U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

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

PLAINTIFF,

v.

UPMC BRADDOCK, UPMC MCKEESPORT, and UPMC SOUTHSIDE,

DEFENDANTS.

ARB CASE NO. 08-048

ALJ CASE NOS. 2007-OFC-001
2007-OFC-002
2007-OFC-003

DATE: May 29, 2009

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Plaintiff:
Gregory F. Jacob, Esq., Katherine E. Bissell, Esq., Beverly I. Dankowitz, Esq., Theresa Schneider Fromm, Esq., *United States Department of Labor,* Washington, D.C.

For the Defendants:
John Myers, Esq., Pittsburgh, Pennsylvania.

FINAL DECISION AND ORDER

This case arises under Executive Order 11246 (E.O. 11246), Section 503 of the Rehabilitation Act (RA), and Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) (collectively, "the three laws"). Executive Order 11246 prohibits Federal contractors and subcontractors from discriminating based on

race, color, religion, sex, or national origin.[1] Section 503 of the Rehabilitation Act protects employees of Federal contractors and subcontractors from discrimination based on disability.[2] VEVRAA protects employees of Federal contractors and subcontractors from discrimination based on disability and veteran status.[3]

The Office of Federal Contract Compliance Programs (OFCCP) filed administrative complaints with the United States Department of Labor against the Defendants, the University of Pittsburgh Medical Center (UPMC) Braddock, UPMC McKeesport, and UPMC Southside, for non-compliance with the three anti-discrimination provisions because the Defendants did not produce documents in response to OFCCP's request and did not allow OFCCP access to their premises for onsite reviews. The Defendants denied that they were covered by the anti-discrimination provisions and moved for summary decision on that ground. OFCCP also filed a motion for summary judgment, contending that the Defendants were subcontractors subject to the anti-discrimination provisions of the three laws and requesting that a Department of Labor Administrative Law Judge (ALJ) order the Defendants to permit OFCCP to proceed with its compliance review of the Defendants' facilities.

The ALJ recommended that we deny the Defendants' motion for summary decision and grant summary decision for OFCCP. The Defendants timely excepted to the ALJ's recommendation. For the reasons discussed below, we agree with the ALJ's recommendation to grant summary decision to OFCCP and deny the Defendants' exceptions.

BACKGROUND

The parties agreed to a joint stipulation of facts and the admission of certain documents. We summarize briefly. The Defendants are hospitals in or near Pittsburgh, Pennsylvania.[4] Each hospital had a Health Maintenance Organization (HMO) contract with the UPMC Health Plan to provide medical products and services to United States Government employees covered by the UPMC Health Plan pursuant to a contract between the Health Plan and the United States Office of Personnel Management (OPM).[5]

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1 30 Fed. Reg. 12,319 (Sept. 24, 1965) as amended by Executive Order 11375, 32 Fed. Reg. 14,303 (Oct. 13, 1967) (adding gender to list of protected characteristics), as amended by Executive Order 12086, 43 Fed. Reg. 46,501 (Oct. 5, 1978) (consolidating enforcement function in the Department of Labor).

2 29 U.S.C.A. § 793 (West 1999).

3 38 U.S.C.A. § 4212 (West 2002).

4 Stipulated Facts (SF) 12.

5 SF 9, 11, 13, 15, 21.

As stated above, Executive Order 11246, Section 503, and VEVRAA collectively prohibit Federal contractors from discriminating against employees or applicants for employment on the basis of race, color, sex, religion or national origin, disability, and veteran status and require that government contractors take affirmative action to provide equal employment opportunities.[6] OFCCP monitors compliance with the three laws by conducting reviews of the contractor's facilities, and contractors agree to furnish the OFCCP with all information required to enable the agency to determine whether the contractors have complied.[7] If OFCCP determines that a contractor has failed to meet its obligations under the laws, the agency will attempt to resolve the matter through conciliation and persuasion.[8] If conciliation efforts fail, OFCCP may initiate an administrative enforcement proceeding against the contractor.[9]

