



## **THE MANAGEMENT ADVANTAGE, INC.**

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*William H. Truesdell, SPHR, SHRM-SCP  
President*

December 14, 2015

Debra A. Carr, Director  
Division of Policy, Planning and Program Development  
Office of Federal Contract Compliance Programs  
200 Constitution Ave NW, Room C-3325  
Washington, DC 20210

RE: Control Number 1250-0003

Dear Director Carr:

We are a consulting firm, actively involved with government contractor clients. We assist them with preparing and annually updating their affirmative action plans (AAP), assessing their employee movement data and responding to compliance evaluation demands of the Office of Federal Contract Compliance Programs (OFCCP). Our clients range in size from under 100 employees to several thousand employees.

We are submitting this response to OFCCP's request for comments about its seeking Office of Management and Budget (OMB) approval for its scheduling letters. In doing so, we wish to share some perspective of contractors we know and have worked with over the past 25 years.

Our feedback concerns apparent discrepancies in the burden impact figures put forth by the OFCCP in this request.

Determining the number of contractors and/or contractor establishments over which OFCCP has jurisdiction is a confusing exercise when using numbers provided by OFCCP in this request. From the "Supporting Statement" we find:

### **Determining the Number of Federal Contractors Subject to This Requirement**

- **Section A, Justification**  
OFCCP declares that there are "104,545 contractor establishments" from which it selects "approximately 3.3 percent" for a compliance evaluation.
- **Section A6, Consequences for Federal Programs if This Information is Collected Less Frequently**

OFCCP says, “only about 4,000 establishments are reviewed annually out of nearly **200,000** establishments.”

- Section 12a(1), Initial Development of an AAP OFCCP tells again that there are “**104,545** contractor establishments.”

**Response:** This confusion is more than simple typographical error. Using the larger number of contractor establishments can effectively double the burden costs cited in the OFCCP’s proposal for the new scheduling letters. This entire proposal is suspect simply because the agency is unable to be consistent in its claim for the size of the contractor community over which it has jurisdiction.

#### **Determining the Number of Pages in the Compliance Evaluation Response Package as Required by the Scheduling Letter Itemized Listing**

- Section A13, Estimate of Annual Operation and Maintenance Cost to Respondents. “OFCCP estimates the average size of an AAP and supporting documentation to be 60 pages. The estimated total copying cost to contractors is \$8,333 (60 pages x \$.08 x 1,736 = \$8,333).”

**Response:** In actual numbers, the compliance evaluation and itemized listing require documents totaling 150 to 300 pages per establishment. For the 50 percent of contractors that submit their response packages in hard copy format, the estimated burden is understated by as much as five times. The proper reproduction cost burden should be \$41,665.

#### **Determining the Initial Recordkeeping Burden Hours**

- Section A15a(1), Initial Development of an AAP. OFCCP writes that it’s “current request is 109,459 hours” and attributes those to 1,046 new federal contractors each year which will find it necessary to comply with the Affirmative Action Plan regulations over which it has jurisdiction. The hours needed for each contractor to come into compliance in the initial year. That cost equates to 104.6 hours per contractor according to OFCCP in this request.

**Response:** On April 30, 1999 the agency made an official estimate of hours required for preparation of an initial affirmative action plan and said it would require 179.5 hours per contractor. It has been 16 years since that estimate by the agency and OFCCP says the hours required have dropped by 42 percent. During those 16 years OFCCP has added the following compliance requirements to contractor cost burden which it seems to ignore in this request.

- ✓ Internet applicant identification and recordkeeping
- ✓ Utilization computations have been added for Disabled applicants and employees

- ✓ Benchmark computations have been added for Veteran applicants and employees
- ✓ Applicant database search recordkeeping requirements have been added
- ✓ Modification of all on-line applicant acceptance systems (company Internet sites) must be brought into compliance for accessibility
- ✓ All expressions of interest in employment must be retained by the contractor, even though those expressions of interest may not rise to the level of applicant by definition
- ✓ Record retention requirements have been expanded to three years for all contractors when it was only a one year requirement for contractors with fewer than 150 employees in the past
- ✓ Tracking multiple data fields for each employee that may or may not have any impact on compensation so these data can be available to OFCCP should it come calling with a compliance evaluation scheduling letter

These added requirements amount to an actual increase in contractor compliance burden since 1999. Our experience has been that contractors are spending an additional 80 hours (both initially and annually thereafter) simply because of the recordkeeping requirements imposed over the past 16 years. That amounts to a current-day requirement of 259.5 hours per contractor on average across the entire spectrum of contractor employee group size. The actual cost for first year contractors is \$10,504.56.

One should remember that \$10,504.56 exceeds 20 percent of the revenue a contractor would receive on a \$50,000 qualifying contract. It precludes any profit on that contract and may well also preclude covering the costs of servicing the contract. Such compliance burden would make it impossible for new contractors to expect financial survival in the federal contracting world. By increasing these compliance costs, OFCCP is effectively eliminating many small employers from the prospect of federal contracting.

#### **Determining the Ongoing Recordkeeping Burden Hours**

- Section A12(d) Annualized Cost of the Burden Hours to Contractors. OFCCP claims the cost per establishment for each year's update to the AAPs is \$3,700. (That is based on a reverse-engineered number of hours equaling 91.4 hours.)

**Response:** On April 30, 1999 the agency made an official estimate of hours required for preparation of an annual affirmative action plan update. It said that amount of time is 74.9 hours per contractor per establishment. Over the course of the intervening 16 years, the same additional requirements apply to each yearly update as apply to the initial compliance effort. So, all of the items cited above also apply here. If we add the additional 80 hours contractors are spending in the real world to the 44.42 hours OFCCP says it will take to update

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the AAP each year and then add the 44.87 hours OFCCP says it will take to maintain each AAP throughout the year, the result is an actual requirement of 169.3 hours. That translates to \$6,853.26 per contractor per establishment each year rather than \$3,700.

The blended (management/administrative support) cost per contractor per hour is estimated by the OFCCP to be \$40.48 although they don't say it anywhere in the proposal. It must be computed from the other numbers the agency presents. The impression one gets is that the OFCCP would prefer to have a bit of confusion rather than be clear about the actual contractor burden it is imposing.

In summary, OFCCP has failed to recognize the burden falls harder on small contractors than it does on large contractors. Action such as this will drive small employers away from federal contracts and ultimately increase the cost of federal government purchases. OFCCP should not ignore that the costs of compliance will be passed along to the buyer, in this instance the federal government.

Thank you for the opportunity to comment on this proposal.

Sincerely,



William H. Truesdell, SPHR, SHRM-SCP