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INSIGHTS INTO AVOIDING OFCCP AUDITS

Based on recent administrative actions and advance notifications sent out earlier in the year, avoiding audits by the Office of Federal Contract Compliance Programs (OFCCP) is becoming more of a concern for some contractors.

At The OFCCP Institute's Annual Conference in early June, Consuela Pinto, an attorney in the Civil Rights and Labor-Management Division of the DOL's Office of the Solicitor, presented information on the methodology that the OFCCP uses to identify which contractor to audit. Contractors are selected according to the Federal Contractor Selection System (FCSS). The FCSS is intended to be provide a neutral system based on specific factors and information sources.

In helping contractors prepare for upcoming OFCCP audits or to know if they are at risk, Pinto said the factors OFCCP takes into consideration in the FCSS include:

- Federal acquisition and procurement databases identifying federal contractors, subcontractors and related entities;
- Company EEO-1 Reports identifying the race and gender composition of EEO job groups, as well as whether the company is a federal contractor;
- Dun & Bradstreet data regarding affiliated entities which might also be covered federal contractors;
- Industry type and data regarding industry baselines;
- Dollar value of a federal contract or subcontract;
- Expiration Date of contract; if the contract is set to expire in the near future it doesn't make sense to slate employer for an audit;
- Workforce size; yes, larger contractors and workforces may be more likely to be audited; and
- Time; the longer it's been, the more likely an audit may be.

The following are useful tips to assess contractor status and ensure that your information and data are accurate so an audit isn't triggered:

- Search for federal contracts on websites like usaspending.gov
- Make sure your EEO-1 Reports are consistent with your affirmative action plan structure (e.g. separate reports filed for individual locations) so that OFCCP isn't seeing locations that look to have more than 50 employees when they really have fewer employees
- Confirm you NAICS code(s) are accurate
- Update your Dun & Bradstreet information.

Source:

http://web.governmentcontractors.org/content/news/Insights_on_how_OFCCP_picks_contractors_to_audit.aspx

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PRESIDENT ANNOUNCES PLANS TO SIGN EXECUTIVE ORDER ON SEXUAL ORIENTATION DISCRIMINATION

President Barack Obama plans to sign an executive order that would forbid federal contractors from discriminating on the basis of sexual orientation or gender identity when hiring workers, a White House official confirmed Monday.

There is currently no federal law that forbids anti-LGBT discrimination in the workplace. The executive order would expand existing rules for federal contractors that forbid discriminating on the basis of race, color, religion, sex, or national origin.

The White House has long said its preferred method of stopping LGBT-based discrimination in the workplace would be the Employment Non-Discrimination Act (ENDA). That bill, if signed into law, would apply to private and public employers, while the executive order is limited to federal contractors. The Senate passed ENDA in 2013. It is expected by many that the House of Representatives will not act on ENDA this year.

The president in the past characterized 2014 as a year of executive action. He previously signed, for instance, an executive order that increased the minimum wage for federal contractor's employees. The new announcement continues this approach for LGBT issues.

Source: <http://www.vox.com/2014/6/16/5814806/president-obama-moves-to-protect-lgbt-federal-employees>

DEFENSE DEPARTMENT ANNOUNCES RANKINGS OF FEDERAL CONTRACTORS TO INCREASE COST EFFICIENCY

The Defense Department's acquisition chief has released a ranking of the top 30 supplier units within the contracting industry as part of a continuing effort to improve the government's largest procurement operations by curbing costs and professionalizing the workforce.

Frank Kendall III, undersecretary of Defense for acquisition, technology and logistics, introduced the first rankings from a Navy Department pilot project called the Superior Supplier Incentive Program. Designed to help industry "recognize its better performers" based on past performance and evaluations by program managers, such a list is planned for all the services beginning to build incentives, Kendall told reporters. "The industry people who will respond the most will be the ones at the bottom," he said.

