U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 February 2019

CASE NO.: 2017-OFC-00006

In the Matter of

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

v.

ORACLE AMERICA, INC.,
Defendant.

NOTICE OF HEARING AND PRE-HEARING ORDER

I held a conference call with the parties on February 4, 2019, to set hearing dates. OFCCP requested 9 court days. Oracle requested 15 court days. I previously stated that I would allocate 10 court days and I was not persuaded to change that estimate. After hearing the parties' positions, I set the matter for 10 court days. The entire hearing on liability and damages will be completed within the timeframes set. I may shorten or lengthen individual court days to keep the case on track to be completed within the time set.

After discussion with the parties, the following dates were agreed upon. Because the scheduled dates are 10 months in the future, the parties should consider the hearing dates to be firm dates that will not be continued absent a compelling reason. The parties worked cooperatively on a case management schedule, which they will revise consistent with the conference call and this prehearing order. The revised case management schedule must be submitted no later than February 19, 2019.

NOTICE OF HEARING

NOTICE: A hearing has been scheduled under Executive Order 11246 (30 Fed.Reg. 12319), as amended, and associated regulations at 41 C.F.R. Chapter 60. Jurisdiction over this matter arises under Sections 208 and 209 of Executive Order 11246 (30 Fed. Reg. 12319) and 41 C.F.R. § 60-1.26 and 41 C.F.R. Part 60-30.

HEARING DATE AND LOCATION: The hearing shall occur on December 5, 6, 10 to 13, and 16 to 19, 2019, from 9:00 a.m. to 4:30 p.m. each day, at the San Francisco Office of Administrative Law Judges Courtroom, 90 - 7th Street, Suite 4-815, San Francisco, California, 94103.

PREHEARING CONFERENCE DATE: A telephonic pre-hearing conference will be held on November 21, 2019, at 10:00 a.m. Pacific Time. The parties will be provided the call information at a later date.

PRE-HEARING ORDER

I. GENERAL RULES

A. **NOTICE**: There is a proactive Freedom of Information Act ("FOIA") disclosure order in place, which requires that every document received in this case be timely published to the OALJ website.[1] Therefore, any document or letter filed or sent to this Office by either party must be simultaneously emailed in PDF format to OALJSQLMail@dol.gov. The emailed version will not be used for any purpose other than FOIA disclosure.

B. **NOTICE**: Proceedings will be conducted in accordance with the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity under Executive Order 11246 contained in 41 C.F.R. Part 60-30. 41 C.F.R. § 60-1.26(b)(2). The Rules of Evidence found in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, codified at 29 C.F.R. Part 18, subpart B, apply to this proceeding. 41 C.F.R. § 60-30.18.

C. **COURT DAY**: The court day ends at 4:30 p.m. Any document that must be filed or exchanged must be submitted no later than end of the court day on the date it is due.

D. **FAX FILINGS**: No party may fax a document to this office without first requesting permission to do so. In the event a fax is allowed, the faxed document may not exceed 12 pages. 29 C.F.R. § 18.30(b)(3).[2] If a fax is approved and sent, do not send the original document. *Id.*

E. **INTERPRETERS OR TRANSLATION SERVICES**: As soon as possible, but no later than 30 days before the prehearing conference, the parties must provide written notice of whether an interpreter or other translation services will be needed at the hearing. Parties may provide their own interpreter or request that the Department of Labor provide one.

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[1] *See* Administrative Notice of Proactive Disclosure of Frequently Requested Records under the Freedom of Information Act (OALJ Chief Judge July 28, 2017). https://www.oalj.dol.gov/PUBLIC/FOIA/Frequently_Requested_Records/Oracle_2017_OFC_00006/In_re_PROACTIVE_DISCLOSURE_2017MIS00006_JUL_28_2017_085937_ORDER_SD_2017811059.pdf

[2] The rules for hearing procedures at 41 C.F.R. § 60-30 govern practice and procedure in OFCCP hearings. These rules provide that "[i]n the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure." 41 C.F.R. § 60-30.1. On some matters concerning practice before OALJ, however, neither the OFCCP rules nor the FRCP are instructive. In situations not adequately addressed in the OFCCP rules or the FRCP, proceedings will be guided by the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, codified at 29 C.F.R. Part 18, subpart A. *See* 29 C.F.R. § 18.10(a).

F. **TELEPHONIC TESTIMONY**: The parties must meet and confer regarding telephonic testimony and request permission in writing to have a witness testify by phone no later than November 8, 2019. The party calling the witness by telephone must make all necessary arrangements for the testimony, including providing a copy of the relevant exhibits to the witness for use during testimony.

G. **ELECTRONIC EQUIPMENT**: This Office does not supply any electronic equipment or devices necessary to view, play, or listen to any evidence or testimony. If any party wishes to play CDs, DVDs, or use PowerPoint or other computer based programs for viewing evidence or argument, they must supply any equipment necessary to present the evidence or argument.

H. **NOTICE OF PUBLIC HEARING**: Hearings under Executive Order 11246 are open to the public. 29 C.F.R. § 18.81. Final agency decisions are posted on the agency website. *See* 5 U.S.C. § 552(a)(2).

