



FIRST CALL

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February 2022



I hope everyone's new year has started strong! We are extremely excited to have Earl Morgan back to work after his health scare. He is getting stronger every day! Thanks to all of you who showed him so much support in his recovery.

We have many exciting things kicking off this month for our members and veteran small business community in general. For those in the DC area, our monthly dinners have returned, and we are extremely excited to see everyone at the Army Navy Country club on the 9th of February—and the second Wednesday of every month thereafter. Mark your calendars! If you are in town, come by and have a great evening filled with networking and business opportunity.

Towards the end of the month, we will launch our second Charlie Mike Webinar series. We have lined up an impressive group of speakers and trainers to cover the gambit of business and federal procurement topics to help strengthen and grow your business! A special shout out to our sponsor for the series, BAE Systems!

Finally, be on the lookout for the rollout of our new membership engagement system. This system will revolutionize our ability to stay connected, communicate and create opportunities for and with our members. Even more importantly, it will revolutionize your ability as a coalition to communicate, work with, and find opportunities to work together and grow your businesses. We have been working extremely hard since last November to create this membership system and I am certain it will return immediate benefits to our membership!

P.S. VETS22 registration opens February 17th! Don't miss the opportunity to register as well as get your business noticed through our exhibit and sponsorship program!

Here is to a strong 2022!

Scott Jensen
Colonel, U.S. Marine Corps (Ret.)
Executive Director

Federal Contractors Confront Wave of Changes Under Biden Agenda

Companies doing business with the federal government have faced greater legal and regulatory changes than the average employer outside of health care under President Joe Biden, with more developments potentially ahead.

Quickly out of the gate, Biden ordered the U.S. Department of Labor to mandate that workers on federal contracts are [paid a minimum of \\$15 an hour](#), a boost that took effect Jan. 30. The president's order came after his administration [failed to lift the federal minimum wage to \\$15 an hour](#) economy-wide.

"The government does have a little more leverage with government contractors, with pushing more progressive policies," said [Erin Connell](#), a partner at Orrick Herrington & Sutcliffe LLP in San Francisco. "They're choosing to do business with the federal government."

The Labor Department office that polices government contractors wasted little time in [ramping up its enforcement](#) of anti-discrimination laws under Biden. Practitioners noted the agency was auditing contractors with greater intensity. The office also altered how contractors are required to handle affirmative action plans, enhancing accountability.

On top of those changes, contractors have had to prepare for a vaccine mandate that would apply to their workforces, though it isn't being enforced as litigation plays out in appellate courts.

In 2020, the National Parks Service granted veterans and Gold Star Families free access to parks and sites across the country. On Dec 27, 2021, the policy became a permanent.

How to access this benefit, get more information, and order your National Park Military Veteran Pass go to the National Park Service website -

<https://www.nps.gov/playourvisit/veterans-and-gold-star-families-free-access.htm#:~:text=https%3A/www.nps.gov/media/video/view.htm%3Fid%3D94360E2D%2DB5FC%2D1C09%>



New DOL Compliance Requirement

On February 1, 2022, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) will launch its electronic Contractor Portal, through which covered federal contractors and subcontractors will be required to register and annually certify that they have developed and maintained Affirmative Action Programs (AAPs) in compliance with applicable OFCCP requirements. This alert provides a high-level overview of requirements related to the Contractor Portal, as well as anticipated legal challenges to the same. For more information or for any questions not covered below, we encourage you to contact your Lathrop GPM attorney.

What is the Contractor Portal?

The Contractor Portal is a new OFCCP online platform by which the OFCCP will require covered federal contractors and subcontractors to register and then annually certify their compliance in having developed and maintained AAPs. The Contractor Portal will also be used by covered contractors and subcontractors to upload their AAPs during any compliance audit by the OFCCP.

Who is required to use the Contractor Portal?

All "covered" federal contractors and subcontractors will be required to register and annually certify AAP compliance through the Contractor Portal.

Covered federal contractors and subcontractors are defined by the requirements set forth in the regulations administered by the OFCCP based on employee size and contract award thresholds. Entities entering into contracts with the federal government or into subcontracts with entities that are fulfilling federal contracts must carefully analyze whether they are a covered contractor or subcontractor under the regulations.

What are the key dates relevant to the Contractor Portal?

On February 1, 2022, covered contractors and subcontractors may begin registering through the Contractor Portal.

\On March 31, 2022, covered contractors and subcontractors may begin certifying their AAP compliance through the Contractor Portal.

By June 30, 2022, covered contractors and subcontractors must have registered and certified their AAP compliance through the Contractor Portal.

New federal contractors and subcontractors will have 120 days from the date of entering into a covered contract or subcontract to develop their AAPs and must thereafter register and certify compliance through the Contractor Portal within 90 days of developing their AAPs.

What are the potential consequences for failure to certify AAP compliance through the Contractor Portal?

