

OFCCP Issues “What Contractors Can Expect” Guidance

Government Contractor Compliance & Regulatory Update Blog on **August 2, 2018**

On August 2, 2018, OFCCP issued a new publication entitled “[What Contractors Can Expect](#).” The publication coincided with OFCCP Acting Director Craig Leen’s well-received presentation at the National Industry Liason Group’s national conference in Anaheim, California, where Proskauer partners Connie Bertram and Guy Brenner are in attendance.

OFCCP had promised the “What Contractors Can Expect” publication in its [May 1, 2018 Town Hall Action Plan](#). The document states that it provides “the general expectations that often guide interactions between federal contractors and OFCCP.” Although the document uses the term “expectations” as opposed to “rules” or “rights,” the publication clearly aims to address contractors’ concerns about dealing with the agency and foster better relations between OFCCP and the contractor community. The expectations include:

- **Access to Accurate Compliance Assistance Material.** OFCCP states that it is “committed to providing clear, concise, and practical compliance assistance” in the form of “technical assistance guides, factsheets and brochures, ‘Frequently Asked Questions’ or FAQs, guidance documents, directives, webinars, and email.”
- **Timely Responses to Compliance Assistance Questions.** OFCCP, as part of its effort to increase the compliance assistance part of its mission, is committed to providing more timely responses to inquiries. It states that “[c]ontractors can typically expect a reply to Help Desk inquiries and emailed compliance assistance questions within 3-4 business days.” Where more time is needed, OFCCP provides that contractors “can expect that OFCCP will provide notice of the delay and assurance that OFCCP’s reply, when provided, is responsive to the issues raised.”
- **Opportunities to Provide Meaningful Feedback and to Collaborate.** OFCCP states that contractors “can expect OFCCP to provide them with opportunities to submit feedback on the quality and quantity of the agency’s compliance assistance offerings and, periodically, on their experiences during their most recent compliance evaluations.” OFCCP also indicates that it will engage with contractors “on the development of new compliance assistance material, contractor training, and other matters that may support contractor compliance.” Consistent with this

expectation, Ms. Bertram was consulted during the conference by a member of OFCCP's National Office regarding Ms. Bertram's experiences working with the member's program and how the program's performance could be improved.

- **Professional Conduct by OFCCP's Compliance Staff.** In response to criticism about what many contractors perceive to be heavy-handed tactics, OFCCP makes clear that in interacting with the agency contractors "can expect to receive prompt, courteous, and accurate information during compliance evaluations and complaint investigations." However, OFCCP notes that professional courtesy is a two way street, as "the perceived quality of an engagement with OFCCP staff can be influenced by several factors, including the specificity and accuracy of the information contractors provide, and the timeliness and thoroughness of their responses to document production requests during compliance evaluations and complaint investigations."
- **Neutral Scheduling of Compliance Evaluations.** OFCCP states that contractors "can expect OFCCP to use a neutral selection system to identify contractors for compliance evaluations." Addressing concerns raised at its recent town hall meetings, OFCCP states that "Individual contractors are never 'targeted' though OFCCP may focus its resources on particular industries or sectors, geographic regions, or types of employment practices," and that "OFCCP **never** schedules a contractor for a compliance evaluation because that contractor sought compliance assistance."
- **Reasonable Opportunity to Discuss Compliance Evaluation Concerns.** Responding to concerns about lack of transparency during compliance evaluations, OFCCP states that contractors "can expect to have a reasonable opportunity to discuss issues that may affect the progress or results of their compliance evaluation or complaint investigation." OFCCP encourages these discussions to take place with the relevant compliance officer in the first instance, but "recognizes that some issues may warrant elevating a discussion to a higher level with management in the district office and then, if necessary, the regional office," and even the national office. OFCCP believes that such interactions "can remove uncertainty and clarify areas of misunderstanding."
- **Timely and Efficient Progress of Compliance Evaluations.** Among other things, OFCCP provides that contractors should expect that when asked for information they will be provided with "reasonable production timelines ... as determined in light of all relevant facts and circumstances." OFCCP also commits to providing "clear explanations of OFCCP's compliance evaluation processes and periodic status or progress updates as evaluations progress." The agency does note that its ability to conduct timely and efficient compliance evaluations is "greatly influenced by the level of cooperation OFCCP receives, and the quantity, quality,

and timeliness of the information that contractors provide.”

- **Confidentiality.** OFCCP states that contractors “can expect that the information they provide during a compliance evaluation will be kept confidential. OFCCP keeps this contractor information, including but not limited to personnel records and salary data, confidential to the maximum extent allowed by law.”

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