

APPENDIX A-13: TRANSMITTAL MEMORANDUM FOR AN ENFORCEMENT RECOMMENDATION

(Compliance Evaluations)

The memorandum transmitting a recommendation for enforcement arising from a compliance review will contain the following sections:

1. CONTRACTOR'S IDENTITY

- a. State the establishment's or functional unit's full name and mailing address, including the county in which it is located, and the names and titles of primary establishment, construction or functional unit contact persons (*i.e.*, top establishment or functional unit official, legal representative, EEO and Affirmative Action Coordinator).
- b. If the establishment or functional unit is part of a multi-establishment corporation, also state the corporate name and address, the names and titles of primary contact persons (as above), and describe the relationship between the establishment/functional unit and corporation, *e.g.*, unincorporated division or wholly owned subsidiary. The description of this relationship is critical when the establishment/functional unit itself does not hold a federal contract.
- c. Give any known information on the ownership makeup of the business and its legal address in the state in which it is incorporated. This information is often available in industrial directories and databases or from the Secretary of State's office (corporations).

2. CONTRACTOR'S BUSINESS

Describe the contractor's main product(s), basic structure, total employment and major types of jobs.

3. PRIOR HISTORY

Indicate whether and when the establishment or functional unit, or both, were previously reviewed or subjected to an OFCCP complaint investigation. Also note the outcome of any such review or investigation. Reference any relevant legal actions against the establishment or functional unit, or both (*e.g.*, pending Title VII suit, consent decree, etc.).

4. CONTRACT COVERAGE

Describe the basis for OFCCP jurisdiction. For basic coverage requirements, under the Executive Order (EO) 11246, see 41 CFR 60-1.5(a); under Section 503, see 41 CFR 60-741.4; and under VEVRAA, see 41 CFR 300.4. If a violation asserted relates to a written AAP, for Executive Order 11246, see 41 CFR 60-2.1 (supply and service) and 41 CFR 60-4.1 (construction); for Section 503, see 41 CFR 60-741.40(b); and for VEVRAA, see 41 CFR 60-300-.40(a).

Federal Contract Compliance Manual (FCCM)

As used below, the term federal contracts means federal prime contracts, subcontracts and federally assisted construction contracts and subcontracts.

- a. **Basic Contract Information (All Cases):** List here (or in an attachment if voluminous) all known federal contracts held by the contractor during the review period and continuing to the present. For each such contract, give the information requested on page 2, item 5 of the Supply and Service SCER plus the goods, services, lease arrangements, etc. provided under the contract and any available information on whether there was a break or modification during the period the contract was in effect.
- b. If coverage is based on contracts for indefinite quantities (for example, a blanket purchase order, a rate agreement, etc.) note: (1) the amounts ordered in each business year during the review period and continuing to the present, and (2) the identity and location of contracting officers and others who may be able to provide copies of invoices and other documents verifying coverage.
- c. **Additional Contract Information Where Actual or Potential Coverage Dispute:** If coverage is or is anticipated to become an issue, state the grounds on which the contractor claims not to be covered, and any grounds you believe the contractor might assert. Then analyze the claim asserted and/or any potential claim. If you have questions or need assistance, consult with your Regional Solicitor (RSOL).
 - i. **Separate Entity Issue:** If the contractor claims to be or not to be covered based on the fact it is a separate entity from the company holding the federal contract, it is critical to include information on the following factors concerning the relationship – whether:
 - The entities have common ownership;
 - The entities have common directors and/or officers;
 - One entity has de facto day-to-day control over the other through policies, management or supervision of the entity’s operations;
 - The personnel policies of the entities emanate from a common or centralized source; and
 - The operations of the entities are dependent on each other, *e.g.*, services are provided principally for the benefit of one entity by another and/or both entities share management, offices or other services.
 - ii. **Subcontract Issue:** If coverage is based on a subcontract relationship with a prime government contractor, include:
 - The identity of the prime contractor, including the contracting agency and the goods or services involved in the prime contract;
 - Information demonstrating that the prime contractor is covered; and

Federal Contract Compliance Manual (FCCM)

- An analysis of how the subcontract meets at least one of the two prongs of the regulatory definition of covered subcontract.
- iii. Serious Jurisdictional Question: If a serious question about jurisdiction is present or anticipated, obtain a complete copy of at least one contract which establishes coverage for the review period and continuing to the present from the contracting agency or the contractor. RSOL will not approve an enforcement recommendation without this documentation. A copy of the contract(s) establishing coverage must be included in the case file.