OFCCP sent each Defendant letters dated January 15, 2004, scheduling compliance reviews of their facilities and requesting copies of the their affirmative action plans and other documents that the three laws require.[10] The Defendants received the January 15 letters but did not provide the requested documents.[11] They denied that they were federal contractors or subcontractors and informed OFCCP that they would not provide the requested documents or permit the agency to perform onsite reviews.[12] On November 3, 2006, OFCCP filed the aforesaid administrative complaint alleging that, by refusing to permit an onsite review or provide the requested documents, each Defendant was violating the three laws. OFCCP requested an injunction against the three hospitals and, as noted, all parties moved for summary decision. In a January 16, 2008 Recommended Decision and Order (R. D. & O.), the ALJ granted summary decision to OFCCP.

JURISDICTION AND STANDARD OF REVIEW

The Administrative Review Board (ARB or the Board) has jurisdiction to review the Defendants' exceptions to the ALJ's R. D. & O. and to issue the Department's final

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6 Executive Order 11246, Section 202; 29 U.S.C.A. § 793(a); 38 U.S.C.A. § 4212(a)(1); *see also* 41 C.F.R. §§ 60-1.1, 60-1.40.

7 41 C.F.R. §§ 60-1.4(a), 60-1.7, 60-1.12, 60-1.20, 60-1.43.

8 41 C.F.R. § 60-1.33.

9 41 C.F.R. § 60-1.26(a)(2).

10 SF 24.

11 SF 24, 25.

12 Joint Exhibit 11, Braddock Answer 12, Southside Answer 18, McKeesport Answer 12.

decision.[13] We review summary decision de novo, i.e., under the same standard that administrative law judges employ. Derived from Rule 56 of the Federal Rules of Civil Procedure, that standard permits a judge to "enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision."[14] Because this case presents no genuine issues of material fact, our review here is limited to determining whether the ALJ correctly applied the relevant law.[15]

ISSUE ON APPEAL

The issue before us is whether the Defendants are UPMC subcontractors covered by the provisions of Executive Order 11246, Section 503, and VEVRAA. Specifically, the Defendants contend that they are not subcontractors because they never agreed to become government subcontractors and had no notice that OFCCP considered them to be subcontractors. The Defendants also contend that the definition of "subcontractor" in UPMC's contract with OPM excludes them, and that this exclusion does not violate any Federal law or regulation. The Defendants further argue that the definition of "subcontract" in the regulations at 41 C.F.R. § 60-1.3 also excludes them because they do not provide "nonpersonal services," as required under the regulatory definition. They also argue that the ALJ erred by failing to apply the definition of "subcontractor" in the Federal Acquisition Regulations (FAR) at 48 C.F.R. § 1602.170-4. Finally, they contend that this Board's decision in *OFCCP v. Bridgeport Hospital*[16] requires a finding that they are not subcontractors.

DISCUSSION

1. The Defendants are bound by the equal opportunity provisions of the three laws.

The ALJ found that the equal opportunity clauses were incorporated into the Defendants' contracts with the UPMC by operation of law. He therefore concluded that the Defendants were bound by the terms of the equal opportunity clauses of the three

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13 41 C.F.R. §§ 60-30.30, 60-250.65(b)(1), 60-741.65.

14 Fed. R. Civ. P. 56(c); 29 C.F.R. § 18.40(d) (2008); *see also Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986).

15 *Lee v. Schneider Nat'l, Inc.,* ARB No. 02-102, ALJ No. 2002-STA-025, slip op. at 2 (ARB Aug. 28, 2003); *Bushway v. Yellow Freight, Inc.,* ARB No. 01-018, ALJ No. 2000-STA-052, slip op. at 2 (ARB Dec. 13, 2002).

16 ARB No. 00-034 (Jan. 31, 2003).

laws even though they did not agree to be bound or have notice of the clauses' terms. The Defendants argue that that their lack of consent to the clauses bars applying the laws to them because a contractor must voluntarily agree to do business with the government.

