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The OFCCP Corporate Schedule Announcement: What It Means If You're On the List

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At least once a year, the U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") posts a Corporate Scheduling Announcement List ("CSAL"). The CSAL identifies federal government contractors and subcontractors who may be the subject to a compliance evaluation as part of OFCCP's oversight of affirmative action and nondiscrimination requirements in the workplace. The size and frequency of the published CSAL depends on the agency's workload and resources. In past years, the CSALs have ranged from 2,500 to 5,000 contractors/subcontractors. On March 25, 2019, OFCCP published its new CSAL, listing 3,500 contractors/subcontractors for FY2019. Importantly, the CSAL is not all-inclusive. A contractor not on the CSAL may be selected for evaluation due to a complaint, contract award notice, or as a result of conciliation agreement or consent decree progress report monitoring.

Although the CSAL is not required by law, it is provided as a courtesy to contractors that have been selected to undergo a compliance evaluation. It provides contractors at least a 45-day advance notice to prepare for the compliance review, which may consist of a Corporate Management Compliance Evaluation Review ("CMCE") (used to review compliance at the corporate headquarters), a Functional Affirmative Action Program Review ("FAAP") (used to review compliance with an Affirmative Action Plan for a specific business function or line of business), a Section 503 Focused Review (used to review compliance with Executive Order 11246, Section 503, and VEVRAA regarding the employment of qualified veterans and individuals with disabilities), or an Affirmative Action Program ("AAP") Compliance Check (used to check whether the contractor is meeting AAP goals).

Notably, the OFCCP has ended its practice of mailing advanced notification, formally known as "corporate scheduling announcement letters," which previously notified contractors that they may be subject to a compliance evaluation. Instead, the CSAL is published online. If you are a federal contractor/subcontractor, you should check the new CSAL to determine whether you (or one of your related entities) have been selected for an audit. You can also sign up for OFCCP's email update service for alerts regarding publication of the CSAL list.

The actual compliance evaluation does not officially begin until a contractor receives the OFCCP's OMB Scheduling Letter. If a contractor receives a Scheduling Letter, it has 30 days to submit its AAP—the result being that a contractor on the CSAL that has been issued a Scheduling Letter will have a minimum of 75 days advance notice to have the AAP ready for submission. A sample AAP can be viewed here. OFCCP will also grant a one-time 30-day extension for supporting data where AAPs are provided timely as indicated in OFCCP's FAQ on requesting an extension for submission of AAPs and supporting data.

CMCE reviews cover the full scope of a contractor's compliance with all three of OFCCP's laws: (E.O. 11246, Section 503, and VEVRAA). FAR Clause 52.222-26 provides OFCCP with the authority to access a

contractor's records. Specifically, paragraph (b)(9) of the Equal Opportunity FAR Clause states that "[t]he Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations." FAR Clause 52.222-26(b)(9). The clause applies equally to lower tier contractors. OFCCP will not conduct the onsite portion of the Section 503 Focused Reviews until September 1, 2019 to allow contractors sufficient time to seek technical assistance from OFCCP's regional and district offices. Under OFCCP's present policy contractors who have completed a compliance review will not be eligible for scheduling for a two-year period following the date on which the prior review was closed, or monitoring under a conciliation agreement or consent decree was completed.

If your name is on the list, now's a good time to look inward and assess how you will fare when the OFCCP comes calling.