



Issue Date: 27 February 2017

CASE NO. 2017-OFC-00004

In the Matter of

**OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS,
U.S. DEPARTMENT OF LABOR,**
Plaintiff,

v.

GOOGLE INC.,
Defendant.

**CLARIFICATION OF ORDER GRANTING IN PART
GOOGLE'S REQUEST FOR LIMITED DEPOSITION; ORDER
CONCERNING POTENTIAL FURTHER BRIEFING
ON SUMMARY DECISION**

On February 21, 2017, I issued an order that granted in part Google's request for deposition discovery. On Friday, February 24, 2017, Google requested clarification. OFCCP filed a response on Monday, February 27, 2017.

Google asks: "Does the Court's Order permit Google to ask OFCCP's witness questions relating to the scope, relevancy and burdens of OFCCP's requests for documents and information during the compliance evaluation?" The answer to Google's question is: No. *See* Order of Feb. 21, 2017.

The deposition is aimed at allowing Google limited discovery consistent with a single point in the Administrative Review Board's analysis in *OFCCP v. Bank of America*, ARB Case No. 00-079 (Mar. 31, 2003). I refer in particular to the Board's holding that – to be reasonable – OFCCP may not select a government contractor for a compliance review in a manner that is arbitrary and without an administrative plan containing neutral criteria.

The scope of the deposition therefore is limited to routine questions concerning the background of the deponent (*e.g.*, name, title, job duties, and scope and source of knowledge of how OFCCP selected Google in this case), and questions related to the manner in which OFCCP in fact selected Google for compliance review in this case.

If Google contends that any testimony at the deposition is relevant to its defense on OFCCP's motion for summary decision, Google may file a supplemental opposition brief no later than close of business on Monday, March 6, 2017.¹ The brief (and any transcript excerpts) should be filed by facsimile. It must be served on the Solicitor by facsimile or email. Any supplemental opposition is limited to presentation of and argument based on the deposition testimony; any other material will be stricken.

If Google files a supplemental opposition to summary decision, OFCCP may file a reply on or before close of business on March 8, 2017. The reply (including any transcript excerpts) should be filed by facsimile. It must be served by facsimile or email on Google's counsel. Any reply is limited to the material in Google's supplemental opposition. Any other material will be stricken.

This Order will be served on the Solicitor and on counsel for Google by facsimile or email. All other service is by U.S. mail.

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge

¹ Google might choose to order an expedited transcript of the deposition. If it does so, it must supply a copy of the transcript to the Solicitor by email along with service of any supplemental opposition brief it files.