Executive Order 11246 mandates inclusion of its equal opportunity clause in any federal contract or subcontract. The RA has the same requirement for contracts in excess of $10,000, and the VEVRAA for contracts in excess of $100,000.[17] The regulations implementing each of the three contract compliance laws provide that the equal opportunity clauses are incorporated by operation of law in "every contract and subcontract required by [the relevant law] and regulations . . . to include such a clause whether or not it is physically incorporated in each such contract and whether or not the contract between the agency and the contractor is written."[18]

All government contractors in turn must include the equal opportunity clauses in their subcontracts.[19] The UPMC's contract with OPM explicitly required that the UPMC include the Executive Order's equal opportunity clause in every non-exempt subcontract, that it include the VEVRAA equal opportunity clause in every non-exempt subcontract of $25,000 or more, and that it include the Section 503 equal opportunity clause in every non-exempt subcontract of $10,000 or more.[20] It is undisputed that the UPMC did not include the equal opportunity clauses in its agreements with the Defendants. Nor did it include any other specific, written provision obligating the Defendants to comply with the three laws.[21]

The equal opportunity provisions of the three laws are "mandatory contract clause[s] that express[] a significant or deeply ingrained strand of public procurement policy."[22] The UPMC's failure to include the mandatory clauses in their agreements with the Defendants does not excuse the Defendants from compliance with these laws, each of

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17 30 Fed. Reg. 12,319 § 202; 29 U.S.C.A. § 793(a); 38 U.S.C.A. § 4212(a)(1). It is undisputed that the Defendants' contracts with UPMC met these monetary thresholds.

18 41 C.F.R. §§ 60-1.4(e); 60-250.5(e); 60-741.5(e).

19 *Id.*

20 Joint Exh. 6, Contract between OPM and UPMC Health Plan, 5.19(b)(10) (Executive Order 11246), p. V-11; 5.22(g) (VEVRAA), p. V-15; 5.23(d) (Section 503), p. V-16.

21 R. D. & O. at 5, item 20.

22 *S.J. Amoroso Constr. Co., Inc., v. United States*, 12 F.3d 1072, 1075 (Fed. Cir. 1993) ("[A] mandatory contract clause that expresses a significant or deeply ingrained strand of public procurement policy is considered to be included in a contract by operation of law."). *See also General Eng'g & Mach. Works v. O'Keefe*, 991 F.2d 775, 779 (Fed. Cir. 1993); *G. L. Christian & Assocs. v. United States*, 312 F.2d 418, 426 (Ct. Cl. 1963).

which has been in effect for decades.[23] As just noted, the equal opportunity clauses are incorporated by operation of each law into the Defendants' contracts with UPMC. And, "where regulations apply and require the inclusion of a contract clause in every contract, the clause is incorporated into the contract, even if it has not been expressly included in a written contract or agreed to by the parties."[24]

The Defendants argue that this so-called "incorporation doctrine" applies only to prime contractors who voluntarily enter into a contract with the government, and not to subcontractors who have not voluntarily and knowingly entered into a contract with the government. The regulations, however, unambiguously state that "the equal opportunity clause shall be considered to be a part of every contract *and subcontract* required by the order and the regulations to include such a clause whether or not it is physically incorporated in such contract . . . ."[25] These regulations have the force and effect of law.[26]

Relying on *Liberty Mutual Ins. v. Friedman,*[27] the Defendants also contend that the regulations implementing Executive Order 11246 are inconsistent with the Executive Order itself and therefore invalid. The Board, however, does not "have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations which has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions."[28] Therefore, we decline to opine on any alleged conflict between the regulations and the Executive Order.[29] We find that the Defendants are subcontractors bound by the equal opportunity clauses of the three laws.

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23 Executive Order 11246 (1965); RA (1973); and VEVRAA (1972).

24 *United States v. New Orleans Public Serv., Inc.,* 553 F.2d 459, 469 (5th Cir. 1977).

25 41 C.F.R. §§ 60-1.4(e), 60-741.5(e), 60-250.5(e) (emphasis added).

26 *See New Orleans Public Serv.*, 553 F.2d at 465 ("[A]n Executive Department regulation which is issued pursuant to an act of Congress and by the department responsible for the administration of the statute has the force and effect of law if it is not in conflict with an express statutory provision." (citing *Maryland Cas. Co. v. United States,* 251 U.S. 342, 349 (1920)).

