



**OFCCP's METHOD OF  
SELECTING CONSTRUCTION  
CONTRACTORS  
FOR COMPLIANCE REVIEWS**

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**EMPLOYMENT STANDARDS ADMINISTRATION**

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## ACRONYMS AND GLOSSARY

### ACRONYMS

AAP	Affirmative Action Plan
CIS	Construction Information System
CRA	Construction Resource Analysis
DOL	United States Department of Labor
EEO	Equal Employment Opportunity
ESA	Employment Standards Administration
GSA	General Services Administration
OASAM	Office of the Assistant Secretary for Administration and Management
OFCCP	Office of Federal Contract Compliance Programs
OIG	Office of Inspector General
OSHA	Occupational Safety and Health Administration
VETS	Veterans' Employment and Training Service
WHD	Wage and Hour Division

### GLOSSARY

#### **Affirmative Action**

Actions, policies, and procedures to which a contractor commits that are designed to achieve equal employment opportunity. The affirmative action obligation entails: (1) thorough, systematic efforts to prevent discrimination from occurring or to detect it and eliminate it as promptly as possible, and (2) recruitment and outreach measures.

**Contracting Agency**

Any department, agency, establishment or instrumentality of the United States (under the Executive Order, limited to the executive branch of the Government), including any wholly owned Government Corporation, which enters into contracts with the federal Government.

**Federally Assisted Project**

Any agreement or modification thereof between any Construction Contract applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or on credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant under which the applicant itself participates in the construction work.



## EXECUTIVE SUMMARY

The Office of Federal Contract Compliance Programs (OFCCP) is a component of the U.S. Department of Labor (DOL), Employment Standards Administration. OFCCP has the responsibility for ensuring that employers doing business with the Federal Government comply with the equal employment opportunity (EEO) and affirmative action provisions of their contracts. Federal contractors, subcontractors, and federally assisted contractors are required to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a Vietnam era or special disabled veteran.

OFCCP's jurisdiction covers approximately 26 million employees, or nearly 22% of the total civilian workforce. OFCCP's covered Federal contractors include an estimated 100,000 construction contractor establishments.

The purpose of this evaluation was to assess OFCCP's methods for selecting construction contractors for compliance reviews. Because of the large size of the contractor universe, and the relatively small size of the OFCCP compliance workforce, it is both prudent and practical for OFCCP to have an efficient and effective method for selecting contractors for compliance evaluations.

## RESULTS OF EVALUATION

We identified several steps that OFCCP can take to improve their method of selecting construction contractors by: (a) identifying sources the Regional and District Offices should use to secure current federal and federally assisted construction data, (b) developing and publishing neutral selection criteria, and (c) documenting the entire selection process.

### **FINDING A - OFCCP Needs to Clarify the Sources from Which Construction Contractors Will Be Selected for Compliance Reviews**

We found that the selection process outlined in OFCCP's 1990 directive - "Construction Contractor Selection System" - is not being followed. Instead, OFCCP's Regional and District Offices inconsistently use a variety of sources to identify construction contractors for compliance reviews; accurate and current database information on federal construction contractors is difficult to identify; and no substantive policy guidance on selecting construction contractors for review has been issued since the 1990 directive.

## **FINDING B - OFCCP Needs to Establish and Apply Neutral Selection Criteria**

In addition to identifying the sources to be used for selecting construction contractors, OFCCP needs to develop a uniform application of selection criteria. We found the selection criteria provided in the 1990 directive on the “Construction Contractor Selection System” are not uniformly applied.

While many District Offices appropriately consider the date of a contractor’s prior review and the dollar value of a contract as their primary selection criteria, many others do not. Further, some District Offices do not schedule companies with less than 15 employees while other offices use a minimum of 25 employees as one of their selection criterion. Finally, while OFCCP can schedule a construction contractor for a compliance review if it has a contract of \$10,000 or greater, we identified that \$25,000 is being used as one criterion for the selection of a contractor for compliance reviews.

## **FINDING C Regional and District Offices Need to Consistently Document the Rationale for Selection Decisions**

We found that most District Offices maintain records on contractors *selected* for compliance reviews, but do not maintain information on those contractors who were *considered but not selected* for a compliance review.

The Solicitor’s office noted that incomplete historical information addressing the selection system is a problem often encountered during litigation involving issues related to selection systems.

The 1990 directive on construction scheduling, states that District and Regional Offices must include the reasons for each compliance review selection in each case file. The District Offices’ lack of documentation showing they applied neutral criteria could result in legal challenges from the contractor community. We believe it is important that OFCCP document each step of its selection system, and maintain such documentation for review.

## **RECOMMENDATIONS**

We recommend that OFCCP take the following actions to improve the efficiency and effectiveness of their method for selecting construction contractors for compliance reviews:

1. Develop and disseminate guidance to District and Regional offices regarding the use of sources for selecting construction contractors for review.
  - (a) Determine what database(s) can provide OFCCP with the most accurate and timely information needed for contractor selection.

