

**U.S. DEPARTMENT OF LABOR,  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
AND  
U.S. GENERAL SERVICES ADMINISTRATION, PUBLIC BUILDINGS SERVICE**

**MEMORANDUM OF UNDERSTANDING ON MEGA CONSTRUCTION PROJECTS**

**I. PURPOSE AND SCOPE**

The purpose of this Memorandum of Understanding (MOU) is to foster cooperation and coordination between the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the U.S. General Services Administration's Public Buildings Service (PBS). OFCCP and PBS agree to cooperate and exchange information with the aim of enhancing the enforcement of equal employment opportunity requirements that apply to entities with Federal and federally assisted construction contracts and subcontracts.

Executive Order 11246 prohibits employment discrimination by Federal contractors and subcontractors, and federally assisted construction contractors and subcontractors, and requires that they take affirmative action to ensure that employees and applicants for employment receive equal employment opportunities. Section 205 of this Executive Order also authorizes the Secretary of Labor to administer and enforce the Order. The Secretary of Labor's responsibilities under the order have been delegated to the Director of OFCCP.

Through PBS, the General Services Administration (GSA) awards construction contracts and works with the OFCCP to ensure compliance with the requirements of 41 C.F.R. Part 60-4.

This MOU establishes procedures that will ensure that OFCCP receives prompt notification of Mega Construction Projects (as defined in Section III, below) in compliance with the Federal Acquisition Regulation (FAR), as well as information about such projects in the planning and pre-solicitation stages. In addition, this MOU clarifies the roles of each agency relating to planning, coordinating, and monitoring the affirmative action efforts on Mega Construction Projects. This MOU is intended to further the goals of providing equal employment opportunity and affirmative action in the construction industry.

**II. BACKGROUND**

OFCCP conducts compliance reviews of construction contractors and

subcontractors to monitor and enforce compliance with the requirements of Executive Order 11246 and its implementing regulations. An ongoing challenge for OFCCP is maintaining a database of entities with current Federal and federally assisted construction contracts and subcontracts subject to Executive Order 11246. The FAR at 22.804-2(c) requires contracting officers to provide written notice to the OFCCP regional office within 10 calendar days of an award of a contract subject to the requirements in 41 C.F.R. Part 60-4. This information is essential to identifying the entities subject to OFCCP's compliance review jurisdiction.

Prior to 1989, OFCCP administered and enforced the requirements of Executive Order 11246 and its implementing regulations in the construction industry by conducting compliance reviews of construction contractors on a "contract by contract" basis. After several decades of following this approach, OFCCP determined that greater efficiency could be attained if "site-oriented" compliance reviews were conducted on large-scale construction projects that involve the work of a general or prime contractor and several subcontractors. In 1989, OFCCP developed the Mega Construction Project Initiative to pursue the "site oriented" approach for securing compliance with Executive Order 11246 on the largest construction projects. In 2014, OFCCP revamped the Mega Construction Project Initiative to implement standard operating procedures for the agency to use when conducting Mega Construction projects.

Due to their complexity, Mega Construction Projects can benefit from the early involvement of OFCCP with contracting agencies and prime contractors in planning, coordinating, and monitoring the affirmative action efforts. On construction projects included in the Mega Construction Project Initiative, OFCCP worked closely with the contracting agency and the prime contractor to establish procedures for planning, coordinating, and monitoring affirmative action efforts at the construction site.

The U.S. Department of Labor (DOL) and GSA entered into a MOU on July 9, 2013 to formalize the use of the Mega Construction Project Initiative procedures on GSA-funded Mega Construction Projects. This MOU supersedes the July 9, 2013 MOU.

### III. DEFINITIONS AND PARTIES TO THE AGREEMENT

The agencies that are parties to this MOU are the OFCCP within DOL, and PBS within GSA. The appropriate officials for DOL/OFCCP are:

- Director, OFCCP
- Deputy Director, OFCCP
- Any OFCCP Division Director
- Any OFCCP Regional Director
- Any OFCCP District Director

The appropriate officials for GSA/PBS are:

- Assistant Commissioner for Project Delivery

- Assistant Commissioner for Acquisition Management, and
- Deputy Assistant Commissioner for Acquisition Management

The term “construction” as used in this MOU is defined as set forth in the FAR at 48 C.F.R. 2.101. This definition is hereby incorporated by reference.

For the purposes of this MOU, the phrase “Mega Construction Project” means any GSA major construction project with a contract value of \$35 million or more that OFCCP determines will have a major employment and economic impact on a community, and that is scheduled to last for more than one year.

The term “possession” as used in this MOU is defined as the actual or constructive care, custody or control of documents and materials that are covered by this MOU.

#### IV. PROVISIONS

PBS agrees to:

1. Provide the Director of OFCCP a list of construction projects that have been approved for funding. The list will include available contractor information, as provided in 41 C.F.R. 60-4.2(c), and identify the projects by location and region. PBS will provide the list within 30 calendar days of appropriation approval, and thereafter will provide a list with updated information on a quarterly basis.
2. OFCCP will identify projects required to participate in OFCCP’s Mega Construction Project Program from the contracts approved for funding. The contractor will be required to comply with the requirements enforced by OFCCP. GSA will require projects with costs above \$35 million to partner with OFCCP, if selected by OFCCP, as a condition of the award. Under that partnership, OFCCP will ask GSA to make clear to prime contractors in the pre-bid phase that the project award terms will require their participation in the Mega Construction Project Program.
3. Notify and invite appropriate OFCCP officials to participate in Mega Construction Project outreach meetings.
4. Notify and invite appropriate OFCCP officials to participate in pre-bid and pre-proposal conferences as defined in FAR Subparts 14.207 and 15.201 for Mega Construction Projects.
5. Consistent with 41 CFR 60-4.2(c) and FAR 22.804-2(c), send notification, including contractor information, to OFCCP within 10 calendar days of an award of an applicable contract.

6. Notify and invite appropriate OFCCP officials to participate in Mega Construction Project post-award meetings with the prime contractor.
7. Provide OFCCP access to contract specifications to ensure that the contractor goals for minorities and women are correctly specified in accordance with FAR requirements at 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.

OFCCP agrees to:

1. Participate in preliminary meetings with appropriate officials from GSA prior to the solicitation and award for Mega Construction Projects in order to ensure that bidders are aware of their EEO obligations if they are awarded a Federal contract.
2. Provide training to GSA staff on the MOU requirements and the Mega Construction Project Program; both national and regional field staff levels.
3. Provide technical assistance during pre-solicitation, pre-bid, and post-award conferences to contractors.
4. Provide GSA with the organizational structure of OFCCP's national and field offices, including contact information.

The parties to this MOU jointly agree that, with respect to Mega Construction Projects, their appropriate officials must:

1. Meet, at least annually, to review the implementation of the MOU, discuss GSA's current and upcoming Mega Construction Projects and OFCCP's involvement in those projects.
2. Participate in interagency training programs and conferences, as appropriate.
3. Provide relevant information on changes to regulations and procedures, as appropriate.
4. Notify their respective regional/field offices and other DOL and GSA staff, as appropriate, of the content of this MOU upon its execution.
5. Use documents and other information obtained under the provisions of the MOU only in the performance of their statutory or administrative functions.

6. Disclose documents and other information obtained under this MOU to third parties only as required under applicable law. The agency receiving a third-party request for documents or information must provide advance notice of any proposed disclosure to the agency that originally provided the documents and information.
7. PBS and OFCCP may share the information obtained under this MOU with other agencies within its department, provided that the information is shared in the performance of its statutory or administrative functions.

#### V. ADDITIONAL PROVISIONS

1. This agreement is an internal Government agreement and is not intended to confer any right upon any private person.
2. Nothing in this agreement shall be interpreted as limiting, superseding or otherwise affecting either agency's normal operations or decisions in carrying out its statutory or regulatory duties. This agreement does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
3. This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.
4. This agreement will be executed in full compliance with all applicable statutes and regulations, including the Privacy Act of 1974, the Freedom of Information Act, and the Federal Records Act.
5. Should disagreements arise on the interpretation of the provisions of this agreement or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement or interpretation is not reached within 30 calendar days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

#### VI. PROCEDURES FOR FORMAL SHARING OR EXCHANGE OF DOCUMENTS

The formal exchange of documents must follow these procedures.

1. Requests from one agency to the other agency to inspect and copy

relevant documents pertaining to a Mega Construction Project must be in writing.

2. When an agency receives a written request under paragraph 1, above, for a document in its possession, that agency must make the document(s) available to the requesting agency for inspection and copying to the extent disclosure is permitted by Federal law.
3. When an agency receives a request under paragraph 1, above, it must respond within 15 calendar days after receipt of such request; if documents are not immediately available, the response must include an estimated date of availability.

VII. IMPLEMENTATION

GSA and OFCCP must conduct periodic reviews of the implementation of this agreement.

Within 60 calendar days of the effective date of this MOU, the headquarters office of each agency must designate a Coordination Advocate who will assist, as necessary, in implementing the requirements and procedures set forth in this MOU. These advocates must meet annually to discuss issues related to the interpretation and implementation of this MOU.


VIII. AGREEMENT MODIFICATION AND TERMINATION

The provisions of this MOU are effective on the date of signature, and the Parties can only modify the MOU by mutual consent. Either agency can unilaterally terminate this MOU by providing 30 calendar days' notice to the other agency.

This MOU is effective until modified or terminated in accordance with this Agreement.

This MOU supersedes the MOU between DOL and GSA signed on July 9, 2013, by Patricia A. Shiu, Director of the Office of Federal Contract Compliance Programs, and Dorothy Robyn, Commissioner, GSA Public Buildings Service.

The undersigned hereby agree that this document represents the understanding between them.

DocuSigned by:  
  
B3621A40637441G...

TRACY MARCINOWSKI  
 Assistant Commissioner  
 Office of Acquisition Management  
 Public Building Service  
 U.S. General Services Administration

12/20/22  
 \_\_\_\_\_

Date

JENNY YANG Digitally signed  
 by JENNY YANG

JENNY R. YANG  
 Director  
 U.S. Department of Labor  
 Office of Federal Contract Compliance Programs

12/19/22  
 \_\_\_\_\_

Date