27 639 F.2d 164 (4th Cir. 1981).

28 Secretary's Order 1-2002, 67 Fed Reg. 64,272 (Oct. 17, 2002).

29 *See Alcatraz Cruises LLC,* ARB No. 07-024, slip op. at 9 (Jan. 23, 2009); *OFCCP v. Goya De Puerto Rico, Inc.*, ARB No. 99-104, 1998-OFC-008, slip op. at 6 (ARB Mar. 21, 2002). We note that the ALJ found the decision in *Liberty Mutual v. Friedman* inapplicable here. In *Liberty Mutual,* the court held that the Secretary lacked statutory authority under the Executive Order to require Liberty Mutual, a worker's compensation underwriter, which held no government contracts, to comply with the Executive Order. In this regard, the court found that there was not a sufficient nexus between the purposes of the Federal Property and

2. The definition of "subcontractor" in the UPMC-OPM contract conflicts with federal law and therefore does not excuse the Defendants from compliance with the three laws.

The Defendants argue before the Board, as they did before the ALJ, that the UPMC-OPM contract expressly provides that they are not subcontractors. "Subcontractor" is defined in the contract as "[a]ny supplier, distributor, vendor or firm that furnishes supplies or services to or for a prime contractor, or another subcontractor, *except for providers of direct medical services and supplies* pursuant to the Carrier's health benefits plan."[30] The Defendants contend that the clause excepting providers of direct medical services excludes them because they are medical facilities in the business of providing medical services. The ALJ agreed with the Defendants that the contract clause excluded the Defendants: "Defendants are correct that for the purpose of interpreting and effectuating the Health Plan Contract, the term subcontractor is defined by § 1.1 to exclude hospitals, and that under § 1.1 many of the provisions of the contract do not apply to hospitals."[31] The ALJ, however, recognized that the parties cannot, by contract, invalidate the equal opportunity provisions of the three laws. [32]

We agree with the ALJ because reading the UPMC-OPM contract provision to exclude providers of direct medical services and supplies would ignore the three laws' mandate to include the equal opportunity provisions in any Federal contract or subcontract.[33] As previously discussed, the three laws and their implementing regulations expressly provide that contractors must comply with the clauses' provisions and include the clauses in their contracts. Provisions in a government contract that violate or conflict with a federal statute are invalid or void.[34] Therefore, the Defendants cannot rely on the UPMC-OPM contract definition of "subcontractor."

Administrative Services Act, 40 U.S.C.A. § 471 et seq. (West 2002), and the purposes of the Executive Order. The dissent recognized that other courts of appeals did not so narrowly limit the Secretary's authority to enforce the Order: "Indeed, among the courts of appeals, this court alone impugns the authority of the Secretary, as the President's delegate to enforce Executive Order 11246 against a subcontractor." *Liberty Mutual,* 639 F.2d at 172 (Butzner, J. dissenting).

30 Joint Exh. 6, Contract between OPM and UPMC Health Plan, § 1.1 (emphasis added).

31 R. D. & O. at 8.

32 *Id.* at 8-9.

33 30 Fed. Reg. 12,319 § 202; 29 U.S.C.A. § 793(a); 38 U.S.C.A. § 4212(a)(1).

34 *Burnside-Ott Aviation Training Ctr. v. Dalton*, 107 F.3d 854 (Fed. Cir. 1997) (provision in Navy contract was invalid because it conflicted with Contract Disputes Act); *American Airlines, Inc., v. Austin*, 75 F.3d 1535 (Fed. Cir. 1996) (airline ticket provisions were invalid because they conflicted with statute). *See also United States v. New Orleans*

3. The ALJ was not obligated to use the FAR definition of "subcontractor" at 48 C.F.R. § 1602.170-14.

The Defendants argue that the ALJ should have applied the definition of "subcontractor" in the FAR at 48 C.F.R. § 1602.170-14, which defines "subcontractor" as "any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, *except for providers of direct medical services or supplies* pursuant to the Carrier's health benefits plan."[35] The Defendants contend that the ALJ was obligated to use this definition because the UPMC-OPM contract incorporated it and because the ALJ applied the FAR regulations to define "nonpersonal services."[36] It is undisputed that the Defendants are "providers of direct medical services and supplies," and therefore are not subcontractors under the FAR definition at Part 1602.

The ALJ refused to apply the Part 1602 definition because he found that it conflicted with federal law. Recognizing that provisions in a government contract that violate or conflict with a federal statute are invalid or void, he reasoned that an interpretation that would exclude subcontractors like the Defendant hospitals from compliance with the three laws would be invalid as contrary to the three laws giving the Secretary of Labor authority in these matters.[37] We agree. The Secretary has promulgated regulations implementing the Executive Order. These regulations do not exclude providers like the Defendants from the definition of "subcontractor."[38] Furthermore, these regulations have the force and effect of law.[39] Because the FAR

Public Serv., Inc., 553 F.2d 459 (5th Cir. 1977) (Executive Order has force and effect of law).

35 48 C.F.R. § 1602.170-14 (emphasis added).

36 As we just discussed, this definition appears in Section 1.1 of the UPMC-OPM contract.

37 R. D. & O. at 8-9.

38 In addition to the definition of "subcontractor" in Part 1602, the FAR has another definition that is almost exactly the same as the one contained in the OFCCP regulations implementing the three laws. *Compare* 48 C.F.R. § 22.801 *with* 41 C.F.R. § 60-1.3. Because the scope of the subpart of the FAR that contains that definition is "to prescribe policies and procedures pertaining to nondiscrimination in employment by contractors and subcontractors," it is directly applicable to the issue here, i.e., contract compliance with nondiscrimination laws. *See* 48 C.F.R. § 22.800.

39 *New Orleans Public Serv.*, 553 F. 2d at 465.

regulation that the Defendants ask us to apply directly contradicts the Secretary's regulations, it is invalid, and we decline to apply it.

4. Each Defendant's contract with the UPMC meets the definition of "subcontract" in the regulations implementing the three laws.

The regulations implementing the three laws provide as follows:

> *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of the employer and an employee):
>
> (1) For the purchase, sale or use of personal property or *nonpersonal services* which, in whole or in part, is necessary to the performance of any one or more contracts; or
>
> (2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.[40]

The Defendants argued below and to us that the medical services that they provide are "personal services," such as colonoscopy and proctology examinations, and that since the equal opportunity regulations define subcontracts as contracts for "nonpersonal services," their contracts with UPMC do not fall within that definition and thus they are not required to comply with the equal opportunity requirements.[41]

The three laws and their implementing regulations do not define "nonpersonal services." The ALJ relied upon the definition of "nonpersonal services" in the FAR, which defines a nonpersonal services contract as one "under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees."[42] The FAR also defines a personal services contract:

> A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel.

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40 41 C.F.R. §§ 60-1.3, 60-741.2, 60-250.2(l).

41 R. D. & O. at 11-13; Defendants' Exceptions to Recommended Decision at 11-13.

42 48 C.F.R. § 37.101.

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> An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee.[43]

The ALJ found that the Defendants provided "nonpersonal services" because they were neither in an employer-employee relationship with the UPMC nor under the supervision and control that an employer would exercise over its employees. They also had significant autonomy in their performance of their contracts. The record supports this finding. Therefore their contracts met the regulatory definition of "subcontract" at 41 C.F.R. § 60-1.3.

Furthermore, even if the Defendants' contracts did not meet the first prong of the definition of "subcontract" in the regulations implementing the three laws, they met the second prong, which states that a "subcontract" is "any agreement or arrangement between a contractor and any person . . . [u]nder which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed."[44] The UPMC's contract with OPM required the UPMC to put a health maintenance organization (HMO) into operation. The contract thus depended on medical providers like the Defendants to offer medical services and supplies necessary for the UPMC to meet a portion of its obligation under its contract with OPM to put an HMO into operation. Therefore, their contracts with UPMC are subcontracts under the second prong of the definition.