- (b) Develop a database system where contractors can report into the agency on actual subcontractors being used on the construction contracts.
  - (c) Inform executive branch department and agencies of their need to comply with the affirmative action requirement of 48 CFR Chapter 1, Part 22.804-2(c). OFCCP should develop a reporting mechanism for contracting agencies, notify them in writing of the requirement, and where possible, meet with representatives of the Federal contracting agencies to stress the need for timely reporting. OFCCP should also determine if there is a need to enter into a Memorandum of Understanding with agencies in order to obtain the required information.
  - (d) Request that contracting agencies include a notification to prime contractors regarding their affirmative action requirement of 41 CFR Chapter 60-4.2(d)3 when they award a contract, with a copy sent to OFCCP. The requirement states that Contractors shall provide written notification to OFCCP within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction.
  - (e) Use its official directive system to promulgate the sources for construction compliance reviews. This will guarantee easy access to the information for operational purposes and ensure a written record of the sources to be used in selecting contractors.
2. Determine and specify in writing what neutral criteria will be applied at each step of the selection process. If there is Region-specific, or District-specific neutral criteria to be applied, it should also be specified in writing and maintained for review should the need arise. OFCCP should use its official directive system to clarify the neutral criteria to field personnel.
  3. Document the rationale for compliance review selection decisions and provide direction to field personnel in the directive on the selection procedures. Consider development of an electronic system for field personnel to utilize when reporting on contractor selection/non-selection.
    - (a) Create a “*Construction Contractor Scheduling Documentation Form.*” The form should be completed for all scheduled construction reviews and included in the case file. This will create an institutional record of the decision should questions arise concerning selection and scheduling procedures. At a minimum, the form should include: OFCCP identification information, contractor identification information, and reason(s) the contractor was scheduled for review.
    - (b) Create a “*Construction Contractor Non-Scheduling Documentation Form.*” This form should be completed for all construction contractors that were considered but not scheduled for a compliance review. The form should be maintained in duplicate form in: (a) the case file of the selected contractor;

and (b) a general District Office file either in hard copy or electronic format. At a minimum, the form should include: OFCCP identification information, contractor identification information, and reason(s) the contractor was not scheduled for review.

## **OFCCP RESPONSE AND OIG CONCLUSIONS**

OFCCP “generally concurs with OIG’s main recommendations,” and acknowledges there are problems in each of the findings identified by OIG, “especially with respect to OFCCP’s selection criteria.” The agency requested that OIG more fully articulate the practical difficulties associated with OFCCP’s role in ensuring that contracting officers and federal contractors comply with existing reporting mandates, particularly at the State level. We have incorporated this information in the report.

Based on OFCCP’s response, we consider all recommendations resolved. The recommendations will be closed pending OIG’s receipt of appropriate documentation specified in the report.

The agency’s complete response is found in Appendix C.

## BACKGROUND

The Office of Federal Contract Compliance Programs (OFCCP) is component of the U.S. Department of Labor, Employment Standards Administration. It has a national network of six Regional Offices, and 54 District and Area Offices in major metropolitan centers.

OFCCP has the responsibility for ensuring that employers doing business with the Federal Government comply with the equal employment opportunity (EEO) and affirmative action provisions of their contracts. OFCCP administers and enforces three EEO programs: Executive Order 11246; Section 503 of the Rehabilitation Act of 1973; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. OFCCP also shares enforcement authority for the regulations requiring EEO and affirmative action in apprenticeship programs; Title I of the American with Disabilities Act; the Immigration Reform and Control Act; and, the Family and Medical Leave Act. Together, these laws ban discrimination and require Federal contractors, subcontractors, and federally assisted contractors to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a Vietnam era or special disabled veteran.

OFCCP's jurisdiction covers approximately 26 million employees or nearly 22% of the total civilian workforce. OFCCP's covered Federal contractors include an estimated 100,000 construction contractor establishments.

Based on the large number of federal construction contractors, and the relatively small size of OFCCP's enforcement workforce, (Fiscal Year 2001 data shows 444 Compliance Officers), the Agency's annual program plan projects a relatively small number of construction contractors for evaluation within the overall contractor population at any given time (reference Figure 1 below). These figures show that less than 1.4% of construction contractors under OFCCP's jurisdiction undergo compliance evaluations annually.

<b>Evaluations Completed versus Compliance Workforce</b>			
	<b>1999</b>	<b>2000</b>	<b>2001</b>
<b>Total Evaluations Completed</b>	3,833	4,162	6,979
Service & Supply	2,588	2,795	5,529
Construction	1,245	1,367	1,562
Compliance Officers	387	453	444

**Figure 1.**

Because of the large size of the contractor universe, and the relatively small size of the OFCCP compliance workforce, it is both prudent and practical for OFCCP to have an efficient and effective method to select contractors for compliance evaluations.

## **Covered Contractors**

Each of the laws administered by OFCCP has its own set of nondiscrimination and affirmative action obligations and requirements for employers with covered contracts and subcontracts as shown below.

**Contractors Covered By Laws**

Employment Laws	Federal Contracts & Subcontracts	Federally Assisted Construction Contracts & Subcontracts
E.O. 11246	> \$10,000	> \$10,000
Section 503	> \$ 10,000	--
38 U.S.C. 4212	\$10,000 or more	--

**Figure 2.**

Because of the fluid and often-temporary nature of construction work, and the differing lengths of duration of the federal contracts associated with construction work, OFCCP has established a distinct approach to affirmative action for the construction industry. For example, Executive Order 11246 does not require covered construction contractors to develop written Affirmative Action Plans. Instead, the construction regulations enumerate the good faith steps these covered contractors must take in order to demonstrate affirmative actions taken in order to increase minorities and women in the skilled trades.

## **PURPOSE, SCOPE, AND METHODOLOGY**

### **PURPOSE**

The purpose of this evaluation was to assess OFCCP's methods for selecting construction contractors for compliance reviews. Specifically, we addressed the following questions:

- (1) Has OFCCP developed, implemented, and monitored policies and procedures for selecting construction contractors for compliance review?
- (2) If there is a selection process, is it uniformly applied throughout the agency?
- (3) What are the methods currently utilized by OFCCP District Offices for selecting construction contractors for a compliance review?
- (4) What recommendations, if any, can be made to help OFCCP develop a more systematic and neutral approach for selecting contractors for review?

This evaluation supports DOL's Strategic Goal 3, Quality Workplaces-Foster workplaces that are safe, healthy, and fair, and ESA's Strategic Goal 1, Create better workplaces by increasing employer and employee awareness of, commitment to, and involvement in assuring fair wages and equal opportunity, minimizing the impact of work related injuries, and safeguarding union democracy.

### **SCOPE**

This evaluation focused on OFCCP's methods for selecting federal construction contractors for compliance reviews for FYs 1999 through 2001. OFCCP conducted a total of 4,174 construction reviews during this period.

### **METHODOLOGY**

Our methodology included qualitative methods and document reviews.

