Are CAAs Federal Contractors and Do They Need Affirmative Action Plans?

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Some Community Action Agencies (CAAs) have received notification from the U.S. Department of Labor (DOL) that the Office of Federal Contract Compliance Programs (OFCCP) will conduct a review of their compliance with a number of laws applicable to federal contractors, including requirements for affirmative action plans. Other CAAs have received a DOL “Equal Opportunity Survey” of federal contractors. Before responding to these communications, CAAs should review all of their grants and contracts to determine whether they are in fact “federal contractors” subject to OFCCP jurisdiction. In most cases, CAAs are not federal contractors and a letter to that effect should be sent to DOL.

In addition, state contracts for Community Services Block Grant (CSBG), Low-Income Home Energy Assistance Program (LIHEAP), Weatherization and other “pass-through” grants sometimes include language that requires CAAs to comply with the affirmative action rules that apply to federal contractors. If a CAA is not a federal contractor, it should explain this fact to the state and seek to have the language removed from its contract. (Keep in mind, though, that CAAs may be required to comply with state laws, regulations and executive orders on affirmative action, including a state requirement that they have an affirmative action plan.)

As a general rule, because CAAs are federal grantees, rather than federal contractors, they are not required to comply with rules imposed on federal contractors, such as Executive Order 11246\(^1\) and 41 Code of Federal Regulations (C.F.R.) Part 60 (which require affirmative action plans for certain federal contractors and federally assisted construction contractors and subcontractors).\(^2\) The federal government distinguishes between those vendors from which it buys products or services to be used by the government (i.e., contractors), and those entities to which it provides funds to benefit the public at large (i.e., grants or federal assistance). Therefore, unless a CAA receives a direct federal contract (as opposed to a federal grant, such as Head Start, or a contract with the state that is funded with federal grant funds, such as CSBG), it is not a federal contractor and will not generally be subject to OFCCP jurisdiction or be required to have a federal affirmative action plan. (One example of a situation where a CAA might be a federal contractor is if it provides services under a contract with the U.S. Department of
Health and Human Services’ Office of Women’s Health, which sometimes issues federal contracts for services rather than grants.)

How do you know whether you are dealing with a grant or a contract? Look at documentation of any direct awards your CAA receives from the federal government (for this purpose, federal funds that are passed through by a state do not make a CAA a federal contractor, even if the state refers to your CAA as a “contractor”). Terms such as “financial assistance award,” “notice of grant award,” “grant agreement,” “grant award,” “loan” or “cooperative agreement” indicate that the CAA has a grant or other federal assistance, and not a contract. If the CAA’s documentation contains language such as “order for supplies and services” such may indicate a contract. If CAAs have questions about whether the funds they receive directly from the federal government are paid under a grant or a contract, they may contact CAPLAW.

Note that if a CAA uses federal grant funds for construction or if it undertakes construction pursuant to any federal program involving federal financial assistance in the form of a grant, loan, or cooperative agreement, it will be subject to some requirements under 41 C.F.R. Part 60 (although not the requirement for an affirmative action plan). If this is the case, a CAA must: (1) incorporate certain language into the construction contract requiring construction contractors and subcontracts not to discriminate; and (2) agree (a) to cooperate with the DOL in getting the contractors to comply with these rules, (b) to provide DOL with information that it may require in order to supervise compliance with these rules, (c) to carry out penalties and sanctions against contractors and subcontractors who don’t comply with these rules, and (d) not to enter into or renew contracts with any contractor debarred from federal contracts.

No matter what the situation, CAAs are still required to comply with other generally applicable federal or state laws prohibiting employment discrimination on the basis of race, sex, age, national origin, disability, etc. They are also subject to similar antidiscrimination laws imposed by their status as federal grantees in general and/or as grantees for a particular program.

For assistance with this issue, please contact CAPLAW at (617) 357-6915.

3 Executive Order No. 11246.