



**TRANSMITTAL**

**U.S. DEPARTMENT OF LABOR  
Employment Standards Administration  
Office of Federal Contract Compliance Programs**

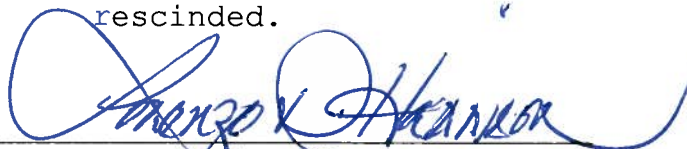
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Number: 288 Date: Revised September 18, 2009 OFCCP Order No. ADM 09-1/SEL

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**NOTE: Revisions have been made only to part B of the construction section (section III) of this Directive.**

1. **SUBJECT**: Procedures for Scheduling and Conducting Compliance Evaluations of American Recovery and Reinvestment Act of 2009 (ARRA) Funded Contractors.
2. **PURPOSE**: To transmit instructions for scheduling compliance evaluations of ARRA funded contractors, including pre-award clearances, and supply and service (S&S) and construction reviews.
3. **FILING INSTRUCTIONS**:  
  
 Holders of ADM and LEG Binders only:  File this Notice behind the "SEL" tab in your Administrative Practices Binder.  
  
 District and Area Office EOSs and EOAs only:   
 File this Notice behind the tab for ADM Directives in your FCCM Binder.
4. **OBSOLETE DATA**: None
5. **DISTRIBUTION**: A, B (both hard copy and electronically); C (hard copy only)
6. **ATTACHMENTS**: Letter Templates: Pre-Award Notification Letter; Supply and Service (S&S) ARRA Notification Letter; and ARRA Construction Scheduling Letter.
7. **EXPIRATION DATE**: This directive remains in effect until rescinded.

  
LORENZO D. HARRISON  
Acting Deputy Assistant Secretary for  
Federal Contract Compliance

  
DATE

**EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
WASHINGTON, D.C. 20210**

**OFCCP Order No. ADM 09-1/SEL**

1. **SUBJECT**: Procedures for Scheduling and Conducting Compliance Evaluations of American Recovery and Reinvestment Act of 2009 (ARRA) Funded Contractors.
  
2. **PURPOSE**: To transmit instructions for scheduling compliance evaluations of ARRA funded contractors, including pre-award clearances, and supply and service (S&S) and construction reviews.
  
3. **BACKGROUND**: The American Recovery and Reinvestment Act of 2009 (Recovery Act or ARRA) was signed into law by President Barack Obama on February 17, 2009. The Recovery Act authorizes up to \$787 billion in Federal spending through September 30, 2010. Potential Federal spending includes funding for construction projects in all 50 states, the District of Columbia, and the territories of the United States, as well as the procurement of supplies and services. Covered Federal contractors that receive ARRA funding must comply with the equal employment opportunity requirements of Executive Order 11246, as amended (EO 11246); Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). OFCCP is authorized to conduct compliance evaluations to ensure that ARRA funded contractors comply with their obligations under these laws.

To increase transparency and accountability of ARRA spending, OFCCP is obligated to track its ARRA-related and non-ARRA-related enforcement activities separately. Accordingly, OFCCP has established separate scheduling procedures to provide for compliance evaluations of ARRA funded contractors.

4. **DEFINITIONS:** For the purpose of this directive, the following terms are defined:
- **Contractor** - unless otherwise indicated, a prime contractor or subcontractor;
  - **ARRA Funded Contractor** - a contractor that has entered into an ARRA funded contract, in which the disclosed terms of the contract satisfy OFCCP's jurisdiction (i.e., total dollar amount meets the coverage threshold, and the funding is Federal or, in the case of construction contracts, federally-assisted);
  - **New ARRA Contractor** - an ARRA funded contractor with no other existing Federal contracts or subcontracts under OFCCP jurisdiction, including previously reviewed contractors who no longer have a covered Federal contract or subcontract under OFCCP jurisdiction;
  - **Established Federal Contractor** - an ARRA funded contractor who has an existing (non-ARRA) Federal contract, subcontract or federally-assisted construction contract under OFCCP jurisdiction;
  - **ARRA Pre-Award Scheduling List** - a list used to schedule compliance evaluations of ARRA funded contractors for whom pre-award clearance has been requested;
  - **ARRA Supply & Service (S&S) Compliance Evaluation** - a compliance evaluation of an S&S contractor receiving ARRA funds. An ARRA S&S compliance evaluation consists of a full desk audit and onsite review, even in the absence of systemic discrimination indicators; and
  - **ARRA Construction Compliance Evaluation** - a compliance evaluation of a construction contractor receiving ARRA funds.
5. **POLICY:** This directive transmits procedures for scheduling and conducting ARRA compliance evaluations. The procedures set forth in this directive apply only to ARRA funded contractors. This directive will remain in effect until it is rescinded or modified.