#### Qualitative Methods

Qualitative methods included numerous interviews/discussions with:

- (1) OFCCP's National Office staff.
- (2) Telephone interviews with OFCCP's six Regional Directors and 16 District/Area Directors.

- (3) Other DOL agencies: ESA's Wage and Hour Division (WHD), Veterans' Employment and Training Services (VETS), and the Occupational Safety and Health Administration (OSHA).
- (4) OSHA's Office of Financial Management in reference to contracts related to data collection methods of other agencies.
- (5) The Department's Information Clearance Office.
- (6) The University of Tennessee-Knoxville's, Construction Resource Analysis group.

### Document Review

We reviewed numerous documents related to methods of identifying and selecting contractors for compliance reviews, including:

- (1) OFCCP's Federal Contract Compliance Manual.
- (2) National and Regional Offices documents pertaining to policy, procedures and guidelines.
- (3) DOL Federal Register Notices.
- (4) Contracts relating to data collection and construction targeting of contractors.
- (5) Documentation in reference to the composition of the F.W. Dodge Report.
- (6) OFCCP's website containing information dedicated to EEO and affirmative action guidelines.
- (7) Other agencies (internal and external) to OFCCP selection procedures.

We relied heavily on information obtained through extensive interviews, and did not conduct additional support review of district case files.

We conducted our review in accordance with the *Quality Standards for Inspections*, published by the President's Council on Integrity and Efficiency.



## FINDINGS AND RECOMMENDATIONS

### **FINDING A—OFCCP Needs to Clarify the Sources from Which Construction Contractors Will Be Selected for Compliance Reviews**

We found that the selection process outlined in OFCCP's 1990 directive—“*Construction Contractor Selection System*”—is not being followed. Instead, OFCCP's Regional and District Offices inconsistently use a variety of sources to identify construction contractors for compliance reviews; accurate and current database information on federal construction contractors is difficult to identify; and no substantive policy guidance on selecting construction contractors for review has been issued since the 1990 directive.

OFCCP should clarify for their Regional and District Offices what sources (e.g., database information, contract award notices, visual identification, etc.) should be used for securing current federal and federally assisted construction data. In conjunction with this identification of sources to be used, the agency should also: (a) develop and publish neutral selection criteria, and (b) document the entire selection process. These two items are identified in separate findings.

#### **OFCCP Is Not Following Its Own 1990 Directive for Selecting Construction Contractors for Compliance Reviews**

OFCCP's headquarters issued a directive to its Regional Offices in May 1990 regarding a selection system for construction contractors. This directive updated and replaced an Order issued in 1987 that similarly addressed policies and procedures for conducting construction reviews (ADM87-1/SEL, formerly OFCCP Order No. 670a4, March 17, 1987). While it reflected changes in terminology and nomenclature since the 1987 Order, the 1990 directive effected no substantive changes in policy and procedures. The selection steps outlined in the 1990 directive are found in Appendix A.

OFCCP uses their directive system to provide guidance to the field on operating procedures and to ensure consistent application of policies within the agency. We learned through interviews that District Offices are not following the steps detailed in the 1990 directive for a variety of reasons, including: (1) the F. W. Dodge Report (Dodge)<sup>1</sup> frequently does not list any federally funded projects in their district, and it has limited workforce information; (2) several District Offices use mega-projects<sup>2</sup> as a resource for scheduling individual reviews, but these projects are not addressed in the 1990 directive (a January 11, 1995 directive was issued on the subject of Mega Project Reporting, but it did not provide guidance regarding selection); (3) District

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<sup>1</sup> Dodge advertises that it has been the single largest source of advance information on current and pending construction jobs. Each month the District Offices receive from CRA a list of publicly owned projects currently under construction within their jurisdiction. The list consists of new contracts awarded during the month and active projects carried over from the previous month.

<sup>2</sup> Mega-projects are defined as federally funded or federally assisted construction projects that meet the following criteria: (a) significant economic impact on community; (b) duration of two years or more; and (c) significant employment opportunities throughout the duration of the project.

Directors have difficulty obtaining information on an employers' use of minorities and women in their scheduling process because they no longer have access to demographic data from the Monthly Employment Utilization Reports (CC-257s)<sup>3</sup>; and (4) the agency has not thoroughly examined how selecting officials can make selection decisions more consistently.

### **District Offices Inconsistently Use a Wide Variety of Resources for Identifying Contractors for a Compliance Review**

We learned through interviews, and confirmed through a review of support documentation, that District Offices use multiple sources to identify construction contractors for compliance reviews, but they are not used consistently. These sources range from a review of monthly hardcopy reports of contractor awards to information received from unions and local community groups. (Reference Appendix B for the typical workflow and the variety of sources the districts consider in their selection process.)

OFCCP does not have a centralized database that provides construction award and workforce data from one recognized source, nor do they have a complete universe of construction contractors to draw from for compliance reviews. Agency representatives stated, and we agree, that it is difficult to obtain such information from a single source, especially one that includes information on federally assisted projects. Over time, OFCCP has turned to other readily available sources of information, such as the Dodge Report, from which to select contractors for reviews.

Following are the most frequently used sources for construction award data utilized by OFCCP.

#### **(a) F. W. Dodge Report**

The 1990 directive states that potential candidates for compliance reviews should be generated principally from a monthly printout entitled "Active Projects", provided by the Construction Resource Analysis (CRA) group at the University of Tennessee. CRA obtains its data for the monthly report from Dodge, which is a business unit of the McGraw-Hill Construction Information Group. OFCCP's National Office purchases monthly listings from CRA of active construction contract projects within each District's jurisdiction. Many District Offices use the Dodge Reports (hardcopy and/or electronic via the Intranet) as a source, but not the sole source for selecting contractors.