The OFCCP has indicated that covered contractors and subcontractors who fail to annually certify AAP compliance through the Contractor Portal will more likely be on the OFCCP's audit selection scheduling list than contractors and subcontractors who have self-certified their AAP compliance through the Contractor Portal.

Additionally, the OFCCP has stated that it may file debarment actions (e.g., an action to exclude an entity from eligibility for new Federal contract awards) against contractors who refuse to comply with the OFCCP's Contractor Portal initiatives, including annual self-certification of AAP compliance.

At this time, the OFCCP has not announced any financial fines or penalties for non-compliance with its Contractor Portal initiatives.

Are any legal challenges expected with respect to the Contractor Portal?

Yes, it is widely anticipated that the OFCCP's Contractor Portal initiatives, including the requirement of annual self-certification of AAP compliance and applicable enforcement measures, will encounter legal challenges. The OFCCP itself has previously acknowledged that it lacks regulatory authority to require any electronic or digital filings and it is expected that this issue, along with others, will be raised if legal challenges are filed. Accordingly, covered contractors and subcontractors should watch for additional developments related to the Contractor Portal prior to the June 30, 2022 self-certification of AAP compliance deadline.

Legal Briefs by Legal Meets Practical

Attention, Subs: What Do You Do When the Prime Isn't Using You?

This is a situation we've seen too many times before: an "other than small" prime teams up with a small contractor on a proposal, and, upon securing the award, cuts them out of the work. This happens even when the subcontractor is listed in the proposal, to include specific personnel filling important roles.

So, what can you do?

The short and unfortunate answer is probably nothing *if you haven't protected yourself in your subcontract*. Even if your firm's involvement helped win the contract, unless there is something in the prime contract obligating them to use you (which is rare), if they cut you out of the deal later, you have little recourse unless you've carved out workshare in your teaming agreement (and, subsequently and more importantly, your subcontract).

If you are a subcontractor dependent on a prime to give you workshare under a resultant contract, follow these three rules:

- In a teaming agreement, make sure the prime agrees to give you a specific workshare and that this will be reflected in a resultant subcontract once you win the award. Legally, teaming agreements are generally "agreements to agree," and workshare isn't entitled to the subcontractor unless the teaming agreements spell out specifics. Then, when you win the award, you can point to this language to remind the prime of what you agreed upon.
- In a subcontract agreement, agree upon workshare using mandatory language: "On any task order, Subcontractor shall be guaranteed workshare of XXX provided Subcontractor has personnel available and such personnel meet the qualifications of the contract."
- Avoid permissive language in a subcontract agreement. For example: "The prime may award up to twenty percent of contract dollars on a task order to Subcontractor." This allows the prime to give you zero. If the parties are working together in good faith and the prime does intend to give you work, they should have no issue with language that affords you your twenty percent provided that conditions allow it: the agency approves you as a subcontractor, your folks are qualified, you have the personnel available.

When it comes to subcontract workshare protection, be proactive, not reactive. *Proactive* likely heads off the issue and protects your share in the event of any disagreement. *Reactive* is likely a losing battle. If it's not in your subcontract, the prime is generally not contractually obligated to give you a guaranteed amount of workshare.

Scope of SDVOSB Surviving Spouse Rule Greatly Expanded

A proposed rule published by the SBA in the Federal Register on November 11, 2021 makes changes to the surviving spouse rule which currently allows the surviving spouse of a deceased veteran to continue operating a firm as a "service-disabled veteran-owned small business" ("SDVOSB") under specific conditions. Previously, a spouse of a veteran who either had a 100% disability rating, or died as a result of his or her service-connected injuries, could run the firm as an "SDVOSB" for ten years after the death.

The new rule dramatically expands the scope of the surviving spouse rule. Now, in the event of a veteran with *any service-connected disability*, the surviving spouse may continue the business as an SDVOSB for three years following the death of the veteran. Accordingly, any spouse of a veteran owning and operating an SDVOSB will have the right to utilize this socioeconomic status for three years, which can be extremely valuable depending on how the firm utilizes the SDVOSB status.

Unless "significant adverse comment" is received by December 8, 2021, this new rule goes into effect on February 22, 2021. Access the notice in the Federal Register [here](#).

Calendar of Events

We Are Back!

Make sure to look for us at the National Veteran Small Business Coalition Networking Dinner happening at the Army Navy Country Club, Arlington, VA

Feb. 9, 2022!

5:30-8:30 pm

[REGISTER TODAY](#)

NVSBC welcomes [Antonio Doss](#) as our guest and keynote speaker for our February 9th DC Networking Dinner at the [Army Navy Country Club](#).

DHS/PIL

The U.S. Department of Homeland Security (DHS), Procurement Innovation Lab (PIL) welcomes your participation in the Virtual PIL Boot Camp Workshop for Industry on Wednesday, February 16, 2022, from 8:00 a.m. to 12:30 p.m. ET.

[REGISTER HERE](#)



No Cost - February 22

