

Frank Scruggs - Abstract of Article Regarding OFCCP
For Mark Casso, President
Construction Industry Round Table

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Recipients of federal contracts employ approximately 25% of the American workforce. The administration of President Obama seeks to intensify scrutiny of federal contractors' employment practices and pledges to demand more multi-million payments from companies that unlawfully discriminate against minorities, women, individuals with disabilities and certain military veterans.

While many federal contractors may take a "wait and see approach" during the election season, others will move proactively to evaluate and, where necessary, revise their employee recruitment, selection, promotion, discipline, and compensation practices because of the financial, litigation, and reputational consequences that arise from a finding of employment discrimination in the context of federal contracting.

"The historical reality is that even though approaches have varied, every president during the last 47 years has enforced the seminal nondiscrimination decree applicable to federal contractors," says Frank Scruggs, former Secretary of Labor for the State of Florida, and a partner at the law firm of Berger Singerman. "Contractors who recognize that the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is targeting systemic discrimination are trying to avoid the misfortunes that await competitors who do not act until they hear regulators' "knock at the door."

Even successful federal construction contractors may not detect the increasing likelihood of an OFCCP compliance audit or the even greater likelihood that demonstrated violations will lead to punishing and embarrassing consequences. The U.S. Solicitor of Labor has greater resources and leverage than any individual litigant who brings a discrimination lawsuit.

According to Scruggs, the potential adverse consequences of unsuccessful litigation with federal contract compliance officials include disqualification from performing federal contracts, "conciliation agreements" that impose requirements to make payments to employees and applicants, widespread negative publicity, spawning class-action employment litigation, and disappointing customers whose key decision-makers frown upon proven discrimination.

Scruggs recommends that federal contractors in the construction space immediately begin taking proactive measures to comply with the non-discrimination laws enforced by the OFCCP. "Systemic changes in employment practices cannot be instituted overnight," says Scruggs. "Given the potential for exceedingly negative financial and reputational consequences, federal construction contractors should adhere to the Scouting motto, "Be Prepared."