Sean Stackley, assistant Navy secretary for research, development and acquisition industry, said "industry best practices include recognizing the best suppliers, which gives them an incentive to sustain superior performance." The selections were made through a process designed to be "fair and objective and understood by the public and Congress, as well as easy to manage," Stackley said.

His team began by picking the top 30 contracting companies, which captures 85 percent of the acquisition "spend," and then broke them into 80 business units, before ranking the top 30 units in nine companies that "stand out." The goal of making the list public is to provide "an important incentive for the corporate business units to talk to each other rather than have us dictate," Stackley said.

This approach may be applicable to other sectors of the federal contracting community and so developments related to this project should be watched closely.

For a complete list of the ranked contractors can be seen in to original news article associated with this summary at: <http://www.govexec.com/contracting/2014/06/pentagon-ranks-top-suppliers-spark-competition-among-contractors/86473/>

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<http://www.management-advantage.com/products/posters/states.htm>



POTPOURRI

■ **EEOC Sues United Health Programs of America and Parent Company for Religious Discrimination**

On June 11, the U.S. Equal Employment Opportunity Commission (EEOC) charged the company violated federal law when it forced employees to take part in religious activities in the workplace and fired employees who opposed such activities.

According to the EEOC's suit, United Health Programs of America, Inc., and its parent company, Cost Containment Group, Inc., which provide customer service on behalf of various insurance providers, coerced employees to participate in ongoing religious activities since 2007. These activities included group prayers, candle burning, and discussions of spiritual texts. The religious practices are part of a belief system that the defendants' family member created, called "Onionhead." Employees were told to wear Onionhead buttons, pull Onionhead cards to places near their work stations and keep only dim lighting in the workplace. None of these practices was work-related. When employees opposed taking part in these religious activities or did not participate fully, they were terminated.

Source: <http://www.eeoc.gov/eeoc/newsroom/release/6-11-14.cfm>

■ **PJP Health to Pay \$300,000 to Settle EEOC Sexual Harassment Lawsuit.**

SunTrust Bank, a large regional bank, will pay \$300,000 and furnish other relief to settle a sexual harassment lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC had charged the company with subjecting three female employees at a Sarasota, Fla., branch to sexual harassment by the branch manager. According to the EEOC's lawsuit, SunTrust's branch manager subjected the women to ongoing harassment. The EEOC said that numerous complaints by female employees to the assistant branch manager and other SunTrust branch managers were ignored, and once human resources became involved, SunTrust failed to take sufficient action to stop the harassment. Further, during the course of EEOC's investigation into the discrimination charges, the branch manager voluntarily resigned, and was subsequently rehired by SunTrust.

Source: <http://www.eeoc.gov/eeoc/newsroom/release/6-10-14.cfm>



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OFCCP ANNOUNCES PROPOSED 2014 RULEMAKING SCHEDULE

The US Office of Federal Contract Compliance Programs (OFCCP) recently released their Spring Regulatory Agenda for 2014. The announcement presented their upcoming rule-making priorities and anticipated schedule for delivering proposed rules following the Executive Orders issued earlier in the year.

As expected, recent efforts by President Obama to further his pay equity plan, are included in the Agenda. According to the announcement, the OFCCP intends to propose by August a rule requiring federal contractors and subcontractors to submit to the Department of Labor summary pay data, including pay data sorted by sex and race.

In addition, the OFCCP expects to propose by September a new rule prohibiting retaliation against employees and job applicants who discuss or disclose their compensation information.

OFCCP anticipates proposing in September updated sex discrimination regulations to better implement Executive Order 11246, which prohibits contractors from discriminating against individuals in employment on the basis of race, color, sex, religion or national origin, and requires them to take action under the order.

The Agenda that was presented clearly illustrates that the OFCCP plan's to continue its focus on pay discrimination, particularly with respect to the construction industry.

By the end of the year, OFCCP also intends to issue a proposed rule setting forth new affirmative action goals and requirements to address disparities in the representation of women and racial minorities in the construction industry.

Source: http://web.governmentcontractors.org/content/news/OFCCP_announces_rule_making_plans.aspx

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