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OFCCP AGAIN DELAYS ADOPTION OF REGULATIONS ADDRESSING CONSTRUCTION INDUSTRY EMPLOYMENT PRACTICES

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By: Frank Scruggs

On Friday, September 23, 2016, the Office of Federal Contract Compliance Programs ("OFCCP") announced yet another delay in the adoption of regulations setting forth new nondiscrimination and affirmative action requirements for covered federal contractors in the construction industry. Through responses to Frequently Asked Questions, the OFCCP said that new utilization goals for companies that contract to provide construction services to federal agencies would not be established because they, "would not likely increase the number of women and minorities gaining employment opportunities in the trades."

Six and three-quarter years earlier, on December 8, 2009, with the federal government poised to expend hundreds of billions of dollars to stimulate the economy during the Great Recession, the OFCCP director explained the agency's decision not to establish new construction industry workforce utilization regulations at that time:

The OFCCP Affirmative Action regulations and goals applicable to construction contractors were last updated about 30 years ago…. As part of the rulemaking process, OFCCP will be reviewing barriers to equal opportunity in the construction industry including employment opportunities for women and minorities. OFCCP will also be considering how construction contractors may best ensure equal opportunities for all job applicants and employees. This Web chat is occurring early in the regulatory revision process so it is premature to discuss particular approaches or solutions we will propose until after we have heard from all our stakeholders.

The effect of last week's decision is to leave in place employment goals as to women and minorities, established in 1980 upon 1970 census data, which contractors can satisfy by making "good faith efforts." In explaining its decision, the agency pointed to its lack of resources and the potential beneficial impact of focusing upon 35 "mega construction projects" of greater than $25 million.

The construction companies that obtain such contracts may receive more scrutiny and assistance from OFCCP. The covered federal construction contractors that do not have mega projects will need to consider whether or not OFCCP employment goals established thirty-six years ago warrant any changes in their current employment practices.

For more information on this topic, please contact Frank Scruggs on the firm's Dispute Resolution Team.

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