

March Comes in Like a Lion: New Verification Process and Focused Reviews for Government Contractors and Subcontractors

Article By:

Colleen P. Lewis

On March 25, 2019, the Office of Federal Contract Compliance Programs (OFCCP) released its Corporate Scheduling Announcement List (CSAL). The CSAL was released in the OFCCP FOIA Library. This is the first time the OFCCP has not mailed the advanced courtesy notification to covered contractors and subcontractors, posting only in the FOIA Library. The CSAL provides a government contractor and subcontractor (collectively referred to as “contractor”) a 45-day courtesy notification that it has been selected for an OFCCP audit/review. The contractors named in the CSAL should expect to receive the OFCCP Scheduling Letter beginning sometime in early May. The Scheduling Letter notifies the contractor what type of audit/review it is undergoing. The contractor will have 30 days to submit its Affirmative Action Programs (AAP) and supporting data to the OFCCP.

Significantly, for the first time ever the CSAL includes two new types of review which will be conducted by the OFCCP. Consistent with two directives (DIR) issued late last year by the OFCCP, 500 contractors identified in the CSAL will undergo a Focused Section 503 Review and 500 contractors will undergo a Compliance Check Review.

The Section 503 Focused Review includes a request for the contractor’s AAP for women and minorities, as well as the AAP for individuals with disabilities. The Focused Review will include a “comprehensive review” of the contractor’s policies and practices related to the obligations to take affirmative steps to ensure equal employment opportunity for individuals with disabilities. It is important to note the review will include information about how the contractor handles requests for reasonable accommodations.

Additionally, the Section 503 Focused Review will include an on-site investigation of the contractor’s establishment. The on-site includes interviews with managers who are responsible for Section 503 compliance. Employees of the contractor will also be interviewed and asked about the company’s policies in this regard, including the mandated reasonable accommodation policy. Additionally, contractors should expect the OFCCP to evaluate hiring and compensation data to ensure individuals with disabilities are not being discriminated against in pay and recruitment.

The new Compliance Check (CC) Review will focus on verification by the OFCCP that contractors are meeting the “basic obligation” to prepare written Affirmative Action Plans and annual updates

under all three applicable regulations:

1. AAP for minorities and women under Executive Order 11246;
2. AAP for disabled individuals under Section 503 of the Rehabilitation Act of 1973, as amended; and
3. AAP for protected veterans under the Vietnam Era Veterans' Readjustment Assistant Act of 1974, as amended.

The justification for the new CC Review is the concern by OFCCP that many federal contractors are not fulfilling their legal duties to prepare and maintain the mandated AAPs within 120 days of entering a federal contract or subcontract. In addition, the OFCCP expressed concern that many contractors are not updating the plans on an annual basis as required by the law. Indeed, the OFCCP has stated, "Where contractor establishments fail to comply with the AAP requirement, the likelihood of other violations, including discrimination, may be higher." (DIR 2018-07)

In addition to the new compliance reviews set forth above, the CSAL identifies:

- 2,345 contractors for Establishment Review (Standard Desk Audit);
- 83 contractors for Corporate Management Compliance Evaluation (corporate headquarters glass ceiling audit); and
- 72 contractors for the Functional Affirmative Action Plan Review.

Contractors not included on the CSAL can still be audited if, for example, a complaint of discrimination is made to the OFCCP or the contractor receives a contract award notice.

Companies that are covered contractors and companies that are unsure of whether the regulations apply to them should review the CSAL. The website can be accessed [here](#).

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