We found several limitations with the Dodge Report used by OFCCP, including:

1. The Dodge Report is essentially comprised of data on prime contractors. If subcontractors are included on the Dodge Report, the information may not be

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<sup>3</sup> The CC-257 was used through 1997 to document and report the employment hours of women and minority in the construction trades. The form was required for construction work performed in geographic areas where a contractor held a Federal or federally assisted construction contract and where minority goals had been established prior to October 3, 1980. Construction contractors and subcontractors in those areas submitted their CC-257s directly to the OFCCP District Office with jurisdiction over the location where payroll records were kept. OFCCP recommended the monthly utilization report be eliminated in 1995 as part of the National Performance, Paperwork Reduction Act. We note that the electronic version of OFCCP's manual still contains the CC-257 requirement in section 4C02.

current or complete. The subcontractor information provided from the Dodge Report may be on those subcontractors who placed a bid for the contract rather than the subcontractors who were awarded the contract.

2. The Dodge Report contains all *publicly* funded active construction projects, many of which do not involve federal funds.
3. Both the hard copy and the Intranet version of the report have similar data, but the Intranet version sometimes has general contractor and owner information included on it. When it is not included, Compliance Officers have to obtain owner and general contractor data from CRA.
4. Information on duration of the contracts is sometimes inaccurate because construction work is very fluid.
5. The Intranet version of the document is cumbersome. The document has anywhere from 700 to 1300 records listed monthly, sorted alphabetically by States. The report requires the District Offices to sort through the report to obtain those states in their jurisdiction. This is a time-consuming process.

#### **(b) Award Notices from Contracting Agencies**

Regulatory requirement in 48 CFR Chapter 1, Part 22.804-2 (c) states that:

*“Contracting officers shall give written notice to OFCCP regional offices within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification should include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated start and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.”*

We identified there is no reporting mechanism in place to ensure that contracting agencies provide OFCCP with this information, and many contracting agencies are not complying with the requirement. However, OFCCP representatives stress that while OFCCP has the authority to promulgate regulations purporting to govern the actions of contracting officers of other executive agencies, such action requires consultation and cooperation between the agencies. OFCCP issued a memorandum dated April 29, 1980 pertaining to Notification of Federally-Assisted Construction Contracts and Award Notifications, signed by the Secretary of Labor. It was addressed to heads of executive branch departments and agencies and requested their cooperation in identifying those “grant, contract, loan, insurance or guarantee programs administered by your agency which result or could result in whole or in part in construction contracts or subcontracts, regardless of the states purpose of the program.” It also requested that procedures be identified for notification of contract information to regional OFCCP offices. We learned through our interviews that these procedures have not been followed for several years, and alternative procedures or reminders have not been sent to executive branch departments and agencies.

Several OFCCP Officials stated it would be beneficial for OFCCP to enhance communications with Federal contracting agencies in their jurisdiction (e.g., Housing and Urban Development, the Department of Transportation and the Department of Defense, particularly the Army Corps of Engineers). They stated that this fostering of relationships would help to facilitate the required notifications of pre-award information to OFCCP.

### (c) Notices of Subcontractor Awards

OFCCP needs to obtain better information on subcontractors. The District Offices derive much of their subcontractor data from notices provided by the prime contractors. While many OFCCP officials indicated the subcontractor notices were a good selection source, they also stated the process of obtaining the information could be improved. Section 41 CFR 60-4.2(d) requires that

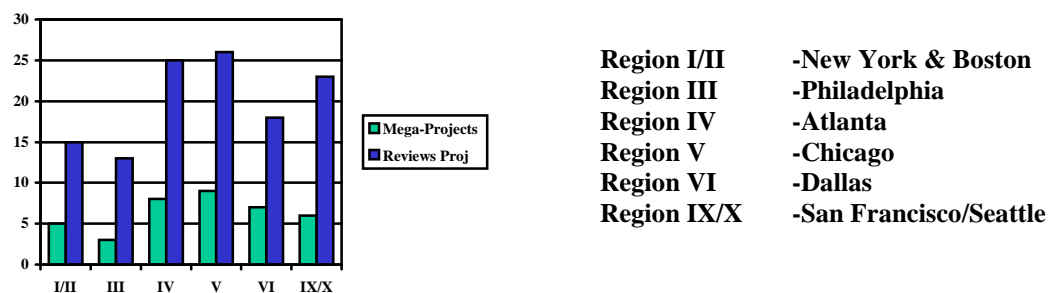
*“The Contractor shall provide written notification to the Director of OFCCP within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under contract resulting from the solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of each subcontractor, estimated dollar amount of the subcontract, its estimated starting and completion dates, and geographic area (Standard Metropolitan Statistical Area or Economic Area) in which the work is to be performed.”*

Again, there is no mechanism in place to ensure all prime contractors notify OFCCP when they award subcontracts.

### (d) Mega Construction Projects

Mega construction projects are not addressed in the 1990 directive, but many District Offices use contractor information from these projects as a primary source for scheduling individual contractors for review.

Frequently one mega-project results in a number of individual compliance reviews of different contractors. OFCCP maintains an inventory of at least 30 active mega-projects. In fiscal year 2001, OFCCP is projected to conduct 120 mega-project evaluations from an inventory of at least 30 active mega-projects.



**Figure 3. FY 2001 Mega-Projects, and Reviews Generated from the Projects**

We found each OFCCP *region* has current mega-projects, but not all *District Offices* within a region have mega-projects within their jurisdiction. If OFCCP is going to continue to use these mega-project reviews as a source for selecting individual contractors for review, they need to develop a uniform method for determining their selection.

#### **(e) Other Sources**

Several interviewees stated that public notices in local newspapers, union data, and visual observation of construction worksites are useful sources for scheduling construction reviews. For example, one Compliance Officer read in a local newspaper that a post office was being built within the jurisdiction of the District Office. The project involved federal funds, but the contracting agency had not provided notification of the contract award to OFCCP. We believe that there are several potential issues in attempting to schedule reviews through visual observation, including the lack of neutrality and the project may be nearing closure.

