



Government Contracts: Look Before You Leap!

Insights

3.01.10

(Labor Letter, March 2010)

We all face uncertain economic times. As everyone knows, the federal government has passed the American Recovery & Reinvestment Act (ARRA) creating huge sources of funds to pay for various projects to "stimulate" the economy. Many companies, are now considering entering into contractual relationships with the federal government as contractors or subcontractors.

The money is good! Invariably it comes with many strings attached. Before becoming a government contractor or subcontractor you must be aware what you are agreeing to undertake. The government is ramping up enforcement efforts to catch and punish government contractors and subcontractors that fail to meet the legal requirements associated with such contracts.

Once you become a government contractor you are subject to a litany of prevailing wage requirements and affirmative action requirements which will impact how you run your business and the potential profitability of the government contract you covet. The following is a brief description of some of the various statutes and regulations you may be required to follow. Remember: these are complex laws and no short summary can cover everything.

Davis Bacon Act (DBA)

The DBA normally applies to all construction projects in excess of \$2,000.00. For projects funded under the ARRA there is no dollar limitation. Under the DBA, contractors or subcontractors are required to meet prevailing-wage standards contained in wage determinations covering the geographic area of the project. These wage determinations also include fringe benefit payments that must be made on an hourly basis as well as vacation and holiday requirements for covered employees. The hourly wage and fringe benefit payments are required for every hour worked by the employee.

The DBA also requires overtime pay for hours worked over 40 in a workweek. Moreover, the Act also requires meticulous records to be kept as the classifications in which an employee works can change from week to week and even day to day. Every time an employee works in a different classification the wage and fringe benefits required can change.

Service Contract Act (SCA)

The SCA applies to contracts or subcontracts involving the provision of services to the federal government. The SCA applies to contracts in excess of \$2,500.00. Like the DBA the SCA establishes area wage and fringe benefit determinations. The fringe benefit rate (excluding vacation and holiday) for all SCA contracts is determined annually on June 1st and as of June 1, 2009 is \$3.35/hour. Like the DBA the prevailing wages must be paid for every hour worked and overtime for hours over 40 based on the classification of the work done by the employee. Unlike the DBA the fringe benefit rate is only paid for the 1st 40 hours worked in a week.

Contract Work Hours & Safety Act (CWHSA)

The CWHSA applies to contracts in excess of \$100,000.00 under the DBA & SCA. It requires overtime payments at 1 ½ times the regular rate and provides for \$10/day liquidated damages if overtime wages are not properly paid.

Copeland "Anti Kickback" Act

This Act prohibits kickbacks of wages and back wages under the DBA and related acts and requires weekly "statements of compliance." It also regulates deductions an employer is permitted to make from paychecks.

Walsh-Healey Public Contracts Act (PCA)

The PCA provides labor standards (minimum wage, overtime & safety) for employees working on Federal contracts over \$10,000 for the manufacturing or furnishing of goods, supplies, articles, or equipment. It also prohibits employment of persons under 16 or convict labor.

Office of Federal Contract Compliance (OFCCP)

OFCCP requirements apply the federal contractor or subcontractor with a contract for more than \$10,000.00 and more than 50 employees throughout its organization. OFCCP requirements are derived from various sources including Executive Order 11246, the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Contractors and subcontractors can be required to:

- file an EEO-1 report annually;
- comply with the "Uniform Guidelines on Employee Selection Procedures," "Sex Discrimination Guidelines," and "Guidelines on Discrimination Because of Religion or National Origin";
- maintain a written affirmative action program for qualified individuals with disabilities if the contractor has 50 or more employees and a non-exempt Government contract or subcontract of \$50,000 or more (a limited affirmative action program);
- maintain a written affirmative action program for covered veterans, if the contractor has 50 or more employees and a non-exempt Government contract or subcontract of \$100,000 (limited affirmative action program);
- file Federal Contractor Veterans' Employment Report using Form VETS-100 or VETS-100A, as appropriate; and

- comply with the Immigration Reform and Control Act (IRCA) of 1986.

Non-construction contractors or subcontractors with 50 or more employees and a contract of \$50,000 or more must develop a written Affirmative Action Program (AAP) covering minorities and women as well as veterans for each of its establishments within 120 days from the start of the Federal contract.

Executive Order 11246, also requires covered contractors and subcontractors to demonstrate good faith efforts to meet the affirmative action goals set for the employment of minorities and women in the construction industry. Construction contractors/subcontractors are not generally required to have full written affirmative action programs. The OFCCP has established goals (not quotas) based on civilian labor force participation rates, and outlined good faith steps for construction contractors to follow.

Whew!

With the enhanced enforcement emphasis of the federal government, contracting or subcontracting on government contracts raises the specter of meeting many regulatory requirements. Each of these requirements provides a trap which can be expensive and time consuming to navigate. **Look before you leap!**