A. Basic Principles:

- 1) Active Case Management (ACM) procedures are not to be used in ARRA compliance evaluations. ARRA compliance evaluation procedures require that Regional, District and Area offices conduct a full compliance evaluation, including a full desk audit and onsite review, of every S&S ARRA funded contractor establishment scheduled, even in the absence of systemic discrimination indicators. See 41 CFR § 60-1.20(a)(1).<sup>1</sup>
- 2) Where OFCCP has reasonable cause to believe that a contractor has violated the equal opportunity clause, it may issue a notice requiring the contractor to show cause, within 30 days, why OFCCP should not institute monitoring, enforcement proceedings, or other appropriate action.<sup>2</sup>
- 3) In addition, due to the special nature of ARRA, the following OFCCP scheduling exceptions will not apply to ARRA compliance evaluations:
  - a. No more than 25 establishments per contractor exception: Presently, for contractors with multiple establishments, the Federal Contractor Scheduling System (FCSS) limits the number of compliance evaluations scheduled to 25 new evaluations during a scheduling cycle. The 25-establishment limit does not apply to ARRA compliance evaluations.
  - b. Two year exception: Presently, contractor establishments that have been reviewed by OFCCP are excepted from further review for a 24-month period. Under ARRA scheduling procedures, ARRA funded contractor establishments may be eligible for an ARRA compliance evaluation even if they have been reviewed within the previous 24 months. However, pre-award clearance is not required for contractor establishments reviewed by OFCCP within the past 24 months.

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<sup>1</sup> In particular, 41 CFR § 60-1.20(a)(1) states that "a compliance review may proceed in three stages:" desk audit, onsite review, and off-site analysis.

<sup>2</sup> See 41 CFR § 60-1.28. Field offices must obtain approval from the National Office before issuing such a show cause order.

- 4) ARRA scheduling procedures will apply the following scheduling exceptions:
  - a. ARRA funded contractor establishments that have undergone an FCSS compliance evaluation will be excepted from scheduling and review under ARRA procedures for six months from the date of the FCSS case closure.
  - b. ARRA funded contractor establishments that have undergone an ARRA compliance evaluation will not be subject to another ARRA evaluation. ARRA funded contractor establishments that have undergone an ARRA evaluation will also be excepted from scheduling for a standard OFCCP compliance evaluation, pursuant to FCSS, for 24 months from the date of closure of the ARRA compliance evaluation.
- 5) The National Pre-Award Registry provides information concerning S&S contractor establishments that have been reviewed by OFCCP within the past two years and have been found to be "In Compliance" with the equal employment opportunity (EEO) regulations enforced by OFCCP. See Directive Transmittal #223 (April 15, 1998). If an awarding agency finds the name of the prospective contractor establishment on the Registry, it should note that the company was on the Registry and consider the prospective contractor to be cleared by OFCCP.

Contractor establishments reviewed by OFCCP within the past 24 months, pursuant to the FCSS, will be listed in the Registry. In light of ARRA, the Registry will also identify those contractor establishments that have undergone an ARRA compliance evaluation.

6. **PROCEDURES**: The following procedures only apply to ARRA funded contractors. Regional offices should continue to follow current procedures for scheduling and conducting pre-award clearance and compliance evaluations of non-ARRA funded contractors.

**I. Pre-award Clearance Evaluations:**

**A. General Requirements:**

Per 41 CFR § 60-1.20(d), awarding agencies are required to notify OFCCP and request pre-award clearance for prospective contractors and their known first-tier subcontractors for awards of contracts or subcontracts of \$10 million or more, unless the contractor establishment appears on the National Pre-Award Registry.

- Processing Timeframes for Pre-award Requests for New ARRA Contractors: OFCCP should notify the awarding agency of OFCCP's intention to conduct a pre-award clearance evaluation within 3 business days of receiving the request. Pre-award clearance evaluations of new ARRA funded contractor establishments should be completed and the awarding agency informed of the results of the evaluation within 20 days of receipt of the pre-award request.
- Processing Timeframes for Pre-award Requests for Established Contractors: OFCCP should notify the awarding agency of OFCCP's intention to conduct a pre-award clearance evaluation within 15 days of receiving the request.

Pre-award clearance evaluations of established Federal contractors seeking an ARRA funded contract will be processed according to the pre-award clearance procedures outlined in Section 60-1.20(d). Once OFCCP has confirmed that the ARRA contract has been awarded, the contractor establishment receiving ARRA funds will be scheduled for an ARRA compliance evaluation.