5. SUMMARY OF EVENTS

Indicate how the company was selected for review, and then list major review events, including current status. Major events include, for example, the date the AAP was received; the dates of the on-site; the dates of any Predetermination Notice, Notice of Violation, Show Cause Notice and 15-Day Notice; the period during which conciliation was attempted; and the date conciliation was terminated. In the case of a denial of access claim, OFCCP must show that the contractor was selected in accordance with a neutral plan.

6. LIST OF VIOLATIONS FOR WHICH ENFORCEMENT IS SOUGHT

List each violation for which enforcement is being sought under the subheadings of “Affirmative Action” or “Discrimination.”

7. ANALYSIS OF VIOLATIONS

For each violation for which enforcement is sought, give the following analysis, specifically referring to the case file location by file and page number of the relevant portions of documents and interviews.

Note, however, that violations may be grouped in such a way as to result in a clearer and more succinct presentation of the case. For example, many affirmative action violations are interrelated and can more easily be described together, *e.g.*, problems with job group formation usually result in problems with utilization analysis, underutilization determinations and goals.

- a. Violation: State the practice or action that constitutes the violation and identify the sections of the regulations and/or laws violated. In the case of a systemic discrimination finding, state the specific group affected, job(s) at issue, level of disparity in standard deviations, if there is relevant statistical data, and any relevant shortfall. Also, in appropriate cases, identify the component(s) of the selection process that caused the adverse impact.
- b. Facts: Summarize factual findings. Reference the file and page location of data such as worksheets, statistical analyses, cohort analyses, salary analyses, medical evidence and contractor documents which are the basis for each factual finding.
- c. Analysis: Conduct an analysis to determine why the facts lead to a conclusion of violation. Where discrimination is the issue, analysis should be done using the appropriate theory and burden of proof.

Federal Contract Compliance Manual (FCCM)

Review the contractor's position and any data provided in support of its position (referencing file location), giving the reasons (referencing supporting documentation) for concluding that the contractor has not adequately responded to evidence of violation and/or that its position is a pretext for discrimination. Also determine if there are other contractor positions that could be raised in the future, and the overall strengths and weaknesses of the case.

- d. Remedy: Describe the proposed remedy. Indicate the basis and support for the type of remedy proposed. Describe the contractor's position on remedy if this has been discussed with the contractor.
 - i. Individually-based back pay: If a proposed remedy includes individually-based back pay, indicate the pay rate used (and, if from other than payroll records, its source), the method of computation and applicable interest rates. Include or attach a summary list of back pay due with the name of each affected class member, the period covered and amount due (referencing the file location of individual computation sheets).
 - ii. Formula relief: If a proposed remedy includes a formula for relief, indicate the rationale for a formula approach, the basis for calculating the total amount due, including components of the calculations, and the method of allocating the total amount among class members.
- e. SOL, JRC, RO and NO Opinions: If applicable, reference the tabbed file location of and summarize any Solicitor's, Joint Review Committee, regional and national office opinions and recommendations, and the action taken with respect to them.

8. CONCILIATION

Describe the conciliation efforts undertaken. Describe significant aspects of those efforts, *e.g.*, what was offered, by whom, rationale for rejecting and issues at impasse. Identify dates conciliation was attempted, the participant(s) and summarize the results, referencing the file location of meeting notes, pertinent correspondence, etc.

If, however, there has already been some discussion of conciliation with respect to particular violations earlier in the Transmittal Memorandum, (*e.g.*, the contractor's position on the violation/remedy, etc.), that discussion may be referenced in the memorandum section on conciliation efforts.

IMPORTANT: If conciliation sessions continue after the Transmittal Memorandum is prepared, it is critical that, at a minimum, an addendum be attached updating the status of negotiations (including any additional violations resolved (see item 10 below) and referencing the file location of pertinent meeting notes and correspondence. RSOL must receive all correspondence and other documents generated during these negotiations and be included in all settlement negotiations.

9. CONCLUSIONS/RECOMMENDATIONS

Indicate the action being recommended.

10. ATTACHMENT – VIOLATIONS FORMALLY CITED BUT RESOLVED

In an Attachment to the Transmittal Memorandum, list any violations cited in one or more of the following documents that have been resolved as of the date the Transmittal Memorandum is prepared: Predetermination Notice, Notice of Violation, Show Cause Notice, Amended Show Cause Notice and 15-Day Notice.

Briefly describe the resolution, referencing the file location of documents that provide more information on the issue and its resolution.

CONTACT PERSONNEL

List the contacts for the contractor and OFCCP.