors who opt to "roll the dice" on their affirmative action obligations can be faced with written conciliation agreements requiring, for example, back pay and retroactive seniority, enforcement proceedings by the Solicitor of Labor, and other sanctions and penalties, including withholding progress payments, contract termination and debarment.

Butzel Long has the expertise to assist Federal contracts and subcontractors with their compliance obligations, including drafting Affirmative Action Plans, creating overall compliance programs, and conducting compliance training.

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