U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 June 2010

Case No.: 2010-OFC-00003

In the Matter of:

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

Plaintiff,

v.

PALMETTO-RICHLAND MEMORIAL HOSPITAL,

Defendant.

ORDER APPROVING CONSENT FINDINGS

This cause of action is filed pursuant to Executive Order 11246 (30 Fed. Reg. 12319), as amended; pursuant to Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. §793), as amended; and pursuant to 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (38 U.S.C. §4212), as amended, and is governed by the implementing Regulations found at Code of Federal Regulations, Title 41, Chapter 60. On April 28, 2010, the Office of Federal Contract Compliance Programs, U.S. Department of Labor (Plaintiff) filed a Complaint with the Office of Administrative Law Judges, for an expedited administrative hearing against the above-named Defendant under the provisions of the 41 CFR § 60-30.31. The Defendant filed its Answer on May 18, 2010.

On June 17, 2010, the Parties jointly filed Consent Findings and thereby stipulate, agree and consent, pursuant to 41 CFR § 60-30.13, to entry of findings as follows:

1. This matter arises under Executive Order 11246, as amended, and regulations issued thereunder (hereinafter "Executive Order 11246"); Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §793 ("Rehabilitation Act"); and Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. §4212 ("VEVRAA"), as amended and regulations issued pursuant thereto.

2. Jurisdiction is conferred in this matter pursuant to §§208 and 209 of Executive Order 11246, the Rehabilitation Act, VEVRAA, 41 C.F.R. §§60-1.26, 60-741.65, 60-350.65, and 41 CFR Part 60-30.

3. Defendant, Palmetto-Richland Memorial Hospital maintains a place of business at 5 Richland Memorial Park Drive #D, Columbia, South Carolina 29203, and is a not-for-profit healthcare organization engaged in the business of providing medical services.

4. At all times relevant, the Defendant had 50 or more employees.

5. Beginning November 1, 2006, Defendant had an agreement totaling $100,000.00 or more per year to provide the Veterans Administration ("VA") with radiation therapy services. The VA exercised its option to renew the contract in 2007 and 2008 through the end date of October 1, 2009, based on the last renewal.

6. Prior to the initiation of this action, Plaintiff advised Defendant that it had been selected for a compliance review under Executive Order 11246, as amended; Section 503 of the Rehabilitation Act, and the VERVAA and that such review may include a desk audit, an onsite review, and an offsite analysis. Plaintiff's efforts to secure voluntary compliance through conciliation and persuasion were unsuccessful.

7. Specifically, by letter dated May 9, 2008, the Plaintiff sought the following information to perform a compliance review:

    a. A copy of Defendant's Executive Order Affirmative Action Program ("AAP") pursuant to 41 C.F.R. §§60-1.40 and 60-2.1 through 60-2.17 (including an organizational profile, formation of job groups, a determination of minority and female availability, a comparison of incumbency to availability, and placement goals for each job group in which the percentage of minorities or women employed is less than would be reasonably expected given their availability).
    b. A copy of Defendant's Section 503, 38 U.S.C. §4212 AAPs pursuant to 41 C.F.R. §§60-741, 60-250 and/or 60-350.
    c. A copy of Defendant's Employer Information Report EEO-1 for the last three years.
    d. A copy of Defendant's collective bargaining agreement(s), if applicable, and any information prepared that would assist in understanding Defendant's employee mobility.
    e. Information on Defendant's affirmative action goals for the preceding AAP year and, where applicable, progress on Defendant's goals for the current AAP year.
    f. Data on employment activity (applicants, hires, promotions, and terminations) for the preceding AAP year and for the current AAP year if already six months into the current AAP year.
    g. Annualized compensation data (wages, salaries, commissions, and bonuses) by salary range, rate, grade, or level showing total number of employees by race and gender and total compensation by race and gender.

8. Defendant questioned Plaintiff's selection of Defendant for a compilation review and denied access to the documents and to Defendant's facility for the purposes of a compliance review.

9. Without admitting that the Office of Federal Contractor Compliance Programs ("OFCCP's") request for compliance review and submission of data is lawful, Defendant nevertheless desires to cooperate with OFCCP to avoid the time and expense of litigation and hereby agrees to the following:

   a. Defendant agrees that it will prepare, to the extent possible, current AAPs for its place of business at 5 Richland Medical Park Drive #D, Columbia, South Carolina 29203 and will submit those AAPs to OFCCP in a timely manner.
   b. Defendant agrees that, beginning on the effective date of the Court's order approving these Consent Findings, it will maintain and evaluate personnel data for applicants, hires, transfers, promotions, terminations, and other personnel actions for its place of business at 5 Richland Medical Park Drive #D, Columbia, South Carolina 29203, in accordance with 41 C.F.R. §§60-1.12, 60-2.17(b)(2), and 60-3.4.
   c. Defendant agrees that it will not deny access to OFCCP compliance officer(s) who seek personnel and affirmative action information to complete OFCCP's compliance review.
   d. Defendant agrees that it will respond to each data request made by OFCCP in its letter of May 9, 2008, attached to the joint "Consent Findings" as Exhibit A, and any relevant information requested as a follow-up after OWCCP has reviewed Defendant's submission during its desk audit review.
   e. Defendant agrees that it will permit OFCCP compliance officer(s) to conduct an onsite review, should OFCCP deem it necessary for its compliance review.
   f. Nothing contained in the "Consent Findings" is intended to relieve Defendant from compliance with the requirements of Executive Order 11246, the Rehabilitation Act, the VEVRAA, or their implementing regulations, nor limit OFCCP's right to review Defendant's compliance with such requirements.
   g. Jurisdiction, including the authority to issue any additional orders necessary to effectuate the implementation of the provisions of the "Consent Findings" and the Decision and Order, is retained by the Office of Administrative Law Judges ("OALJ") until such time as the OFCCP concludes review and provides notice of such to OALJ.
   h. If, during the term of the Decision and Order, OFCCP believes that Defendant has violated any portion of the Decision and Order, Defendant will be promptly notified of that fact in writing. This information will include a statement of the facts and circumstances relied upon in forming that belief. Defendant will have 15 days in which to respond in writing.
   i. Enforcement proceedings for violation of the Decision and Order may be initiated any time after the 15-day period has elapsed (or sooner if irreparable injury is alleged), upon filing with the OALJ a Motion for an Order of enforcement and/or sanctions. The administrative law judge may, if he deems it appropriate, schedule an oral hearing on the Motion. The issues in a hearing on the Motion shall relate solely to the issues of the factual and legal claims made in the Motion.

j. Liability for violation of the Decision and Order may subject Defendant to sanctions set forth in Executive Order 11246, the Rehabilitation Act, the VEVRAA, and their implementing regulations.

k. If a Motion for an Order of enforcement or clarification indicates by signature of counsel that the Motion is unopposed by Plaintiff or Defendant, as appropriate, the Motion may be presented to the administrative law judge without hearing, and the proposed Order may be implemented immediately. If said application or Motion is opposed by any party, the party in opposition shall file a written response within 20 days of service of such motion.

10. The Parties further agree that:

(a) The "Consent Findings" shall be deemed final on the date the Order thereon is signed by the Administrative Law Judge;

(b) The final Order disposing of this proceeding shall have the same force and effect as an Order made after full hearing;

(c) The entire record on which such final Order shall be based shall consist solely of the Complaint, the Answer, General Denial and Affirmative Defenses, and the joint Consent Findings, including exhibits thereto; and,

(d) Each Party shall bear its own costs, fees (including attorney fees) and expenses as were incurred by it in connection with any stage of these proceedings.

11. The Parties waive:

(a) Any further procedural steps in this matter; and,

(b) Any rights to challenge or contest the validity of these findings and any Order entered in accordance herewith.

After review of the filed Consent Findings, the Complaint, and the Answer, General Denial and Affirmative Defenses, this Administrative Law Judge finds that the Consent Findings are in compliance with 41 CFR § 60-30.13, are in the best interests of all the Parties, and adequately resolve all pending issues for this matter.

ORDER

IT IS HEREBY ORDERED that **the Consent Findings are ADOPTED AND APPROVED** as the final Administrative Order pursuant to the provisions of 41 CFR § 60-30.13.

A

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia