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GUIDE TO LEGAL FOUNDATIONS FOR SUPPLIER INCLUSION FOR DISABILITY-OWNED BUSINESSES[1]

One steadfast principle of federal antidiscrimination law in the disability area is that being disabled is a protected category and being non-disabled is not a protected category, as expressly stated in the Americans with Disabilities Act (ADA). Indeed, it still is required for employers and places of public accommodation to grant reasonable accommodations related to a disability, advisable to have disability hiring and inclusion programs, and clearly permissible to have supplier inclusion programs for disability-owned businesses. Without question, in all respects, the Rehabilitation Act and ADA, including related compliance requirements and best practices, remain in effect and support efforts to increase disability inclusion in all aspects of society, including in the supply chain. This principle of disability inclusion has been endorsed by the Equal Employment Opportunity Commission, Office of Disability Employment Policy, and Office of Federal Contract Compliance Programs: Employment Protections Under the Rehabilitation Act of 1973: 50 Years of Protecting Americans with Disabilities in the Workplace | U.S. Equal Employment Opportunity Commission.

Accordingly, there is no federal statute or regulation prohibiting a private company from intentionally cultivating a group of qualified, disability-owned suppliers.[2] Such supplier inclusion programs may provide a framework through which companies can identify barriers in the contracting process and work to eliminate those barriers for the benefit of potential qualified business partners, including disability-owned businesses.

For example, a company's disability supplier inclusion program may provide accessible application processes or break procurement into multiple contracts, where smaller suppliers can provide some, even if not all, of the required products or services or serve a limited geographic location. This latter element of an inclusion program proves especially important to promote inclusivity of disability-owned businesses, the vast majority of which are small businesses started in response to overcoming barriers found in the workplace. Indeed, the National Disability Institute estimated there were 1.8 million small businesses owned by people with disabilities in 2019.

Companies also are free to support certification of disability-owned businesses, such as via Disability:IN's following certifications: Disability Owned Business Enterprise (DOBE) Certification, Veteran Disability-Owned Business Enterprises (V-DOBEs) and Service-Disabled Veteran Disability-Owned Business Enterprises (SDV-DOBEs).

Further, U.S. Federal law protects from discrimination, and even allows for preferential treatment of, disability-owned businesses in the context of federal contracting. Specifically, federal contractors must have a sub-contracting plan inclusive of service disabled-veteran-owned businesses and small-disadvantaged businesses, which is inclusive of broader disability-owned businesses. See FAR Clause | 552.219-73 Goals for Subcontracting Plan.; FAR Clause | 52.219-8 Utilization of Small Business Concerns.).

Finally, the recent DEI Executive Orders have been focused on preferences and exclusions based on race and gender under EO 11246 and related DEI programs. They have not been interpreted or applied in a manner that would undermine the above principles. Indeed, the Office of Personnel Management has even issued a memo indicating that accessibility and accommodation requirements remain enforceable consistent with applicable law. See Memorandum to Heads and Acting Heads of Departments and Agencies: Further Guidance Regarding Ending DEIA Offices, Programs and Initiatives. In addition, Section 503 of the Rehabilitation Act continues to apply to federal contractors and requires outreach and recruitment in order to help contractors meet the 7% disability utilization rate. Thus, federal law still supports business efforts to increase disability inclusion across the board, including in the supply chain.

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[1] This document is for general informational purposes only and does not constitute legal advice and should not be relied upon as such.

[2] However, federal law does prohibit the *awarding* of contracts based on race, under Section 1981 of the Civil Rights Act.