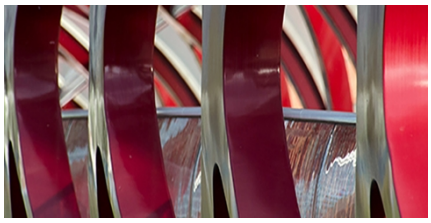
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News & Types: クライアント・アドバイザリー

連邦政府の請負業者が遵守すべき雇用機会均等規制

3/10/2021

Practices: 商事／競争／取引, 雇用／労働法／福利厚生

Executive Summary

With the Biden Administration's stated goal of advancing equity in government contracting operations, businesses supplying goods or services to the U.S. federal government need to be aware of the equal opportunity requirements the government currently imposes on federal contractors and subcontractors. The current equal opportunity requirements consist of three government regulations: Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"). Each of these equal opportunity regulations are applicable when doing business with the federal government or federal agencies, such as the Department of Defense or Department of Health and Human Services. This client advisory will examine each of these three regulations in turn and will provide proposed strategies for compliance.

EXECUTIVE ORDER 11246

Executive Order 11246 of September 24, 1965, codified in the federal acquisition regulation ("FAR") at 41 CFR 60-1.4(a) ("EO 11246"), establishes the equal opportunity clause requirement. EO 11246 requires each government contract and subcontract to include an equal opportunity clause that prohibits discrimination in hiring and employment by U.S. government contractors on the basis of the protected categories of race, color, religion, sex, sexual orientation, gender identity, and national origin. EO 11246 further requires government contractors and subcontractors to take affirmative action to ensure equal employment opportunity. EO 11246 applies to businesses with federal contracts totaling more than $10,000 in one year. In addition, a business must implement a written affirmative action plan if the business has 50 or more employees and a single government contract worth $50,000 or more. Notably, Executive Order 13672 of July 21, 2014 amended EO 11246 to include sexual orientation and gender identity as protected categories.

SECTION 503 OF THE REHABILITATION ACT OF 1973

Section 503 of the Rehabilitation Act of 1973, codified in the FAR at 41 CFR 60-741.5(a) ("Section 503"), requires each government contract and subcontract to include an equal opportunity clause prohibiting discrimination against qualified individuals with disabilities on the basis of their physical or mental disability in all employment practices. In addition, Section 503 requires government contractors and subcontractors to take affirmative action to employ and advance in employment individuals with disabilities. Section 503 applies to contracts exceeding the current threshold amount of $15,000, which is periodically adjusted for inflation.

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Further, Section 503 requires businesses to have a written affirmative action plan if the business has 50 or more employees and a single government contract worth $50,000 or more.

VIETNAM ERA VETERANS' READJUSTMENT ASSISTANCE ACT OF 1974 ("VEVRAA")

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), codified in the FAR at 41 CFR 60-300.5(a), requires each government contract and subcontract to include an equal opportunity clause that prohibits discrimination against qualified individuals based on their status as a protected veteran in all employment practices. In addition, VEVRAA requires government contractors and subcontractors to take affirmative action to employ and advance in employment protected veterans. VEVRAA defines "protected veterans" as a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran. VEVRAA applies to government contracts exceeding the current threshold amount of $150,000, which is periodically adjusted for inflation. Finally, VEVRAA requires businesses to implement a written affirmative action plan if the business has 50 or more employees and a single government contract worth $150,000 or more.

COMPLIANCE STRATEGIES

Businesses subject to one or more of the equal opportunity clause requirements can comply by making sure the applicable contract or subcontract, which can include terms & conditions, contains certain language referencing the applicable equal opportunity requirements. EO 11246 is automatically incorporated by operation of law in applicable government contracts or subcontracts, but it may also be included in a contract by referring to its provisions.

In contrast, Section 503 and VEVRAA each require certain referencing language in the applicable contract or subcontract. Per U.S. Department of Labor ("DOL") guidance, government contractors may incorporate two or more of the equal opportunity clauses (EO 11246, Section 503, and VEVRAA) into a single "incorporation by reference" clause with language referencing each regulation. Businesses should place the incorporating clause(s) in bold-face type to be effective.

CONCLUSION

In summary, businesses selling goods or services to the federal government need to be aware of the equal opportunity requirements imposed on applicable government contracts or subcontracts, and must take measures to include the applicable equal opportunity clauses in contracts with subcontractors, including any purchasing terms & conditions. In addition, before entering into any contract with the federal government, a business should closely examine its internal employment policies and determine that it is compliant with all applicable federal equal opportunity requirements, as well as determine whether it must implement a written affirmative action program. If you have any questions regarding government contracts or would like to request a review of your business's contracts, terms & conditions, or workplace policies for compliance, please contact your Masuda Funai relationship attorney for a consultation.

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