

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
SAN FRANCISCO, CALIFORNIA

Issue Date: 11 April 2017

ALJ NO.: 2017-OFC-00006

In the Matter of:

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
UNITED STATES DEPARTMENT OF LABOR,
Plaintiff,

v.

ORACLE AMERICA, INC.,
Defendant.

NOTICE OF HEARING AND PRE-HEARING ORDER

This matter arises under Executive Order 11246 (30 Fed. Reg. 12319), as amended, and the regulations at to 41 C.F.R. Chapter 60. The Court has jurisdiction in this matter under Sections 208 and 209 of the Executive Order and 41 C.F.R. § 60-1.26 and 41 C.F.R. Part 60-30.

NOTICE OF HEARING

Please take notice that the hearing in this matter will begin on **TUESDAY, AUGUST 15, 2017, at 9:00 a.m.** The hearing will be held at:

**United States Department of Labor
Office of Administrative Law Judges
Federal Building
90 Seventh Street, Room 4-815
San Francisco, CA 94103-1516**

STATUS CONFERENCE

The court will hold a Prehearing Status Conference by telephone with the parties on **July 26, 2017 at 10:00 a.m. CST**. The parties must provide a contact telephone number to Colleen Blake-Harris at the Office of Administrative Law Judges (415) 625-2200 no later than July 19, 2017.

PRE-HEARING ORDER

1. **APPLICABLE RULES OF PROCEDURE:** The statutory provisions related to procedures governing Office of Federal Contract Compliance Programs (OFCCP) matters are at 41 C.F.R 60-30. The adjudication provisions of the Administrative Procedure Act (APA) are incorporated by reference, and provide further guidance and authority for formal hearings before the administrative law judge. Finally, general rules of practice and procedure for adjudicatory proceedings before administrative law judges are contained in 29 C.F.R. Part 18 (2015). These rules apply unless inconsistent with a rule of special application. 29 C.F.R. § 18.10.

Filing by facsimile is prohibited unless explicitly authorized by the presiding judge or warranted by other circumstances as set forth in 29 C.F.R. § 18.30(b)(3)(i).

2. **INITIAL CONFERENCE.** Within 10 days from the date of this notice and pre-hearing order, the parties must meet and confer with each other regarding the matters set forth in 29 C.F.R. § 18.50(b). But the parties need not file a written report outlining their discovery plan, 20 C.F.R. § 18.50 (b)(2) notwithstanding.

The parties may hold their Initial Conference in person or, if the convenience of the parties dictates otherwise, via telephone or video conference. The attorneys of record and any unrepresented parties that have appeared in the case are jointly responsible for arranging the conference.

3. **INITIAL DISCLOSURE** The parties must make initial disclosures under 29 C.F.R. § 18.50(c). All initial disclosures, including disclosures of expert testimony under 29 C.F.R. § 18.50(c)(2) shall be completed within 21 days of this Order. The Parties have a continuing duty to update disclosures under 29 C.F.R. § 18.53.

4. **PRE-HEARING EXCHANGE, CLOSE OF DISCOVERY AND THE FILING OF THE PRE-HEARING STATEMENT**

- a. **Thirty (30) days** before the hearing the parties must exchange exhibits expected to be offered at hearing. The parties shall avoid duplication of exhibits and must mark exhibits as either: Joint Exhibits (“JX”) if both parties are relying upon the same exhibit; Plaintiff’s Exhibit (“PX”); or Defendant’s Exhibits (“DX”). Exhibits shall be paginated and bound together. Each bound volume is limited to 100 pages. Each volume shall be accompanied by an exhibit index containing a description of each exhibit, date and author. Each page of multi-page exhibits must be numbered.
- b. Discovery closes thirty (30) days before the hearing.
- c. In lieu of individual prehearing statements under by 29 C.F.R. § 18.80, the parties must file a JOINT Prehearing Statement. 29 C.F.R. § 18.80(d). **TWENTY (20) days** before the scheduled Hearing, the parties must confer either in person or telephonically for purposes of finalizing exhibits and the Joint Prehearing Statement which shall include the following information in numbered paragraphs:

- (1) Stipulated facts which are admitted and require no proof;
 - (2) Disputed facts;
 - (3) The issues of law to be determined with reference to appropriate statutory and/or regulatory authorities. Note: Evidence at the hearing will be limited to these issues and to the disputed issues of fact listed in subparagraph (2) above;
 - (4) A list of proposed witnesses for each party including the name and address of each witness the party expects to call and a brief summary of the testimony each witness is expected to furnish. With regard to expert witnesses, the expert's written report will be marked as an exhibit of the offering party and received into evidence as that witness' testimony in chief. Additional direct testimony from the expert will be allowed only if circumstances warrant. The qualifications of the expert will ordinarily be stipulated. But, the court may consider objections to the expert's so long as the objections are raised in writing at least five (5) working days from receipt of the material. Following the qualification of the expert and the introduction of his/her report into evidence, the witness will be made available for cross-examination;
 - (5) A list of all exhibits to be offered into evidence (other than those to be used for impeachment) along with a statement of any objections reserved as to admissibility; and
 - (6) A realistic estimate as to the time required to present each party's case.
- d. **TEN (10) days** before the scheduled Hearing, the parties shall file a fully executed Joint Prehearing Statement and All Exhibits with the presiding judge. The Joint Prehearing Statement shall be signed by all counsel (or *pro se* parties if applicable) involved in the litigation. Failure to cooperate in this process or timely file the Joint Prehearing Statement and Exhibits may result in the case being automatically REMOVED from the trial calendar, exclusion of evidence, or the imposition of other appropriate sanctions depending on the party at fault.
5. **SUBPOENAS**. Requests for subpoenas must be in writing under 29 C.F.R. § 18.56. Requests for more than five (5) subpoenas must be accompanied by a list of the names of persons or entities being subpoenaed. It is the responsibility of the parties to prepare and serve subpoenas upon any witness. Subpoenas provided for this case shall be used only for this case. Parties with access to the Internet may find additional information about obtaining subpoenas at the web site maintained by the Office of Administrative Law Judges, <http://www.oalj.dol.gov/SUBPOENAS.HTM>.
6. **MOTIONS** All motions and other requests for relief from the presiding administrative law judge must comply with 29 C.F.R. §§18.33-18.35.

Motions for Summary Decision pursuant to 29 C.F.R. § 18.72 must be filed at least 60 days prior to the scheduled hearing in order to afford adequate time for an answer and ruling. Rulings on motions for summary decision that are not filed at least 60 days prior to the hearing may, in the discretion of the presiding administrative law judge, be deferred until after the hearing.

All motions will be considered unopposed and subject to allowance in the absence of a timely answer opposing the relief sought. See 29 C.F.R. § 18.33(d) and § 18.32 for computing the time when answers are due.

7. **SETTLEMENT** The parties are encouraged to explore settlement of this case. OALJ has established a Settlement Judge Program which is available to litigants. 18 C.F.R. § 18.13. Information concerning the voluntary Settlement Judge Program is available online at www.oalj.dol.gov/SETTLEMENT_JUDGE.HTM. If all parties agree and so request, a settlement judge may be appointed to assist the parties in settlement efforts. The parties are free to explore settlement outside the OALJ Settlement Judge Program.
8. **INTERPRETERS**. The parties must advise the presiding judge promptly if an interpreter will be needed at the hearing. Parties needing assistance with translation services must inform the presiding judge no less than **15 days** before the date of the hearing.
9. **POST HEARING BRIEFS** Dates for filing proposed findings of fact and conclusions of law and briefs pursuant to 29 C.F.R. § 18.91 will be set at the close of the hearing.

SO ORDERED.

CHRISTOPHER LARSEN
Administrative Law Judge

San Francisco, California