



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

Selected Mega Construction Projects

Standard Operating Procedure

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Standard Operating Procedure for Selected Mega Construction Projects

1. **SUBJECT:** Selected Mega Construction Project (SMCP) Standard Operating Procedure (SOP).
2. **PURPOSE:** To establish a SOP for conducting SMCPs.
3. **EFFECTIVE DATE:** Effective October 20, 2014, the procedures established in this SOP govern all SMCPs. If there is a conflict between any previous or existing guidance or procedures and those outlined in this SOP, these procedures take precedence.
4. **DEFINITIONS:** The definitions in OFCCP's regulations, 41 CFR Part 60, apply to SMCPs. In addition, for purposes of these SOPs, the following definitions are provided:
 - An Applicant is the entity receiving federal assistance, such as a state transportation agency, within the meaning of 41 CFR § 60-1.3.
 - Civil and Worker Rights Organizations are national, state, or local organizations that work to promote civil, women's, disability, veterans, religious, or worker rights.
 - Community-Based Organizations (CBOs) are public or private nonprofit organizations that are representative of a community or significant segments of a community and have demonstrated effectiveness at providing educational, employment, or related services to individuals in the community.
 - A Community Benefits Agreement is an agreement between community groups and the funding agency, applicant, and/or prime contractor that requires the funding agency, applicant, and/or prime contractor to provide specific benefits or accommodations, including employment benefits or accommodations such as parking, to the local community in exchange for support of the project.
 - Federal Worker-Protection Agencies include: within DOL, the Occupational Safety and Health Administration, the Wage and Hour Division, and the Employment and Training Administration's Office of Apprenticeship; the Equal Employment Opportunity Commission (EEOC); and, as appropriate, the Civil Rights Office of the funding agency (FA) or Applicant.
 - The Funding Agency (FA) for a mega construction project (MCP) is either the federal agency that provides direct federal funding for the project or, for federally assisted construction projects, the federal agency that awards a grant for the project to an Applicant.
 - A Mega Construction Project or MCP is a construction project spanning more than one year, with a value of at least \$25 million that will have a major employment and economic impact on a community. See also "Selected Mega Construction Projects"

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below.

- Minority group refers to the minorities listed in the Standard Federal Equal Employment Opportunity Construction Contract Specifications set out in 41 CFR § 60-4.3(a).
- Other Department of Labor (DOL) Agencies include the Employment and Training Administration's Office of Apprenticeship, Women's Bureau, Office of Disability Employment Policy (ODEP), and Veterans' Employment and Training Service (VETS).
- Pre-bid refers to the period before the deadline for bids or offers (responses to solicitations) on a construction contract. For federally assisted construction contracts, pre-bid also refers to the period before the deadline for bids on the construction contract. Pre-bid can refer to the period before or after a solicitation is published, as long as it means before the bid or proposal deadline.
- Pre-construction means after a prime contractor(s) is (are) chosen but before construction begins.
- Pre-solicitation refers to the period before an FA publishes a notice soliciting bids or offers on a construction contract. For federally assisted construction contracts, pre-solicitation also refers to the period before an Applicant publishes a notice soliciting bids on that MCP.
- Project Labor Agreement (PLA) is a pre-hire collective bargaining agreement between a prime contractor or subcontractor and one or more labor organization(s) that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f). A PLA can be used to increase hiring of women, minorities, underrepresented or disadvantaged groups, and local community residents.
- Recruitment Sources are typically non-profit agencies and organizations, apprenticeship and pre-apprenticeship programs, community colleges, worker centers, Tribal Employment Rights Offices (TEROs), and similar programs within reasonable commuting distance from a Selected Mega Construction Project. These sources provide construction-trades training to women, minorities, individuals with disabilities, or veterans or actively maintain contact with such workers who have been trained in the construction trades.
- Selected Mega Construction Projects (SMCPs): The subset of Mega Construction Projects chosen for review pursuant to OFCCP's neutral selection process.
- SMCP Team: The OFCCP staff who are assigned to work on a particular SMCP.

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- Utilization Data refers to number and percentage of work hours performed, in total and disaggregated by sex and each minority group, by trade. For projects funded directly by federal agencies (i.e., not federally assisted), utilization data also refers to number and percentage of work hours performed by individuals with disabilities under 41 CFR Part 60-741 and the number of veterans hired under 41 CFR Part 60-300.

5. **BACKGROUND:** The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) developed the MCP initiative to address the historical underrepresentation of minorities and females in skilled construction trades by building partnerships between the public and private sectors, including industry, community organizations, labor groups, and Federal, state, and local governments. By concentrating resources on such large-scale, high-profile mega construction projects, OFCCP can have a greater impact than it can merely doing compliance reviews contractor-by-contractor. On SMCPs, OFCCP's role is to provide education and technical assistance, ensure ongoing coordination, monitor the EEO efforts of participating construction contractors and subcontractors, and verify results through compliance evaluations. All participants, including the FA, the prime contractor and subcontractors, OFCCP, CBOs, and labor groups, work together to ensure compliance with applicable EEO laws and successful employment of women and minorities and, on non-federally assisted projects, of individuals with disabilities and protected veterans.¹ OFCCP has Memoranda of Understanding (MOU) with such agencies as the General Services Administration (GSA), which enable OFCCP to receive early notification of MCPs and assure FA cooperation in the SMCP process.

When the SMCP procedures are implemented, the stakeholders involved in the SMCP can benefit in several ways. OFCCP's early involvement ensures greater commitment by the FA and prime contractor to promote equal employment opportunity on the SMCP. Regular engagement with the community enhances an SMCP contractors' ability to identify qualified workers who are women and/or minorities and aids recruitment sources with identifying those jobs for which training is needed. Regular engagement among stakeholders also strengthens linkages between contractors and unions, pre-apprenticeship and apprenticeship programs, and the CBOs that train workers for construction. Finally, participation in an SMCP enhances the contractors' and subcontractors' preparedness for OFCCP compliance evaluations and ensures that such evaluations are conducted more smoothly and quickly. SMCPs involve early intervention, extended duration, and regular stakeholder engagement. For these reasons, the initiative has had some success in ultimately increasing the representation of minorities and women in skilled trades working on the SMCPs through effective recruitment and training.

In 2010, an MCP initiative task force, comprised of select OFCCP personnel, was established to review the MCP program and develop consistent procedures. The procedures

¹ Throughout this SOP, references to individuals with disabilities and protected veterans are to be understood to apply only to those SCMPs that are directly funded by federal agencies (i.e., not federally assisted) or that involve contractors that have contracted directly with a federal agency to perform work.

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set out herein are the result of that task force and subsequent discussions among National Office (NO) staff, the Solicitor's Office, regional directors (RDs), and deputy regional directors (DRDs).

6. PROCEDURES FOR SMCPs: MCPs are selected in each region pursuant to a neutral selection procedure. Once an MCP is selected and assigned to a District or Area Office (DO or AO), the following steps are taken:

A. Meet and coordinate with the Funding Agency.

(i) Once a DO or AO receives a SMCP, that office sends an Agency initiation letter (Appendices A-1 and A-2) to the appropriate FA contact and, if the SMCP is federally assisted, to the appropriate contact for the Applicant. The letter advises the FA (and Applicant) of the FA's MOU with OFCCP (if applicable); informs the FA (and Applicant) of OFCCP's selection of the project; details the goals of the MCP initiative; and describes the respective roles of the FA, (Applicant) and OFCCP. If the FA is not a party to an MCP MOU with OFCCP, the letter invites the FA to cooperate on the SMCP. The letter also requests a meeting with the FA (and Applicant) contact(s) to discuss these matters.

(ii) At the meeting with the FA (and Applicant), OFCCP ascertains as much information as is available about the scope and sequencing of the project. This includes information about the phases of the project, their sequencing and locations, the positions and trades for which people will be hired and during which phases they will be hired, what entities will be doing the hiring, the qualifications necessary for those positions, the expected duration and pay of these positions, and when peak hiring periods are anticipated, as well as whether a PLA or other community benefits agreement covers the project and other relevant information. If the FA is the Department of Transportation (DOT), OFCCP arranges to obtain the utilization data that DOT collects annually on the FHWA-1391 form.²

B. Ensure required language is included in applicable documents.

(i) *Pre-solicitation.* In general, OFCCP becomes aware of SMCPs at the pre-solicitation stage. The Regional Director (RD) or RD's designee monitors the solicitations, offers, and bid documents disseminated by FAs and, where applicable, Applicants, as well as the prime contract and subcontracts, to ensure inclusion of the notice specified in 41 CFR § 60-4.2(d) and any other language required by an applicable MOU. If this notice does not appear, the RD or RD's designee contacts the FA and asks it to correct the

² The FHWA-1391 form reports the number of minority and non-minority employees by gender employed in each work classification on a Federal-aid highway contract. It must be filed by August 15 of each year by each prime contractor and subcontractor, regardless of tier, who has a Federal-aid contract or subcontract in excess of \$10,000. The form can be found at <http://www.fhwa.dot.gov/eforms/fhwa1391.pdf>.

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omission.

(ii) *Pre-award.* If OFCCP has not become aware of the SMCP until after the solicitation has gone out but before the contract is awarded, the RD or RD's designee coordinates with the FA and, where applicable, the Applicant, to ensure incorporation of the EEO Clauses required by 41 CFR § 60-1.4(a) or (b), § 60-4.3, §60-741.5, and § 60-300.5 into the prime contract and subcontracts.

C. Participate in pre-bid conferences.

Once the solicitation has been made public, the District Director (DD) or Assistant District Director (ADD) participates in as many pre-bid conferences³ as feasible that the FA and Applicant may schedule with prospective bidders. Under the applicable MOUs, it is the responsibility of the GSA and DOT to notify OFCCP of, and invite OFCCP to, pre-bid conferences. At these conference(s), OFCCP explains the requirements set out in 41 CFR Chapter 60 and the requirements of a SMCP, as well as the roles of the FA, Applicant, OFCCP, and the prime contractor in the SMCP. The DD or ADD encourages and assists the FA in inviting representatives of relevant federal, state, or local government worker-protection agencies to attend these meetings. It is important to note, however, that OFCCP is not a participant in the procurement process and does not influence or comment on that process.

D. Involve the Prime Contractor.

(i) *Initial contact.* Once the prime contract is awarded, the DD or ADD contacts the prime contractor for three purposes. He or she will explain that OFCCP will be conducting compliance reviews of the prime contractor and its subcontractors; will offer the prime contractor the opportunity to participate in the SMCP program, so as to receive extensive compliance assistance and support prior to OFCCP conducting those reviews; and, will explain the prime contractor's role and responsibilities if it participates in the SMCP program. Where possible, this contact occurs at a face-to-face meeting and with the cooperation of the FA. At this time the OFCCP also requests that the prime contractor confirm and expand upon the information OFCCP has received from the FA or Applicant about the scope and sequencing of the project (see section 6A(ii) above). OFCCP also requests other relevant information about the project, such as whether the prime contractor's and subcontractors' employees are unionized.

(ii) *Post-award, Pre-Construction Meetings:* Once initial contracts have been awarded, the DD/ADD attends post-award, pre-construction meetings with the prime contractor, then-known subcontractors, and other relevant government agencies, at which the FA,

³ See FAR 14.207: "A pre-bid conference may be used, generally in a complex acquisition, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened."

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Applicant, and OFCCP review the prime contractor and subcontractor obligations under 41 CFR Chapter 60 and as a SMCP. Under the applicable MOUs, it is the responsibility of the GSA and DOT to notify OFCCP of, and invite OFCCP to, post-award meetings. Where possible, invitations to these meetings are extended to representatives of relevant unions and local trade union councils, federal, state, or local worker-protection agencies, and the parties to any applicable PLA or other community benefits agreement.

Pre-construction meetings are held before each significant phase of construction begins. At each stage, a sufficient number of meetings is held that all the relevant subcontractors will have had the opportunity to attend one before construction of that phase begins.

At these pre-construction meetings, OFCCP provides compliance assistance covering the prime contractor's and subcontractors' responsibilities in a SMCP. Where possible, OFCCP provides contractors and subcontractors with a list of recruitment sources for women, minorities, individuals with disabilities, and protected veterans. OFCCP also utilizes these meetings to request status updates of the projections it has received from the FA and prime contractor regarding staffing and sequencing (see section 6A(ii) above). Finally, at these meetings, the process and procedures for hiring are clearly established. This is especially important for job sites where security restrictions, distance from population centers, or other barriers that reduce job applicants' access to the site. It is also critical for non-union jobs or trades where job applicants are allowed to seek out work independent of the union hall.

E. Include Unions.

In general, on any project where there will be any union jobs, the SMCP team ensures that each of the unions has the opportunity to attend at least one pre-construction compliance assistance meeting. If many unions are involved, the SMCP team ensures that the local trade union council(s) has (have) the opportunity to attend such a meeting. If necessary or appropriate, a separate meeting is held for the unions or union councils. The SMCP team attempts to ensure that the EEOC is present when the unions are present, given the EEOC's jurisdiction over unions.

F. Coordinate with Other Stakeholders.

(i) *Outreach.* As soon as possible after selection of an MCP, the SMCP team begins reaching out to the following: appropriate unions and local trade union councils; TEROs and tribal representatives; recruitment sources for women, minorities, individuals with disabilities, and protected veterans; CBOs; civil and worker rights organizations; construction trade groups and associations; officials from federal, state, and local worker-protection agencies; other DOL agencies; American Jobs Centers; recognized State Apprenticeship Agencies; and Congressional and state and local elected officials; including parties to any applicable PLA or other community benefits agreement. Initial contact with TEROs and tribal representatives is done through OFCCP's Indian/Native

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American Employment Rights Project. The DD/ADD informs the NO before contacting elected officials.

(ii) *Initial Meetings with Stakeholders.* The initial meeting with stakeholders introduces the SMCP to the local community. Meetings with stakeholders include a discussion of the project, how and when job openings on the project will be filled, OFCCP's role, the prime contractor's and subcontractors' obligations, and how stakeholders can be involved. The FA and prime contractor are encouraged to attend these meetings. The SMCP team particularly emphasizes the apprenticeship and other employment opportunities presented by the SMCP and the need for recruitment sources for women, minorities, individuals with disabilities, and protected veterans to train prospective employees for those upcoming opportunities. The initial such meeting occurs before the EEO Committee (discussed below in section 6H) is established and recurs as needed during the duration of the SMCP.

(iii) *Relationship to EEO Committees.* Persons attending the initial stakeholder meetings may also be invited to serve on the EEO Committee discussed in section 6H below.

G. Provide Compliance Assistance for Subsequently Added Subcontractors.

Pursuant to 41 CFR § 60-4.2(d)(3), it is the responsibility of the prime contractor(s) to notify the OFCCP DO that is handling the SMCP of subcontractors and/or additional general contractors that are added to the project. The SMCP team schedules compliance assistance seminars to advise the newly added contractors or subcontractors of their obligations as soon as possible after receiving such notification.

H. Establish an EEO Committee.

(i) *Purpose.* The purpose of the EEO Committee is to engage all the relevant parties, including those from the community, in discussing and supporting EEO compliance by contractors and subcontractors participating in the SMCP. In addition to OFCCP, the EEO Committee includes representatives from the following: the FA; the prime contractor; each subcontractor and union involved in performing work on the SMCP, as well as, where feasible, pre-apprenticeship and apprenticeship programs; CBOs; TEROs; tribes; recruitment sources for women, minorities, individuals with disabilities, and protected veterans; the parties to any applicable PLA or other community benefits agreement; recognized State Apprenticeship Agencies; local American Jobs Centers; federal, state, and local worker-protection agencies; and other DOL agencies.

(ii) *Responsibility for convening.* The SMCP team chooses either to convene the EEO Committee meetings itself, or to request that the prime contractor convene the meetings. If the prime contractor is asked and chooses not to convene the meetings, the SCMP team decides whether to convene the EEO Committee or only to conduct compliance evaluations of the prime and selected subcontractors pursuant to the usual mega

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procedures.

(iii) *Convening.* At least 60 days before hiring on the SMCP begins, OFCCP or the prime contractor convenes the EEO Committee. The Committee meets at least quarterly for the duration of the project and is expected to meet more frequently during periods where hiring is likely to occur on the project in the near future. To maximize subcontractors' attendance at the EEO Committee meeting, when possible, these meetings should occur in conjunction with meetings that the prime contractor and subcontractors hold to discuss other project-related matters.

(iv) *OFCCP attendance.* The DD attends at least the first meeting of this Committee. The DD-selected SMCP team leader (see section 7 below) attends all meetings of this Committee.

(v) *Topics of discussion.* With the consent of all the participants, meetings focus on available employment opportunities, perceived problems, and planning outreach and recruitment aimed at achieving a robust applicant pool that includes qualified women, minorities, individuals with disabilities, and protected veterans for the jobs anticipated on the SMCP.

a. During the Committee meetings, the SMCP team ensures understanding of all contractor obligations under 41 CFR Chapter 60, and addresses any concerns of contractors and stakeholders. As appropriate, the DD/ADD may choose an aspect of contractor responsibility or stakeholder involvement and provides a mini-compliance assistance seminar on that topic as a refresher.

b. Also at the EEO Committee meetings –

- i. The prime contractor(s) and subcontractors report on barriers they face in outreach to and recruitment of women, minorities, individuals with disabilities, and veterans.
- ii. OFCCP summarizes utilization data that it has received from other federal, state, or local agencies or pursuant to compliance evaluations of the prime contractor and subcontractors working on the SMCP (see section 6J below), and highlights any significant changes since the previous month. Consistent with applicable law, including the Freedom of Information Act (FOIA) and DOL's FOIA regulations, 29 CFR Chapter 70, OFCCP does not reveal any data that would disclose an individual's private information, a particular contractor's trade secrets, or other protected information without providing said individual or contractor an opportunity to object. The purpose of this reporting is to assist the Committee in recommending ways of improving outreach and recruitment efforts.

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- iii. In addition, at the meetings, the prime contractor and subcontractors review the staffing projections for the upcoming months so that EEO Committee members can help with recruitment for the projected openings.
- iv. As appropriate, at these meetings, other government agencies provide technical assistance concerning the laws they enforce.

I. Continue Stakeholder Coordination.

As early as possible during the SMCP, the OFCCP SMCP team encourages the prime contractor to organize and otherwise participates in apprenticeship program events, job and linkage fairs, and other events as appropriate, to connect the prime and subcontractors with recruitment sources for women, minorities, individuals with disabilities, and protected veterans. If the prime contractor does not organize such events, the OFCCP SMCP team does so as necessary. The SMCP team also periodically contacts and re-contacts recruitment sources, CBOs, unions, and other stakeholders (especially those not part of the EEO Support Committee) to discuss any concerns or results (positive or negative) regarding the project and interactions with contractors, and to ensure that these stakeholders understand the job skills required for the jobs for which the prime and subcontractors are hiring and the SMCP's purpose of fostering a robust applicant pool that includes qualified workers who are women, minorities, individuals with disabilities, and protected veterans.

J. Conduct Compliance Evaluations.

In addition to the compliance assistance aspects of a SMCP, OFCCP DOs conduct compliance evaluations of the prime contractor and subcontractors working on a SMCP. Scheduling of compliance evaluations of subcontractors is done according to a neutral selection procedure. All compliance reviews of prime and subcontractors on a SMCP include an onsite review of the contractor's or subcontractor's work performed at the SMCP site. Otherwise, compliance evaluations of contractors and subcontractors involved in a SMCP are no different than any other construction evaluation. Therefore, Compliance Officers should follow the standard review procedures detailed in Chapter 3 of the Federal Contract Compliance Manual.

K. Review Utilization Data.

The lead CO for the project reviews the utilization data of the contractors and subcontractors working on the SMCP, which OFCCP receives pursuant to compliance evaluations conducted during the duration of the SMCP or from other federal, state, or local agencies. While all contractors and subcontractors selected for compliance evaluations should have utilization data regarding minorities and women, only those

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contractors and subcontractors subject to the Affirmative Action Program (AAP) requirements of Section 503 and VEVRAA can be expected to have utilization data for individuals with disabilities and hiring benchmark data for protected veterans. OFCCP determines if the contractors on the SMCP have implemented the Executive Order Equal Opportunity Clause and the specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and made good faith efforts to meet relevant goals for each trade in the relevant economic area. Similarly, OFCCP determines if contractors have implemented the EO clauses of Section 503 and VEVRAA and whether those subject to the AAP requirements in 41 CFR 60-741 and 41 CFR 60-300 have complied with them.

L. Underutilization.

(i) Minorities and women. If the prime contractor or any subcontractor on the SMCP has not made good faith efforts to meet the goal for minorities applicable to the economic area in which the SMCP is located or the nationwide goal for women, the SMCP team works with the contractor or subcontractor to provide compliance assistance in order to help create a robust applicant pool that includes qualified women and minority workers for the SMCP. For example, the CO could review the 16 affirmative action steps that the contractor or subcontractor must take, or call a special meeting with the appropriate unions, CBOs, contractors and the FA to discuss the overall issues and develop solutions.

(ii) People with disabilities and protected veterans. If the prime contractor or any subcontractor has not met the nationwide goal for individuals with disabilities, the SMCP Team assesses whether the contractor or subcontractor has taken the steps described in 41 CFR §§ 60-741.45(e) and (f), and, as necessary, provides compliance assistance to assist the contractor or subcontractor in complying with these obligations. If the prime contractor or subcontractor has not established the hiring benchmark as required by 41 CFR § 60-300.45, the SMCP team provides compliance assistance to assist the contractor or subcontractor in complying with this obligation.

M. Monitor the Working Conditions On-site.

As part of compliance reviews, the COs on the SMCP team monitor the working conditions at the SCMP site to ensure that all employees receive fair and nondiscriminatory treatment, that the worksite is free of all of forms of harassment, and that the regulations in 41 CFR Chapter 60 are complied with.

7. **STAFFING:** Each SMCP is staffed by at least one CO who has experience with conducting SMCPs. The DD selects a team leader on the SMCP to serve as the ongoing OFCCP point-of-contact for the FA, prime contractor, subcontractors, EEO Committee members, and others. The SMCP team leader must have some experience with SMCPs and be committed to working on the project long-term, and must be afforded sufficient time to fulfill the

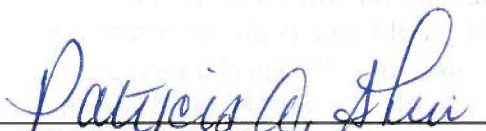
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SMCP responsibilities. DDs are encouraged to assign more than one CO to each SMCP as necessary.

8. NATIONAL OFFICE REPORTING:

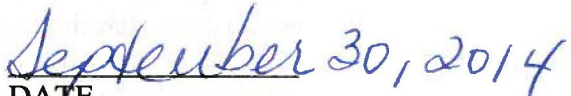
- A. Bimonthly Reports. For each open SMCP, regions report to the NO bimonthly. A sample Bimonthly Report is attached as Attachment B to this SOP.
- B. Annual and Close-of-Project Reports. Regions report on each SMCP annually and at the Project's close. A sample Annual/Close-of-Project Report is attached as Attachment C to this SOP.
- C. The NO reports to the regions on best practices and lessons learned from SMCPs across the nation.

- 9. RECORDKEEPING:** With regard to MCPs, all OFCCP offices will adhere to the Agency's current recordkeeping practices.


PATRICIA A. SHIU

Director

Office of Federal Contract Compliance Programs


DATE