5. The Board's decision in *OFCCP v. Bridgeport Hospital* does not support the Defendants' contention that they are not subcontractors.

The Defendants contend that the ALJ misapplied the Board's decision in *OFCCP v. Bridgeport Hospital*.[45] They argued before the ALJ that *Bridgeport* required the ALJ to rule for the Defendants here. The issue in *Bridgeport* was whether OFCCP had the authority to require Bridgeport Hospital to comply with the Executive Order. Bridgeport Hospital had a contract with Blue Cross/Blue Shield of Connecticut, Inc. (Blue Cross) to provide medical care to Blue Cross's policyholders. Blue Cross also contracted with OPM to provide Federal employees with a fee-for-services health benefits insurance policy. The Board held that the hospital was not a subcontractor under the Executive Order because Blue Cross's contract with OPM required Blue Cross to provide health

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43 48 C.F.R. § 37.104(a), (c)(1).

44 41 C.F.R. § 60-1.3.

45 ARB No. 00-034 (Jan. 31, 2003).

insurance – not medical care – to federal government employees.[46] The ALJ found that the *Bridgeport* decision was inapplicable here:

> The determinative issue [here] is whether the contracting hospitals can be considered subcontractors under 41 C.F.R. § 60-1.3. Arguably, fee-for-service organizations, or strictly insurance providers, are not subcontractors under *Bridgeport*, as such organizations are charged with providing reimbursement to their members for health care expenses without concern over who actually provides the health care. However, an HMO by its nature arranges and provides for the medical services through the medical providers such as the Defendant hospitals with which it contracts. Thus, the hospitals and other medical providers are clearly necessary for the fulfillment of UPMC's contract with OPM and are subcontractors under 41 C.F.R. § 60-1.3.[47]

Unlike Blue Cross, the UPMC is more than an insurer. According to the UPMC Health Plan brochure, the Health Plan "is a health maintenance organization (HMO)" that "contract[s] with individual physicians, medical groups, and hospitals to provide the benefits in this brochure."[48] The benefits listed include medical services and supplies and surgical and anesthesia services, which are provided by physicians and health care professionals. Also among the benefits provided are emergency services, mental health and substance abuse services, prescription drug benefits, and dental benefits.[49] Provision of medical services and supplies was a critical component of the UPMC's contract. The contract depended on medical providers like the Defendants to offer medical services and supplies necessary for UPMC to meet its obligations under its contract with OPM. Unlike Bridgeport Hospital, Defendant hospitals contracted to provide "a portion of the contractor's obligation" to provide medical services and supplies under its contract with OPM.

The Defendants argue that they should be considered insurance providers like Blue Cross, and therefore, under the Board's analysis in *Bridgeport*, the ALJ should not have found them to be subcontractors. They rely upon the Supreme Court's decision in *Rush Prudential v. Moran.*[50] There, the Court held that an HMO could be considered an

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46 *Bridgeport*, slip op. at 6.

47 R. D. & O. at 17.

48 Appendix A, Introduction, p.4.

49 Appendix A, §§ 5(a) – 5(h).

50 536 U.S. 355, 370 (2002).

insurer under a state law that regulates insurers. The Court, however, also characterized an HMO as a health care delivery system defined by the providing of medical benefits and the assumption of financial risk in providing those benefits.[51] Here there is ample evidence that the Defendants were operating primarily as health care delivery providers and not strictly as insurance providers.[52] We therefore agree with the ALJ's finding that our *Bridgeport* decision is inapplicable and that the Defendants were subcontractors subject to the equal opportunity provisions of the three laws.

CONCLUSION

For the reasons discussed herein, OFCCP is entitled to summary decision. Therefore, the Defendants' exceptions to the R. D. & O. are **DENIED.** Accordingly, it is **ORDERED** that the Defendants, their officers, agents, employees, successors, divisions, subsidiaries, and all persons in active concert or participation with them are permanently enjoined from failing or refusing to comply with the requirements of Executive Order No. 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973 and their implementing regulations.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge

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51 *Id.*

52 R. D. & O. at 17.