While all of these sources (the Dodge Report, award notices from contracting agencies, notices of subcontractor awards, mega-projects, etc.) may provide good information on Federal construction projects, field personnel lack guidance on how and when these sources should be utilized. Our review of documentation and interview results revealed there is no consistency in the agency's approach to using these sources.

#### **Accurate and Current Database Information on Federal Construction Contractors is Difficult to Identify**

OFCCP officials stress, and we agree, there are practical difficulties associated with OFCCP's role in ensuring that contracting officers and federal contractors comply with reporting mandates, particularly at the State level. For example, many contractors covered by OFCCP regulations do not contract directly with contracting agencies, but with municipalities or other local governmental units that receive federal assistance funneled through State block grants. Often times the federal agency awarding the grant to the State cannot identify the contractors that ultimately receive federal funds without identifying a complicated chain of subsequent grants from the State to the local governmental unit.

Our research did not find a centralized, government-wide database that identified all Federal and federally assisted contractors. However, we discovered two agencies in DOL, the Occupational Safety and Health Administration (OSHA) and the Veterans' Employment and Training Service (VETS) that have database initiatives to consolidate contractor information into centralized databases. OSHA's Construction Information System and Construction Inspection Scheduling Website and VETS' Federal Contract Award Information System are discussed below. We recognize that an OFCCP system would not duplicate either of these systems, as each has unique needs. However, there may be aspects of the systems that OFCCP can draw from to develop a database system for construction contractors.

**(a) OSHA's Construction Information Selection System (CIS) and Construction Inspection Scheduling Website**

OSHA's *Construction Information Selection System* (CIS) was designed to provide timely information on active construction projects, including: project location,

contractor and project manager information, and the types and numbers of subcontractors involved in the projects.

OSHA's construction system relies on monthly data provided from F. W. Dodge to CRA on construction projects, which are expected to start in the next 60 days. Through the use of a sophisticated construction duration model, CRA adds to the Dodge data a time period when each project is active and maintains a file containing all active construction projects. The system is designed to get inspectors on site at neutrally selected projects when they are between 30 percent and 60 percent complete.

The current OSHA-CRA contract requires that CRA (and Dodge) provide numerous services, including but not limited to: a file of the universe of all construction projects estimated to be currently active; monthly lists of randomly selected construction projects meeting the unique criteria of the Area Offices. To achieve this, CRA orders an OSHA Construction Report for each project from Dodge (currently over 100 Federal and State Area Offices receive monthly targeting lists); statistical reports provided to the National Office on construction activity at the National, Regional, and Area Office levels, in aggregate form; an annual report addressing fatalities at construction sites for the previous year.

**(b) VETS' Federal Contract Award Information System**

VETS has a grant with University of Colorado at Denver (UCD) to support their Federal Contract Award Information System (FCAIS). According to VETS, FCAIS is an efficient, interactive, user-friendly data information system that collects data from the Commerce Business Daily (CBD)<sup>4</sup> and the Federal Procurement Data System (FPDS). All Federal procurement offices are required to announce proposed procurement actions and contract awards in the CBD if they are over \$25,000 and are likely to result in the award of any subcontracts. The FPDS is a central repository for information on all Federal contracts awarded. The FPDS contains detailed information on contract actions over \$25,000 and summary data on procurements of less than \$25,000. UCD maintains a database of contracts awarded and other employer information from an estimated 60,000 awards processed annually. The database contains fields such as award issuing agency,

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<sup>4</sup> Effective October 1, 2001, all federal agencies are required to post bid notices valued at \$25,000 or more into a new system called FedBizOpps. In 2002, procurements will no longer be required to be published in the CBD.

contract number, contract dollar amount, contract starting and ending dates, contractors' name and address, and place of performance. VETS has an Internet site for this system, which may be used by OFCCP with permission.

**Recommendation:**

We recommend that OFCCP:

1. Develop and disseminate guidance to District and Regional offices regarding the use of sources for selecting construction contractors for review. OFCCP should:
  - (a) Determine what database(s) can provide OFCCP with the most accurate and timely information needed for contractor selection.
  - (b) Develop a database system where contractors can report into the agency on actual subcontractors being used on construction contracts.
  - (c) Inform executive branch department and agencies of their need to comply with the reporting requirements of 48 CFR Chapter 1, Part 22.804-2(c). OFCCP should develop a reporting mechanism for agencies, notify them in writing of the requirement, and where possible, meet with representatives of the agencies to stress the need for timely reporting. OFCCP should also determine if there is a need to enter into a Memorandum of Understanding with agencies in order to obtain the required information.
  - (d) Request that contracting agencies include a notification to prime contractors regarding their affirmative action requirement of 41 CFR Chapter 60-4.2(d) when they award a contract, with a copy sent to OFCCP. The requirement states that the Contractors shall provide written notification to the Director of OFCCP within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction.
  - (e) Use its official directive system to promulgate the sources for construction compliance reviews. This will guarantee easy access to the information for operational purposes and ensure a written record of the sources to be used in selecting contractors.

## **FINDING B—OFCCP Needs to Establish and Apply Neutral Selection Criteria**

In addition to identifying the sources to be used for selecting construction contractors, OFCCP needs to develop a uniform application of selection criteria. We found the selection criteria provided in the 1990 directive on the “Construction Contractor Selection System” are not uniformly applied.

### **Neutral Selection Criteria**

The 1990 directive on construction selection procedures states that contractors should be selected for review based on the following criteria, in sequential order: 1) length of time since prior review, 2) size of contracts, 3) size of workforce, and 4) minority and female representation as compared to their availability in the labor market<sup>5</sup>. The directive also states that those contractors with a history of compliance review violations or a record of individual complaints should also be considered for review.

### **OFCCP is not Uniformly Applying Neutral Selection Criteria**

While many District Offices appropriately consider the date of a contractor’s prior review and the dollar value of a contract as their primary selection criteria, many others do not. Further, some District Offices do not schedule companies with less than 15 employees while other offices use a minimum of 25 employees as one of their selection criterion. Finally, while OFCCP can schedule a construction contractor for a compliance review if it has a contract of \$10,000 or greater, we identified that \$25,000 is being used as one criterion for the selection of a contractor for compliance reviews.

Recently, the Solicitor’s office advised OFCCP that in order to successfully defend against a legal challenge made to their selection decision based on an administrative selection system, they would have to show that: 1) the selection the system contained specific neutral criteria, and 2) the selection system was actually applied neutrally at the time the challenged selection decision was made. The Solicitor also pointed out that although oral testimony of the officials involved could prove that neutral criteria were used, courts have noted, “agencies are well advised to make proper records and maintain them.”

Whatever sources the agency ultimately decides to use for selecting construction contractors (i.e., the Dodge Report or a combination of sources), the agency must apply the specific neutral criteria used at every step in developing the list of contractors derived from the source(s).

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<sup>5</sup> We note that since the elimination of the CC-257 report, it is more difficult to obtain workforce information prior to a compliance review. We also note that the Wage Hour Certified Payroll Report (WH-347) could be used by OFCCP to obtain demographic information, if the report is modified to include race/sex information.



**Recommendation:**

We recommend that OFCCP:

2. Determine and specify in writing what neutral criteria will be applied at each step of the selection process. If there is Region-specific, or District-specific neutral criteria to be applied, it should also be specified in writing and maintained for review should the need arise. OFCCP should use its official directive system to clarify the neutral criteria to field personnel.

**Finding C: Regional and District Offices Need to Consistently Document Their Rationale for Selection Decisions**

We found that most District Offices maintain records on contractors *selected* for compliance reviews, but do not maintain information on those contractors who were *considered but not selected* for a compliance review.

The Solicitor's office noted that incomplete historical information addressing the selection system is a problem often encountered during litigation involving issues related to selection systems.

The 1990 directive on construction scheduling states that the District and Regional Offices must include in each case file information on the reasons for their selection of a contractor for each compliance review. The District Offices' lack of documentation showing they applied neutral criteria could result in legal challenges from the contractor community. We believe it is important that OFCCP document each step of its selection system, and maintain such documentation for review.

It is essential that OFCCP document every step of its neutral system for selecting construction contractors for compliance reviews, and make and maintain written records of the criteria applied in every selection decision.

**Recommendation:**

We recommend that OFCCP:

3. Document the rationale for compliance review decisions and provide direction to field personnel in the directive on selection procedures. Consider development of an electronic system for field personnel to utilize when reporting on contractor selection/non-selection.
  - (a) Create a "*Construction Contractor Scheduling Documentation Form*." The form should be completed for all scheduled construction reviews and included in the case file. This will create an institutional record of the decision should questions arise concerning selection and scheduling procedures. At a minimum, the form should include: OFCCP identification information, contractor identification information, and reason(s) the contractor was scheduled for review.
  - (b) Create a "*Construction Contractor Non-Scheduling Documentation Form*." This form should be completed for all construction contractors that were considered but not scheduled for a compliance review. The form should be maintained in duplicate form in: (a) the case file of the selected contractor; and (b) a general District Office file either in hard copy or electronic format. At a minimum, the form should include: OFCCP identification information, contractor identification information, and reason(s) the contractor was not scheduled for review.

## **OFCCP's Response and OIG Conclusions**

The purpose of our recommendations is to improve the efficiency and effectiveness of OFCCP's method for selecting construction contractors for compliance reviews.

### **OFCCP's Response:**

OFCCP "generally concurs with OIG's main recommendations" and commits to the following actions:

*"OFCCP will continue to evaluate whether there are databases that provide OFCCP with more comprehensive information on covered construction contractors than the information contained in the Dodge Report.*

*"OFCCP will develop a database to allow contractors to submit required information about covered subcontractors to OFCCP. OFCCP will notify contractors of this database through various media outlets, including OFCCP's web-site. OFCCP will describe this database in the reminder letter to contracting agencies and ask them to include such notification to contractors upon the initial award of the contract.*

*"OFCCP also will develop a reporting process to provide contracting officers and grant applicants several easy methods for submitting required information about covered contracts to OFCCP. OFCCP will describe this reporting process in the reminder letter, and through various other media outlets, including OFCCP's web-site.*

*"OFCCP will promulgate formal guidance to its field offices on the process for selecting contractors for construction reviews, including the criteria for selection and the sources of information to be used. OFCCP will consider the use of appropriate forms and other reporting mechanisms to document the selection process.*

### **OIG's Conclusions**

We consider the recommendations resolved. The recommendations will be closed upon receipt of the following:

- A status report on: (a) OFCCP's efforts to identify more comprehensive information on covered construction contractors; (b) OFCCP's development of a database to allow contractors to submit required information about covered subcontractors to OFCCP; and (c) notification to contractors of this database. Please provide information on these plans no later than July 31, 2002.
- A copy of: (a) OFCCP's letter to executive agencies reminding them of reporting requirements, and (b) information on the agency's development of a reporting process for contracting officers and grant applicants. Please provide a copy of the letter to executive agencies and information on the reporting process no later than May 31, 2002.

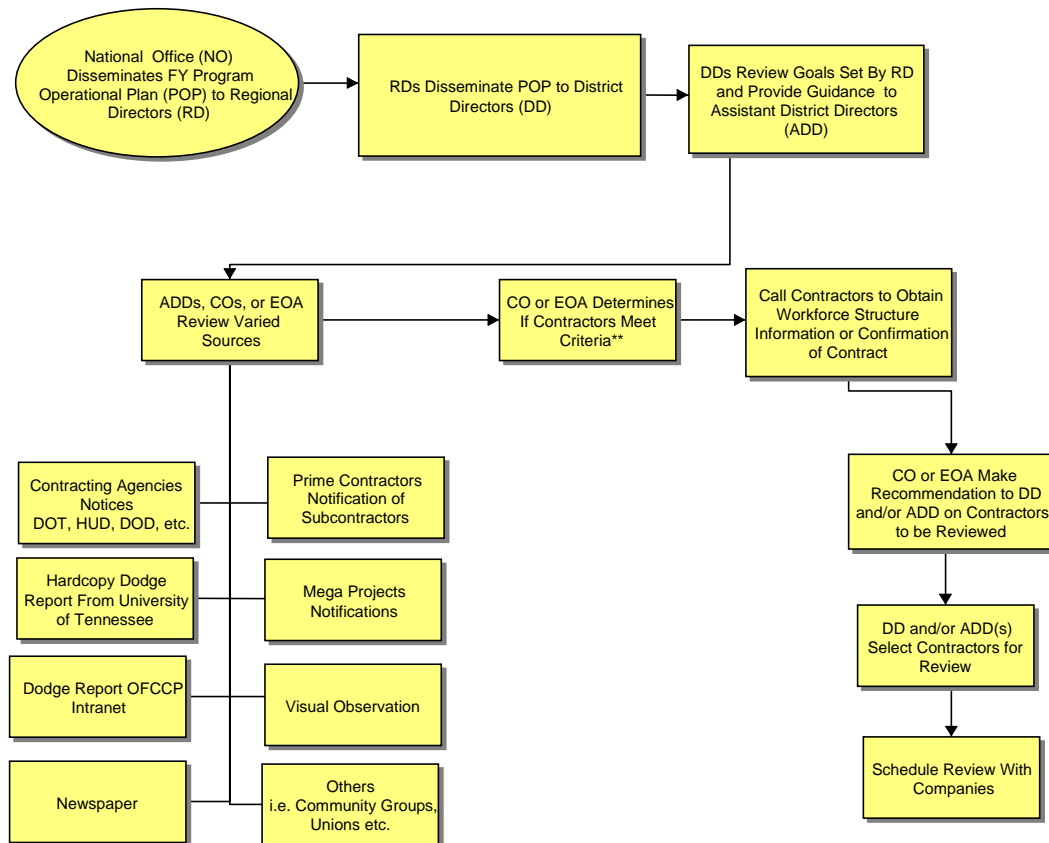
- A copy of the guidance for field offices on selecting contractors for construction reviews, including the criteria for selection, the sources of information to be used, and reporting mechanisms. Please provide the information no later than July 31, 2002.

## **APPENDIX**

**Steps For Selection of Construction Contractors For Compliance Reviews  
1990 Directive**

<b>Step 1</b>	Establish a pool of available contractors using Construction Resource Analysis (CRA), F.W. Dodge individual reports.
<b>Step 2</b>	Consult the Active Project List before using other contract/contractor sources. The Active Projects List contains all public construction projects in the offices' jurisdiction regardless of funding sources. If there are compliance evaluation candidates from other sources, add them to the pool already established through the CRA printouts. Call the owner of the project identified to determine if Federal funds or guarantees are involved.
<b>Step 3</b>	Determine whether work is being done primarily by the prime contractor or by its subcontractors. Using the F.W. Dodge report, contact the prime contractor to obtain names, addresses, and size of their major subcontractors. The subcontractors are to be considered candidates for compliance review in the same fashion as the prime contractor identified from the monthly Active Project List.
<b>Step 4</b>	Verify the existence of a Federal or federally assisted contract or subcontract of the requisite dollar amount.
<b>Step 5</b>	Determine date of last review. Do not review construction contractors who have been reviewed within the last two calendar years unless: <ul style="list-style-type: none"> <li>a) complaint investigations indicate significant problems which warrant a compliance review;</li> <li>b) there is a possible violation of a Conciliation Agreement or Letter of Commitment;</li> <li>c) State Fair Employment Practices agencies or EEOC investigations reveal significant equal employment opportunity problems; or</li> <li>d) their work force has significantly increased (or is expected to significantly increase) during the 2-year period since the previous review.</li> </ul>
<b>Step 6</b>	Consider contractors with the largest onsite construction workforce first. Prime contractors employing few workers should be considered a low priority regardless of the size of the contract. This data may, where possible, be obtained from the CC-257. Otherwise, they can be obtained from the contractor or subcontractor.
<b>Step 7</b>	Consider those contractors who have used fewer minorities or women in proportion to their availability in the total workforce before those who have a greater utilization.
<b>Step 8</b>	Give priority to contractors having a history of compliance review violations, individual complaints, or a reputation for noncompliance on the community or industry.

## Typical OFCCP Scheduling Process



\*\*Criteria  
Jurisdiction  
Dollar Amount of Contract  
Duration of the Contract  
Workforce Size  
Geographic Location

## Appendix C

<b>AGENCY RESPONSE</b>
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Reply to the Attention of:

FEB 20 2002

MEMORANDUM FOR WILLIAM D. PICKLE

Assistant Inspector General  
Office of Communications, Inspections and  
Evaluations

FROM:

DIXON M. WILSON  
Deputy Assistant Secretary  
Employment Standards Administration

SUBJECT:

Evaluation of OFCCP's Method of Selecting Construction  
Contractors for Compliance Reviews  
Report No. 2E-04-410-0002

The Employment Standards Administration (ESA) and the Office of Federal Contract Compliance Programs (OFCCP) submit the following comments on the Office of Inspector General's (OIG) January 16, 2002 draft report titled "OFCCP's Method of Selecting Construction Contractors for Compliance Review."

OIG's study focused on two areas of OFCCP's construction review selection process: (1) the methodology which OFCCP employs to obtain information to identify construction firms with covered contracts; and (2) the process which OFCCP uses to select contractors for compliance reviews from among those covered contractors which it has identified.

OIG concludes that OFCCP's method for identifying covered contractors is incomplete and that its selection process greatly varies. OFCCP recognizes that there are problems in each of these areas, especially with respect to OFCCP's selection criteria. However, OFCCP believes that OIG's report does not fully articulate the practical difficulties associated with OFCCP's role in ensuring that contracting officers and federal contractors comply with existing reporting mandates, particularly at the State level. For example, the OIG report does not recognize that many covered contractors do not contract directly with contracting agencies, but with municipalities or other local governmental units that receive federal assistance funneled through State block grants. The federal agency that awarded the grant to the State could not identify the contractors that ultimately received federal funds without identifying a complicated chain of subsequent grants from the State to the local governmental unit.

As noted in OIG's draft report, contracting officers and grant applicants are required by regulation to report to OFCCP the identity of any entity with which they enter into a covered contract. In turn, covered contractors must notify OFCCP of the award of any



covered subcontracts and the identity of covered subcontractors. These reporting mandates constitute the principal method for OFCCP to identify covered construction contractors. As OIG points out in its draft report, however, contracting officers and grant applicants often ignore these reporting requirements. Accordingly, OFCCP does not have a complete universe of construction contractors to draw from for compliance reviews. Over time, OFCCP has turned to other readily available sources of information, such as the Dodge Report, from which to select contractors for reviews.

OIG correctly points out that the Department of Labor (DOL) promulgated a reminder letter to fellow executive agencies in 1980 reminding contracting officers of the reporting mandate. OIG recommends that OFCCP seek to have DOL send out another reminder letter, and include in the letter a description of the process that contracting officers may use to submit required data to OFCCP. OFCCP believes that this recommendation is worthwhile. However, OFCCP is skeptical that a DOL reminder letter alone will have significant impact in light of the widespread noncompliance with reporting requirements. OFCCP will review additional options for securing these reports. OIG should note in its report that while OFCCP has the authority to promulgate regulations purporting to govern the actions of contracting officers of other executive agencies, such action requires as a practical matter consultation and cooperation between the agencies.

OFCCP generally concurs with OIG's main recommendations as follows:

1. Develop and disseminate guidance to District and Regional Offices regarding the use of sources for selecting construction contractors for review. OFCCP should:

- (a) Determine what database(s) can provide OFCCP with the most accurate and timely information needed for contractor selection.

**OFCCP Response:** OFCCP will continue to evaluate whether there are databases that provide OFCCP with more comprehensive information on covered construction contractors than the information contained in the Dodge Report.

- (b) Develop a database system where contractors can report into the agency on actual subcontractors being used on construction contracts.

**OFCCP Response:** OFCCP will develop a database to allow contractors to submit required information about covered subcontracts to OFCCP. OFCCP will notify contractors of this database through various media outlets, including OFCCP's web-site.

- (c) Inform executive branch department and agencies of their need to comply with the reporting requirement of 48 CFR Chapter 1, Part 22.804-2(c). OFCCP should develop a reporting mechanism for agencies, notify them in writing of the requirement, and where possible, meet with representatives of the agencies to stress the need for timely reporting. OFCCP should also determine if there is a need to enter into a Memorandum of Understanding with agencies in order to obtain the required information.



OFCCP Response: OFCCP will seek DOL approval for a letter to executive agencies reminding them of the reporting requirements. OFCCP also will develop a reporting process to provide contracting officers and grant applicants several easy methods for submitting required information about covered contracts to OFCCP. OFCCP will describe this reporting process in the reminder letter, and through various other media outlets, including OFCCP's web-site.

- (d) Request [that] contracting agencies include a notification to prime contractors regarding their affirmative action requirement of 41 CFR Chapter 60-4.2(d) when they award a contract, with a copy sent to OFCCP. The requirement states that Contractors shall provide written notification to the Deputy Assistant Secretary for OFCCP within 10 working days of award of any construction sub-contract in excess of \$10,000 at any tier for construction.

OFCCP Response: As noted above, OFCCP will seek DOL approval for a letter to executive agencies reminding them of the reporting requirements. OFCCP also will develop a database to provide contractors a method for submitting required information about covered subcontracts to OFCCP. OFCCP will describe this database in the reminder letter to contracting agencies and ask them to include such notification to contractors upon the initial award of the contract.

- (e) Use its official directive system to promulgate the sources for construction compliance reviews. This will guarantee easy access to the information for operational purposes and ensure a written record of the sources to be used in selecting contractors.

OFCCP Response: OFCCP will promulgate formal guidance to its field offices on the process for selecting contractors for construction reviews, including the criteria for selection and the sources of information to be used.

2/ OFCCP should determine and specify in writing what neutral criteria will be applied at each step of the selection process. If there is Region specific or District specific neutral criteria to be applied, it should also be specified in writing and maintained for review should the need arise. OFCCP should use its official directive system to clarify the neutral criteria to field personnel.

OFCCP Response: OFCCP will develop formal guidance on the process for selecting contractors for construction reviews, including the criteria for selection and the sources of information to be used.

3/ OFCCP should document the rationale for compliance review decisions and provide direction to field personnel in the directive on selection procedures. Consider development of an electronic system for field personnel to utilize this report on contractor selection/non selection.



a) Create a “Construction Contractor Scheduling Documentation Form.” The form should be completed for all scheduled construction reviews and included in the case file. This will create an institutional record of the decision should questions arise concerning selection and scheduling procedures. At a minimum the form should include OFCCP identification information, contractor identification information, and reasons the contract was scheduled for review.

OFCCP Response: OFCCP will develop formal guidance on the process for selecting contractors for construction reviews, including the criteria for selection and the sources of information to be used. OFCCP will consider the use of appropriate forms, and other reporting mechanisms, to document the selection process.

b) Create a “Construction Contractor Non Scheduling Documentation Form.” This form should be completed for all construction contractors that were considered by not scheduled for a compliance review. The form should be maintained in duplicate form in (a) the case file of selection contractors; and (b) a general District Office file either in hard copy or electronic format. At a minimum, the form should include OFCCP identification information, contractor identification information, and reason (s) the contractor was not scheduled for review.

OFCCP Response: OFCCP will develop formal guidance on the process for selecting contractors for construction reviews, including the criteria for selection and the sources of information to be used. OFCCP will consider the use of appropriate forms and other reporting mechanisms to document the selection process.