

GC GUIDANCE ON ACCESSING SUBCONTRACTOR EMPLOYMENT RECORDS

Federal officials, on occasion, may seek access to contractor or subcontractor employment and personnel records. There are circumstances in which such access is appropriate and permissible. But access should only be granted in circumstances that demonstrate such access is authorized and that creates a record of such access that can be reviewed.

In some situations, such as an investigation by the Inspector General, specific officials are authorized to have access. Other officials who wish access to such records should coordinate with the contracting officer, who should maintain a record of both the officials who are seeking access and their declared purpose for the access. This process will permit legitimate access to contractor and subcontractor records, while creating an appropriate record of access that can be reviewed.

Various standard Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses authorize federal officials to access contractor and subcontractor records.¹ For example, FAR clause 52.222-26, Equal Opportunity, which implements Executive Order 11246, is required to be in virtually all prime contracts. Under the terms of the Equal Opportunity clause, the Contractor must permit the Department of Labor (DOL) Office of Federal Contract Compliance Programs (OFCCP) and the contracting agency access to its premises, during normal business hours, for the purpose of conducting on-site compliance evaluations and complaint investigations. This access permits the inspection and copying of books, accounts, and records, including computerized records, and any other material relevant to the matter under investigation or pertinent to compliance with the Executive Order. It is, thus, permissible for agency employees to review contractor or subcontractor employment and personnel records for this purpose. There may also be other applicable provisions allowing such access.

Where government officials who are neither contracting officers nor contracting officers' representatives, and who have not otherwise been expressly designated as having access to special categories of contract records (e.g., contract auditors, the Inspector General, the Government Accountability Office, or the Department of Labor), desire access to contractor or subcontractor records, they should start by obtaining written permission from the Contracting Officer. The Contracting Officer should maintain in the contract file a record of the persons or categories of persons who have been authorized to access the records and the rationale for their access. To that end, the Office of the General Counsel will advise the Office of Procurement and Assistance Management on appropriate access protocols.

April 13, 2010

¹ E.g., 52.212-4 Contract Terms and Conditions—Commercial Items; DEAR 952.204-77 Computer Security; DEAR 970.5204-3 Access to and ownership of records; DEAR 970.5232-3 Accounts, records, and inspection;