II. **DISCOVERY**: Formal discovery may be conducted according to the case management scheduled adopted by the parties and approved by the court. The parties must submit the revised and agreed-upon case management schedule no later than February 19, 2019.

III. **PRE-HEARING REQUIREMENTS**

A. **PRE-HEARING MOTIONS:**

1. The parties have met and conferred regarding a case management schedule governing pre-hearing motions. The parties shall meet and confer further in light of the deadlines imposed during the conference call and specified in this order. The parties must submit the revised and agreed-upon case management schedule no later than February 19, 2019.

2. Any prehearing motion must not exceed 20 pages. Any response or objection may not exceed 20 pages. Any reply to a motion may not exceed 10 pages. The parties previously agreed to electronic services of documents. Any response to a motion must be received within 14 days of service on the opposing party. The court cannot accept filings electronically.

3. The parties must meet and confer prior to filing any motion. They must actually engage in a good faith, verbal discussion to resolve the dispute prior to seeking court intervention. The parties must include a statement that the meet and confer has occurred and the position of each party when the motion is filed. No meet and confer is required for any dispositive motions, but for all other motions, including any in limine motions and any *Daubert* objections, proof of the meet and confer is required.

4. Any dispositive motion, such as a motion for summary decision, and any motion concerning *Daubert* must be filed and fully briefed, including opposition and any replies, no later than October 21, 2019.

5. Any challenge or objection to exhibits or any in limine motions must be fully briefed, including opposition and any reply, no later than November 8, 2019.

B. DOCUMENTS TO BE FILED OR SERVED BEFORE THE HEARING

1. **EVIDENCE**: The parties must exchange copies of the evidence that will be offered at the hearing as agreed, but within sufficient time to allow any objection to an exhibit. The evidence should be in the same format as it will be offered at the hearing.

2. **PRE-HEARING EXCHANGES**: The parties must serve the following materials on all other parties and on the presiding judge, no later than November 8, 2019:

   a. **PREHEARING STATEMENT**: The parties must prepare a joint prehearing statement that contains the information required by 29 C.F.R. § 18.80(c). Any in limine motions must be fully briefed and filed, including opposition and any reply, no later than November 8, 2019. The parties should include an updated timeline for prehearing filings in the revised case management schedule submitted on February 19, 2019.

   b. **WITNESS LIST**: The parties shall prepare a joint witness list that contains: (1) The name of each witness who will actually testify at the hearing with a precise (not general) statement of what the testimony will prove and an estimate of the entire (direct and cross) time required for the examination of each witness; and (2) The names of each witness whose deposition will be offered, with a precise statement of what the testimony will prove.

   c. **EXHIBITS/EXHIBIT INDEX**: The parties must submit joint exhibits at the hearing. The joint exhibits should be submitted to the judge no later than November 8, 2019. The exhibits for the judge may be printed double-sided so that they read like a book.
      (1) For any submitted exhibits, an **Exhibit Index** must be included that describes each exhibit by tab with a statement of precisely (not generally) what the exhibit proves.
      (2) Joint exhibits should be labeled J-1 through the end.
      (3) Each party may also submit individual exhibits that do not duplicate any of the joint exhibits. Plaintiff should label any individual exhibits as P-1 to the end, and Defendant should do the same with D-1 to the end.
      (4) Each exhibit must be individually marked with a numbered or lettered tab and be sequentially numbered in the lower right corner. The exhibits must be bound, preferably at the sides.
      (5) If an exhibit is difficult to read or illegible, it must be accompanied by a legible or typed version otherwise the exhibit will be given no weight.
      (6) Submit deposition transcripts in condensed format with a word index.
      (7) A curriculum vitae or an equivalent qualifications summary for each expert witness must be submitted in the evidence. The expert witness may be briefly examined about their background and qualifications to give context to their testimony, but the examination should be brief.

(8) Bring one copy of the exhibits to the hearing for the witnesses to use. The exhibits for the witnesses may be printed double-sided so that they read like a book.

d. **VOLUMINOUS RECORDS**, such as financial records, that are submitted as evidence must include a written summary of what is included and the purpose for inclusion, as well as direction to the specific page in the record that supports the contention. If applicable, the documents should include summary totals of any amounts requested by column on each page, with summary totals for the entire document either at the beginning or end.

C. **SETTLEMENT AGREEMENTS:** Any settlement between the parties must be submitted to the judge for approval in writing pursuant to 41 C.F.R. § 60-30.13. The files maintained by this office, including settlement agreements, are subject to disclosure under the provisions of the FOIA, unless an exemption applies. *See* 5 U.S.C. § 552.

IV. **SETTLEMENT CONFERENCE**: The parties are encouraged to continue to work towards resolution of this matter. If the parties agree that a settlement judge may help resolve the case, they may make a written request to the District Chief Judge asking for the appointment of a settlement judge. *See* 29 C.F.R. § 18.13. Information concerning the voluntary Settlement Judge Program is available online at www.oalj.dol.gov/SETTLEMENT_JUDGE.HTM. The parties are free to explore settlement outside the OALJ Settlement Judge Program. The hearing will not be postponed for use of the settlement judge program.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge