

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 15 April 2014**

Case No.: 2014-OFC-00002

In the Matter of:

**U.S. DEPARTMENT OF LABOR,  
OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS**

Plaintiff

v.

**SHAPIRO, DiCARO & BARAK, LLP**

Defendant

**ORDER APPROVING CONSENT DECREE**

This Consent Decree is entered into between the Plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs (hereinafter "OFCCP"), and Defendant Shapiro, DiCaro & Barak, LLP (hereinafter, the "Shapiro Firm") in resolution of the Administrative Complaint filed by OFCCP pursuant to Executive Order 11246 (30 Fed. Reg. 12319), as amended by Executive Order 11375 (32 Fed. Reg. 14303), Executive Order 12086 (43 Fed. Reg. 46501), and Executive Order 13279 (67 Fed. Reg. 77141) ("Executive Order"), section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503") and section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. § 4212 ("VEVRAA"); and the rules and regulations issued pursuant thereto. The Administrative Complaint alleges that at all times pertinent hereto, the Shapiro Firm has had 50 or more employees and was a party to a contract with the Department of Justice totaling more than \$50,000.00, and was therefore a covered government contractor for purposes of the Executive Order, Section 503, and VEVRAA. The Administrative Complaint further alleges that Defendant Shapiro Firm violated the Executive Order, the Rehabilitation Act and the VEVRAA, as described in paragraphs 6-16, therein.

**PART A. GENERAL PROVISIONS**

1. The record on which this Consent Decree ("Consent Decree") is based shall consist of this Consent Decree, and the Complaint.
2. As meant herein, the term the "Shapiro Firm" shall include Shapiro, DiCaro & Barak LLP, its successors, subsidiaries, and any similar business entity substantially owned or operated by any of the principals of the Shapiro Firm.

3. This Consent Decree shall become final and effective on the date it is signed by the Administrative Law Judge (“Effective Date”).

4. This Consent Decree shall be binding upon Defendant, any and all officers, agents, employees, purchasers, successors, assignees, and/or transferees of Defendant and shall have the same force and effect as an Order made after a full hearing. Defendant waives its right to a hearing.

5. All further procedural steps to contest the binding effect of the Consent Decree, and any right to challenge or contest the obligations entered into in accordance with the agreement contained in this Decree, are waived by the parties.

6. Subject to the performance by Defendant of all duties and obligations contained in this Consent Decree, all alleged violations identified in the Administrative Complaint shall be deemed fully resolved. Defendant Shapiro Firm and OFCCP agreed to settle this dispute to avoid the further costs and burdens of litigation. Nothing herein shall be deemed an admission of wrongdoing, liability or non-compliance by Defendant Shapiro Firm.

#### **PART B. JURISDICTION**

7. This court has jurisdiction over this proceeding under sections 208 and 209 of the Executive Order, Section 503 and VEVRAA and their implementing regulations. *See* 41 C.F.R. §~ 60-1.26, 60-741.65, 60-300.65, and 41 C.F.R. Part 60-30. Defendant admits to the jurisdiction of this Court over them regarding the subject matter of this action.

8. On or about June 15, 2012, OFCCP sent a scheduling letter to defendant stating that OFCCP had selected Defendant’s establishment for a compliance review under Executive Order 11246, the Rehabilitation Act, the VEVRAA and their implementing regulations (“Scheduling Letter”).

9. The Scheduling Letter was approved by the Office of Management and Budget and bore OMB No. 1250-0003.

10. In the Scheduling Letter, OFCCP requested that, within 30 days from the date of its receipt of the letter, defendant submit copies of an Executive Order Affirmative Action Program (“AAP”), a Rehabilitation Act/VEVRAA AAP, and supporting data itemized in an attachment to the respective Scheduling Letter. OFCCP stated in the attachment to the Scheduling Letter that both the AAPs and supporting data were needed to conduct the desk audit phase of its compliance review.

11. On or about August 10, 2012, OFCCP issued a Show Cause Notice to Defendant as to why an enforcement action should not be initiated due to Defendant’s failure to submit the required employment activity data.

12. On or about September 14, 2012, Defendant submitted an AAP and supporting data in response to the Scheduling Letter.

13. On or about September 26, 2012, OFCCP initiated and conducted a desk audit of Defendant's AAP and supporting data.

14. On or about February 27, 2013, OFCCP issued an Amended Show Cause Notice to Defendant for violations identified during the course of the desk audit.

15. Defendant refused to provide additional documentation or information in response to the Amended Show Cause Notice and have expressed that they do not intend to do so.

16. OFCCP made numerous status inquiries and follow-up requests for defendant's employment activity data after it issued the Amended Show Cause Notice. Plaintiff has attempted to secure voluntary compliance through means of conciliation and persuasion. In spite of these efforts, defendant failed to provide the documents or information requested by OFCCP. Rather, on or about April 24, 2013, the federal contract was terminated by the parties.

### **PART C. SPECIFIC PROVISIONS**

17. From the Effective Date of this Consent Decree, Defendant Shapiro Firm agrees not to bid for, knowingly enter into, knowingly perform work, or knowingly provide services necessary to any future Government contracts or subcontracts. By this agreement, Defendant Shapiro Firm is debarred from receiving future contracts or subcontracts or extensions or substantive modifications of existing contracts or subcontracts for a minimum period of two years and until Defendant is reinstated pursuant to Part D of this Consent Decree. This debarment shall be effective against Defendant and its officers, agents, employees, purchasers, successors, assignees, and/or transferees of Defendant. In addition, no Federal agency may exercise any renewal option under an existing contract, unless the agency head determines that there is a compelling reason for such action pursuant to Federal Acquisition Regulation ("FAR") 9.405-1(b). The prohibitions in this paragraph shall be effective against Defendant Shapiro Firm as defined in Paragraph 2 of Part A above.

18. Notice of this debarment shall be printed in the Federal Register on or after the Effective Date and shall include the full terms of this Consent Decree. In addition, on or after the Effective Date, OFCCP shall notify the Comptroller General of the United States (the "Government Accountability Office") that Defendant Shapiro Firm is ineligible for the award of any Government contracts or subcontracts,

### **PART D. REINSTATEMENT**

19. The debarment period is for a minimum of two years from the Effective Date. After two years, Defendant Shapiro Firm shall continue to be forbidden from bidding for, knowingly entering into, knowingly performing work, or knowingly providing services, goods, or facilities necessary to a Government contract or subcontract, until Defendant Shapiro Firm requests reinstatement to federal contractor status and satisfies the Director of OFCCP that it or they are in compliance with the Executive Order, Section 503, VEVRAA and their implementing regulations. To do so, Defendant must submit to a full compliance review, pursuant to 41 C.F.R. 60-1; 41 C.F.R. 60-250; 41 C.F.R. 60-300 and 41 C.F.R. 60-741.

20. Defendant may not request reinstatement until after the minimum two-year debarment period elapses. After a request for reinstatement is made, OFCCP shall initiate a compliance review within 60 days. This review may include requests for relevant documents, in addition to the documents listed above, and any on-site compliance evaluations at Defendant's facility or facilities, as necessary to determine whether the Defendant is in compliance at the time of the request with the terms of this Consent Decree and the terms of the Executive Order, Section 503, VEVRAA, and their implementing regulations. OFCCP shall notify Defendant in writing, upon its completion of the compliance review, if there is a deficiency or a finding of compliance that would preclude reinstatement until remedied.

21. If, after completing a compliance review in accordance with Paragraph 20 above, OFCCP finds that the Defendant has complied with the terms of this Consent Decree and with the terms of the Executive Order, Section 503, VEVRAA and their implementing regulations, the prohibitions in paragraph 17 above and otherwise herein shall be lifted, and Defendant Shapiro Firm shall be free to enter into future Government contracts and subcontracts. Within 30 days of OFCCP's issuance of a finding of compliance (see paragraph 20 above), notice of the reinstatement shall be made to the Government Accountability Office, and notice of reinstatement shall be printed in the Federal Register.

22. If, after completing a compliance review in accordance with Paragraph 20 above, OFCCP finds that Defendant has not complied with the terms of the Consent Decree or with the terms of the Executive Order, Section 503, VEVRAA and their implementing regulations, OFCCP will notify Defendant of its finding (see paragraph 20 above) that the prohibitions in paragraph 17 above and otherwise herein shall not be lifted and shall remain in effect until the requesting Defendant(s) successfully demonstrates compliance with the Consent Decree, the Executive Order, Section 503, VEVRAA and their implementing regulations. The Defendant may file a motion with the Office of Administrative Law Judges for review of the Director's decision, and Defendant may request a hearing at which the sole issue will be whether the Defendant has complied with the terms of this Consent Decree and the Executive Order, Section 503, VEVRAA and their implementing regulations.

#### **PART E. IMPLEMENTATION AND ENFORCEMENT OF THE DECREE**

23. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges for a period of 24 months from the Effective Date.

24. If at any time during the 24 month period OFCCP believes that Defendant has violated any portion of this Consent Decree, Defendant will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Defendant 15 days to respond in writing except where OFCCP alleges that such a delay would result in irreparable harm.

25. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 15-day period referred to in Paragraph 24 has elapsed (or sooner, if irreparable injury is alleged) upon filing with the Court a motion for an order of enforcement and/or

sanctions. The hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

26. If an application or motion for an order of enforcement or clarification indicates by signature of counsel that the application or motion is unopposed by Plaintiff or Defendants, as appropriate, the application or motion may be presented to the Office of Administrative Law Judges without hearing and the proposed Order may be implemented immediately. If any party hereto opposes an application or motion, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

27. The Agreement, herein set forth, is hereby approved and shall constitute the final Administrative Order in this case.

**SO ORDERED.**

**THERESA C. TIMLIN**  
Administrative Law Judge

Cherry Hill, New Jersey