



Mega Construction Project Program Sixteen Affirmative Action Steps

Background on OFCCP

OFCCP is charged with protecting America's workers by enforcing equal employment opportunity and affirmative action obligations of employers that do business with the federal government. OFCCP enforces Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Together these legal authorities make it unlawful for federal contractors and subcontractors¹ to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations, and may not retaliate against applicants or employees for engaging in protected activities. These legal authorities also require that federal contractors provide equal employment opportunity through proactive action to recruit underrepresented workers and to remove barriers to opportunity. OFCCP's authority extends to supply and service contractors and construction contractors. OFCCP enforces anti-discrimination requirements for federal contractors and promotes compliance with affirmative action commitments through scheduled compliance evaluations and in response to complaints. OFCCP's construction jurisdiction includes direct federally funded construction contracts and federally assisted construction contracts.

Mega Construction Project Program

OFCCP's Mega Construction Project (Megaproject) Program fosters equal opportunity in the construction trades workforce of federal contractors and subcontractors on large federal construction projects. Projects eligible for designation as Megaprojects are valued at \$35 million or more in funding, some part of which must be federal funding, and are expected to last for at least one year. Through the program, OFCCP focuses its resources on construction projects that have the greatest potential to make a positive economic difference in a community. OFCCP engagement can provide immediate impact on contractor and subcontractor recruitment and hiring practices in the construction trades and can help build robust applicant pools that include talented workers from underrepresented backgrounds.

When OFCCP designates a construction project as a Megaproject, OFCCP offers contractors and subcontractors extensive compliance assistance, conducts compliance evaluations, and fosters collaboration across the public and private sectors. From the earliest stages of a designated

¹ Hereinafter, the term "contractor" is used to refer collectively to Federal contractors and subcontractors that fall under OFCCP's authority, unless otherwise expressly stated.

Megaproject, OFCCP engages a wide range of stakeholders in the community to remove hiring barriers and promote consideration of a diverse pool of qualified workers for jobs in the trades.

Because of this intensive, “front-end” approach, the Mega Construction Project Program has been an effective strategy for achieving greater contractor compliance with equal opportunity requirements and for increasing the representation of qualified workers from underrepresented groups in the construction trades.

Megaprojects provide a structure in which OFCCP:

- Conducts outreach and engages with prime contractors to regularly convene a broad range of stakeholders in Equal Employment Opportunity (“EEO”) Committees. An EEO Committee is comprised of, but not limited to, the following stakeholders: the project funding agency, prime contractor, subcontractors, unions, apprenticeship and pre-apprenticeship programs, American Job Centers, worker centers, community colleges, Tribal Employment Rights Offices, Women’s Apprenticeship and Non-Traditional Occupation grantees, and federal, state, and local government agencies. The EEO Committee identifies available employment opportunities and works to recruit and remove barriers to employment for applicants from underrepresented communities.
- Provides ongoing compliance assistance at the pre-bid and post-bid stage to prime contractors and subcontractors on their nondiscrimination and affirmative action obligations.
- Evaluates contractors’ efforts to recruit and utilize talent from underrepresented backgrounds and to promote contractor compliance with anti-discrimination and affirmative action requirements.
- Promotes awareness of eligibility for Indian preferences where projects are located on or near Indian reservations and foster outreach to workers in these communities.

When the Megaproject procedures are implemented, the stakeholders involved in the Megaproject can benefit in several ways. OFCCP’s early involvement ensures greater commitment by the Funding Agency (FA) and prime contractor to promote equal employment opportunity. Regular engagement with the community enhances a Megaproject 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 Community-Based Organizations (CBOs) that train workers for construction jobs. Finally, participation in a Megaproject enhances the contractors’ and subcontractors’ preparedness for OFCCP compliance evaluations and ensures that such evaluations are conducted smoothly and quickly. Megaprojects involve early intervention, extended duration, and regular stakeholder engagement. For these reasons, the initiative has had past success in ultimately increasing the representation of minorities and women in skilled trades working on the Megaprojects through effective recruitment and training.

To comply with Executive Order 11246, federal construction contractors must make good faith efforts to meet the participation goals by taking the 16 affirmative action steps described in this section, which are part of OFCCP's regulations at 41 CFR 60-4.3(a)7.

The 16 steps listed in this guide do not appear in the order listed in the regulations. Rather, for ease of reference, they appear in the following groups that correspond to critical personnel activities.

- Recruitment Practices
- Training
- Equal Employment Opportunity Policy and Implementation
- Personnel Operations
- Contracting Activity

Listed below are best business practices that would positively enhance the work environment as well as enable a contractor to comply with the specifications. They are listed only as examples and should not be viewed as the only possible ways to comply with these specifications. Construction contractors must document the steps and actions that they take to ensure that these requirements are met.

Recruitment Practices

Step 1—Recruit Women and Minorities from Community Organizations, Schools, and Training Organizations

This step requires the contractor to direct its recruitment efforts, both oral and written to minority, female, and community organizations, to schools with minority and female students and minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. The contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source. Step 1 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. i.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should establish relationships with community organizations, recruitment sources, schools, and training organizations that serve all demographic groups in the recruitment area, including minorities and women. Records of interactions should specify the purpose of establishing a particular relationship and the outcomes the relationship has produced.
- Contractors should document and retain retrievable electronic records on all of their contacts with agencies and programs in the contractor's recruitment area that are responsible for recruiting, referring, or training individuals for work in the construction industry, including local offices of the state employment service, local trade union apprenticeship programs, and community organizations that prepare individuals for entry

into trade union-sponsored apprenticeship programs, such as vocational/technical schools and high schools with construction-related training programs, Urban League training and referral programs.

- Contractors should maintain retrievable electronic records of their contacts with recruitment sources, including minority, women, and community organizations, announcing apprenticeship and other training opportunities. Contractors must provide written notification to organizations like those described above about the openings, screening procedures, and tests to be used in the selection process at least one month before applications for those training opportunities are accepted. Contractors should also maintain retrievable electronic records of those notifications.

Step 2—Encourage Employees to Recruit Women and Minorities

This step requires the contractor to encourage present minority and female employees to recruit other minority persons and women, and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce. Step 2 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. j.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should maintain electronic diaries, telephone logs or memos indicating contacts (both written and oral) with minority and female employees encouraging them to recruit other minorities and women, and records of the results. Contractors should specifically discuss recommendations for referral with minority and female trade employees.

Contractors that provide work experience or work exposure opportunities to minority and female youth should maintain electronic records of such activities. Contractors may also retain electronic files of letters and other documentation of contact with recruitment sources and local state employment agencies and community organizations that assist with youth employment programs.

Step 3—Track Recruitment Sources

This step requires the contractor to establish and maintain a current list of minority and female recruitment sources and provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available and maintain a record of the organizations' responses. Step 3 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. b.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should identify recruitment sources capable of referring qualified applicants, including minorities and women that include construction trade union locals, certified

apprentice programs, and state employment offices serving the company's project recruitment areas.

- Contractors should develop relationships with local high school and community college-based skills training programs and organizations that provide effective pre-apprenticeship preparation, such as Women in Trades organizations that help prepare individuals, including women and minorities, for entry into the construction trades.
- Contractors should maintain files of interactions with recruitment sources, including sources for minorities and women, detailing achievements in developing employment and/or training opportunities. Details should include descriptions of initiatives and resulting outcomes.
- Contractors should utilize applicant and hire logs to monitor the source of referrals and to evaluate the effectiveness of recruitment sources. Where contractors are a signatory to collective bargaining agreements, they should use this information to inform union representatives about the impact of union referrals on contractor efforts to provide equal employment opportunity.

Step 4—Track Applicants

This step requires the contractor to maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken concerning each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken. Step 4 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. c.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should establish standard personnel procedures that require creation and retention of records that show the name, address, telephone number, sex, race, ethnicity, trade, source of referral, and action taken concerning each applicant.
- Contractors should post information at each worksite that directs interested parties to the location or website where applications for employment are accepted. Where contractors are signatory to union collective bargaining agreements that require a direct referral, the union trades employed on the project and location and contact information of the respective union halls should be posted at each worksite.
- Where contractors are signatory to trade union collective bargaining agreements that establish referral or hiring hall obligations, contractors should create and retain records that identify the union local(s) involved, union contact persons and their names, addresses

and telephone contact information, and the results of referrals showing hires and reasons for those not hired.

- Contractors should establish a standard selection process for all applicants that are trade- and skill-based that includes documentation of the reasons for nonhire.
- Where an applicant has been referred to a union for referral back to the contractor, contractors should retain documentation of this action and its results, as well as any follow-up contacts made with the applicant or the union.

Step 5—Notify OFCCP if Union Referral Process Impedes EEO

This step requires the contractor to provide immediate written notification to the Director of OFCCP when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations. Step 5 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. d.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should establish standard procedures for making and documenting referrals to and/or requesting referrals from the union or unions that are consistent with the terms of their collective bargaining agreements.
- Contractors should immediately notify the Director of OFCCP through their local OFCCP District Offices when they have any information that the union referral process impedes their efforts to meet their EEO obligations.

Training

Step 6—Develop On-the-Job Training Opportunities

This step requires the contractor to develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The contractor shall provide notice of these programs to the sources compiled under Step 3. Step 6 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. e.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should develop on-the-job training opportunities, participate in other training programs offered in the geographical area, or both. These programs and opportunities must expressly include minorities and women. Contractors must provide notice of these

training opportunities to their recruitment sources, including the minority and female recruitment sources and community organizations they have identified.

- Contractors should maintain retrievable electronic records of employees' participation in training programs, including those that are approved or funded by the U.S. Department of Labor.
- Contractors should maintain retrievable electronic records of any contributions of cash, equipment or personnel provided in support of training or apprenticeship programs.

Equal Employment Opportunity Policy and Implementation

Step 7—Disseminate EEO Policy Externally

This step requires the contractor to disseminate its EEO policy externally by including it in any advertising in the news media, specifically minority and female news media, and providing written notification to and discussing the EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business. Step 7 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. h.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should establish, as a standard practice, the retention of retrievable electronic records of any employment advertisements or job announcements that include the EEO "tagline," which states the contractor's commitment to its EEO policy. The tagline may state that the contractor is an "equal opportunity employer," or it may state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. The tagline should appear in all advertisements placed in media, including media directed at minorities and women. Note that if the contractor is covered by Section 503, the tagline must include disability. If the contractor is covered by VEVRAA, the tagline must include protected veteran status. See pages 10-11 of this TAG for acceptable tagline options.
- Contractors should retain retrievable electronic records of correspondence with subcontractors that notify them of their EEO policies and discuss their corresponding contractual obligations.
- Contractors should retain retrievable electronic records of any meetings with construction industry associations and organizations where the federal EEO and affirmative action contract obligations and methods for facilitating compliance have been discussed or acted upon.

Step 8—Share EEO Policy with Unions and Training Programs

This step requires the contractor to disseminate its EEO policy by:

- Providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations;
- Including it in any policy manual and collective bargaining agreement;
- Publicizing it in the company newspaper, annual report, etc.;
- Specific review of the policy with all management personnel and with all minority and female employees at least once a year; and
- Posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

Step 8 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. F.

Examples of Best Business Practices That Demonstrate Compliance

- In addition to including their EEO policies in any policy manuals, contractors may include their EEO policies in any employee handbooks provided to employees when they are hired.
- Contractors should post their EEO policies in places such as company offices, project sites, and project trailers.
- Contractors should discuss their EEO policies with employees at scheduled intervals, at least annually. Contractors should maintain documentation of employees' acknowledgment of receipt or review of their EEO policies, for example, by asking employees to sign a receipt for an employee handbook that contains the contractor's EEO policy.
- Contractors should retain retrievable electronic copies of emails, letters, memoranda and notices to unions and union apprentice training programs notifying them of the contractors' EEO policies and requirements and requesting their assistance in meeting those obligations.
- Contractors should retain retrievable electronic files containing company newsletters and annual reports which contain descriptions of their EEO policies.

Step 9—Review EEO Obligations with Employees Involved in Employment Decisions

This step requires the contractor to review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel (e.g., Superintendents, General Foremen) before the initiation of construction work at any job site. A written record should be made and maintained identifying the time and place of these meetings, persons attending, the subject matter discussed, and disposition of the subject matter. Step 9 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. g.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should discuss their EEO policies and affirmative action obligations with all employees who have responsibility for employment decisions at scheduled intervals, at least annually.
- Contractors should also discuss their EEO policies and affirmative action obligations with onsite supervisory personnel before construction work begins at any job site.

Contractors should retain retrievable electronic records of memoranda, diaries, minutes of meetings, etc., that identify the time and place of these meetings, persons attending, the subject matter discussed and disposition of the subject matter. Disposition of the subject matter may include any actions to be taken by participants.

Step 10—Annually Review Supervisor Performance with EEO Obligations

This step requires the contractor to conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations. Step 10 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. p.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should establish standards of performance that measure supervisors' adherence to and performance under their EEO policies and affirmative action obligations.
- Contractors should retain retrievable electronic records of annual evaluations of supervisor performance, as well as memoranda, letters, reports, and minutes of meetings or interviews with supervisors and management personnel about company practices as they relate to EEO policy and affirmative action obligations.
- Contractors should retain retrievable electronic records of company policies and procedures that show how supervisors and managers are notified when their employment practices adversely or positively affected the company's EEO and affirmative action posture.

Personnel Operations

Step 11—Evaluate Promotion Opportunities for Women and Minorities

This step requires the contractor to conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities. Step 11 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. 1.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should encourage all employees, including minorities and women, to seek or prepare for promotional opportunities through appropriate training.
- Contractors should retain retrievable electronic records such as memoranda, letters, and personnel files showing how promotional opportunities for all employees are reviewed and inventoried annually.

Step 12—Ensure a Harassment-Free Workplace

This step requires the contractor to ensure and maintain a workplace free of harassment, intimidation, and coercion at all sites, and in all facilities that the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities. Step 12 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. a.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should communicate to all personnel that harassment will not be tolerated.
- The contractor should produce and post EEO policy statements prohibiting unlawful harassment at all sites where posting is reasonably possible.
- The contractor should ensure all supervisory personnel are aware of and carry out the contractor's EEO obligation by issuing memoranda and other written instructions addressing the need to maintain a work environment free of harassment, intimidation, and coercion. The contractor should maintain retrievable electronic records of such written materials.
- The contractor should conduct meetings to inform supervisory personnel of their duty to carry out the contractor's obligation to maintain a workplace free of harassment, intimidation, and coercion. The contractor should maintain retrievable electronic records of such meetings.
- Contractors that assign more than one woman to each construction project should retain records of such assignments.
- The contractor should develop formal procedures to take and investigate complaints of harassment. These procedures should include how to file a complaint, where to file the complaint and the name of the person who is responsible for accepting complaints. The contractor should maintain records of such complaints and the results of the investigations.

- The contractor should designate an official (e.g., an EEO officer) to be responsible for creating and retaining reports, diaries, analyses, etc., of the company's specific efforts to monitor the work environment for the presence of any forms of harassment, intimidation, or coercion.

The contractor should provide harassment awareness training to supervisors and employees and retain records of such training that indicate the dates of the training, the names of those conducting the training, the names of those attending the training, and a copy or description of the training materials.

Step 13—Conform to the Uniform Guidelines on Employee Selection Procedures (UGESP)

This step requires contractors to validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3 (Uniform Guidelines on Employee Selection Procedures (1978)). Step 13 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. k.

Examples of Best Business Practices That Demonstrate Compliance for Contractors with Fewer Than 100 Employees

- Contractors with fewer than 100 employees should collect data to determine if any selection procedure used has a possible adverse impact on any race, sex, or ethnic group. These contractors should maintain and have available records showing the following information for each year.
 - The number of persons hired, promoted, and terminated in each trade (e.g., carpenters, brick masons, concrete finishers, ironworkers, mechanics, equipment operators), by sex and, where appropriate, by race and national origin.
 - The number of applicants for hire and promotion by sex and, where appropriate, by race and national origin.
 - The selection procedures used (such as standardized testing or unstructured interviews and qualifications review).
- Contractors must use the race and ethnicity categories included in OFCCP's regulations or the categories required for the Employer Information Report EEO-1 (EEO-1 Report).

Examples of Best Business Practices That Demonstrate Compliance for Contractors with 100 or More Employees

- Contractors with 100 or more employees should maintain the records listed above. Additionally, they should maintain records for each job to show whether the total selection process for each job has an adverse impact on either sex or any of the races and ethnic groups specified in OFCCP regulations or the EEO-1 Report.

- Contractors should perform adverse impact analyses at least once a year for each group that constitutes at least 2% of the labor force in the relevant area or 2% of the applicable workforce.
- Where a total selection process for a job has an adverse impact, the contractor should maintain and have available records showing which components of the selection process have an adverse impact.
- Records regarding individual components of the selection process should be collected for at least two years after the adverse impact has been eliminated in the total selection process for a particular job.

Contractors must validate selection procedures that have an adverse impact on any race, sex, or ethnic group following the Uniform Guidelines on Employee Selection Procedures.

Step 14—Monitor Personnel Practices for Unintended Discriminatory Effects

This step requires contractors to ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out. Step 14 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. m.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should use data collected to determine if seniority practices, job classifications, work assignments or other personnel practices have a discriminatory effect on women or minorities. Contractors should use data collected under Step 14 to determine whether a discriminatory effect exists. For example, a contractor may determine that its practice of assigning work results in substantially more men than women receiving higher-paid work assignments.
- Contractors should audit or examine existing personnel practices periodically to ensure that EEO obligations are being adequately addressed and incorporated in personnel practices.
- Contractors should ensure current policies are reviewed regularly to identify any policies that are not equally applied.

Step 15—Ensure Nonsegregated Facilities

This step requires the contractor to ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes. The term "facilities" refers to waiting rooms, work

areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. Step 15 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. n.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should compile announcements (e.g., flyers, posters, emails) of company sponsored events such as training, parties or picnics and documentation reflecting that notification has been disseminated equally to all employees.
- Contractors should provide adequate toilet and changing facilities to all employees to guarantee privacy between the sexes.
- Contractors should designate single-user restrooms, changing rooms, showers, and similar single-user facilities as sex-neutral.

Contracting Activity

Step 16—Document Solicitations from Minority and Female Contractors

This step requires contractors to document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations. Step 16 can be found in OFCCP's regulations at 41 CFR 60-4.3(a)7. o.

Examples of Best Business Practices That Demonstrate Compliance

- Contractors should use small, disadvantaged businesses or disadvantaged business enterprises as subcontractors and should document their efforts.
- Contractors should make solicitations to small, disadvantaged businesses and disadvantaged business enterprises on the same bases as solicitations to larger contractors.
- Contractors should retain retrievable electronic records of all solicitations of offers for subcontracts from construction contractors and suppliers that are small, disadvantaged businesses or disadvantaged business enterprises, including circulations of solicitations to minority and women's contractor associations.