

**U.S. DEPARTMENT OF LABOR
AND
U.S. GENERAL SERVICES ADMINISTRATION**

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 (DOL) and the U.S. General Services Administration (GSA). DOL and GSA agree to cooperate and exchange information with the aim of enhancing the enforcement of equal employment opportunity requirements that apply to firms 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. 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 the Office of Federal Contract Compliance Programs (OFCCP).

Through its Public Buildings Service (PBS), GSA awards construction contracts and works with the OFCCP to ensure compliance with the requirements of 41 CFR 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 Regulations (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 firms with current Federal and federally assisted construction contracts and subcontracts subject to the Executive Order 11246. The FAR at 22.804-2(c) requires contracting agencies to provide written

notice to the OFCCP regional office within 10 days of an award of a contract subject to the requirements in 41 CFR Part 60-4. This information is essential to identifying the firms 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 the Executive Order 11246 on the largest construction projects.

Due to the complexity of these projects, 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.

DOL and GSA entered into a MOU on August 28, 2000, to formalize the use of the Mega Construction Project Initiative procedures on GSA funded Mega Construction Projects. This MOU supersedes the August 28, 2000, agreement.

III. DEFINITIONS AND PARTIES TO THE AGREEMENT

The agencies that are parties to this MOU are the OFCCP within DOL, and GSA.

The appropriate officials for the DOL/OFCCP are listed below.

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

The appropriate officials for the GSA are listed below.

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

The term "construction" as used in this MOU is defined as set forth in Executive Order 11246, 41 C.F.R. 60-4, and the FAR. These definitions are 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 \$25 million or more that GSA, in consultation with 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

GSA agrees to:

1. Provide the director of OFCCP annually within 30 days of appropriation approval a list of Mega Construction Projects that have been approved for funding. The list will identify the projects by location and region.
2. Include requirements for an EEO compliance plan and EEO reporting in contracts for Mega Construction Projects.
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.
5. Notify and invite appropriate OFCCP officials to participate in Mega Construction Project post-award meetings with the prime contractor.
6. Work with OFCCP on Mega Construction Project to include requirements for an EEO compliance plan and EEO reporting in all Mega Construction Project contracts in accordance with PBS policy.
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 technical assistance during pre-solicitation, pre-bid, and post award conferences to contractors.
3. 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 construction contracts, their appropriate officials must:

1. Meet, at least annually, at the national level 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.

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 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 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 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-day notice to the other agency.

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

This MOU supersedes the Memorandum of Understanding between DOL and GSA signed on August 28, 2000, by Shirley J. Wilcher, Deputy Assistant Secretary for Federal Contract Compliance, and Robert A. Peck, Commissioner, Public Buildings Service.

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



PATRICIA A. SHIU
Director
Office of Federal Contract Compliance Programs
Date Signed: July 9, 2013



Dorothy Robyn
Commissioner
GSA Public Buildings Service
Date Signed: June 7, 2013