

CLIENT ALERT

OFCCP Abandons Dramatic Expansion of Information To Be Supplied at Outset of Compliance Reviews

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Faced with strong opposition from the government contracting community, the OFCCP has abandoned several of its proposed changes to the Scheduling Letter and Itemized Listing that contractors will receive at the start of every audit. The OFCCP's initial proposal, which would have dramatically expanded the universe of data and documentation provided at the start of every audit, was issued for public comment on April 11, 2019. Organizations representing federal contractors and other interested members of the contracting community [filed comments](#) that were deeply critical of the proposed changes.

On June 21, 2019, the OFCCP forwarded a substantially revised version of the proposed Scheduling Letter and Itemized Listing to the Office of Management and Budget (OMB) for approval. Among the key provisions the OFCCP has dropped from its proposal are the following:

- Mandating that contractors provide the “results of the most recent analysis of the compensation system” – OFCCP has removed this proposed requirement.
- Requiring that utilization and job group analyses be performed on a racial subgroup basis rather than by grouping all racial subgroups together – OFCCP has withdrawn this proposed revision and reverted to the existing requirements.
- Requiring that those who receive the Scheduling Letter six months or more into their AAP year provide data for the prior AAP year and for “every completed month of the current AAP year” – OFCCP has withdrawn this proposed revision and reverted to the practice of requiring the first six months of data from the current AAP year.
- Compelling contractors to produce data on the “pool of candidates from which the promotions were selected by gender and race/ethnicity” – the OFCCP has abandoned this proposed requirement.

While the proposed revisions are good news for the contracting community, the OFCCP did not abandon all of its proposed changes. Perhaps most importantly, the OFCCP did not withdraw its proposal to require contractors to furnish information regarding their subcontractors and, instead, modified the proposed requirement. Rather than requiring contractors to provide a list of their “three largest subcontractors based on contract value,” the OFCCP now proposes that contractors be required to identify subcontractors “for the three most recently awarded subcontracts that have a total contract value of \$150,000 or more.” This proposed, revised requirement remains ambiguous and will impose additional burden on contractors.

In addition to the changes to the standard Scheduling Letter, the OFCCP has advanced to OMB proposed revisions to the Compliance Check letter and the Focused Review letters pursuant to VEVRAA and Section 503. As for the latter, the OFCCP has retained its proposal that contractors be required to produce, in a Focused Review, individualized compensation data for all employees at the establishment. The proposal does not specifically require contractors to identify in the compensation submission employees who are covered veterans or individuals with disabilities.

OMB will accept comments on the proposed revisions through July 28, 2019.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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