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Not Even COVID-19 Will Stop OFCCP

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On March 20, 2020, OFCCP made clear in an announcement to the contractor community that it will continue operations during the COVID-19 pandemic "while making adjustments to ensure all of its activities are consistent with current public health guidelines."

Dispelling any thought that audit activities might cease during the pandemic and the turmoil it has unleashed on businesses, OFCCP made clear that it "will continue its compliance reviews, focused reviews, and complaint investigations, but in lieu of physical onsites, OFCCP will maximize use of every alternative resource available, such as WebEx, Skype, and phones to conduct interviews and complete our evaluations."

OFCCP does recognize that the COVID-19 pandemic may pose challenges for contractors under audit. To that end, it advises that "[i]f contractors are experiencing difficulty in having their employees accessible during a review or experiencing any other challenges related to the health crisis, OFCCP will remain flexible by coordinating with them and providing reasonable extensions where needed."

OFCCP has also issued a memorandum announcing "a limited exemption" to the requirements of the laws the agency enforces for contracts entered into to provide Coronavirus relief. The exemption will be effective for a period of three months, from March 17 to June 17, 2020, subject to extension. The agency also published FAQs that clarify the scope of the exemption. The FAQs make clear that this exemption applies narrowly and is available only to "new supply & service and construction contracts *solely* for the specific purpose of providing Coronavirus relief." The exemption will not apply to contractors who have preexisting contracts unrelated to coronavirus, even if the contractor also has a new contract to provide Coronavirus relief. Such contractors must continue to comply with the affirmative action requirements of the laws enforced by OFCCP.

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

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