**B. Pre-award Intake Procedures:**

- 1) Identification of ARRA Pre-award Requests: Due to the need to make a timely identification of which pre-award requests are for new ARRA funded contractors, the following procedures should be followed for all pre-award requests:

Upon receiving the pre-award request, the pre-award specialist will promptly make the assessments listed in items a through h below. Each Regional/District office will track ARRA pre-award clearance requests.

If the assessments cannot be made based on the information in the pre-award request, then the specialist should contact the awarding agency and/or the contractor to obtain the necessary information.

- a. *Where is the place of performance(s)?* If the place of performance is not in the region where the pre-award request was received, or if the performance of the contract occurs in multiple regions, the pre-award specialist initially contacted will forward the request to the appropriate region(s) and annotate the pre-award log appropriately.
- b. *Is this an ARRA funded contract?* If ARRA funds will not be used in the contract, the pre-award procedures outlined in 41 CFR 60-1.20(d) should be followed. If ARRA funds will be used, the pre-award specialist must identify whether the contractor is a new contractor or an established one. If it cannot be readily determined whether ARRA funds will be used, the request should be treated as if ARRA funds will be utilized until a determination regarding the source of funds can be made.
- c. *Is this a construction contract?* Pre-awards are only conducted for Supply and Service contracts. Refer to the Construction Contract Notification requirements on the OFCCP Web site for guidance.<sup>3</sup>
- d. *Does the contract award meet the \$10 million threshold?* When making this assessment consider the amount of the initial award (base year) together with the amount of any options to the contract.
- e. *Is the contractor establishment listed on the National Pre-Award Registry?* Contractor establishments that appear on the pre-award registry do not require pre-award clearance.

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<sup>3</sup> <http://www.dol.gov/esa/ofccp/regs/compliance/preaward/cnstnote.htm>

- f. *Is the contractor on the Excluded Parties List System for debarred status? If yes, notify the awarding agency that the contractor appears on the debarred list.*
- g. *Does the contractor have fewer than 50 employees? Contractors with fewer than 50 employees are not required to maintain an AAP; however they are still required to comply with the provisions of the equal opportunity clauses at 41 CFR § 60-1.4; 60-250.5; 60-300.5; and 60-741.5.*
- h. *Does the contractor have a current contract that meets OFCCP's jurisdictional requirements? The pre-award specialist will use various resources, such as the Government Services Administration (GSA) Federal Procurement Database System (FPDS) Next Generation, to search for current contracts. Print a copy of the results and maintain them in Folder #1 of the case file.*

2) Once the determination of ARRA coverage is made, pre-award requests will be classified as:

- a. **Non-ARRA pre-award request:** a pre-award request with no ARRA funding. Regions should continue to follow current procedures for processing pre-award clearance requests for non-ARRA funded contractors.
- b. **ARRA pre-award request for a new ARRA contractor**
- c. **ARRA pre-award request for an established Federal contractor**

C. Conducting the Pre-award Evaluation of ARRA Contractors:

1) General Procedures:

All new and established ARRA funded contractors will be subject to a pre-award compliance evaluation. As part of the pre-award compliance evaluation, the pre-award specialist will verify whether any active



conciliation agreements exist and that they are being complied with.<sup>4</sup>

OFCCP will notify the awarding agency of OFCCP's intention to conduct a pre-award clearance via fax, telephone or e-mail. A record of this correspondence should be maintained in the case file. If OFCCP does not inform the awarding agency within the appropriate clearance evaluation period, clearance may be presumed and the awarding agency is authorized to proceed with the award. See 41 CFR 60-1.20(d).

The District or Regional office conducting the pre-award clearance should follow up with the awarding agency to determine if the ARRA funded contract was awarded to the contractor. A record of this correspondence should be maintained in the case file. Once a record is established, the contractor establishment will be added to the ARRA Pre-Award Scheduling List for scheduling as provided in Section C(2) or C(3) below, as appropriate.

District and Area offices will use the OFCCP Case Management System (CMS) to track the status of all scheduled pre-award evaluations. When tracking pre-award evaluations of ARRA funded contractor establishments, offices are required to follow the ARRA CMS procedures.

2) Additional Procedures for Pre-award Evaluations of New ARRA Contractors:

In addition to the General Procedures, above, when conducting a pre-award evaluation of a new ARRA funded contractor, the procedures in this section should also be followed. As previously noted, OFCCP should complete the pre-award evaluation and notify the contracting agency of the evaluation results within 20 days of **receipt** of the pre-award request.

- a. Since new ARRA contractors do not have existing Federal contracts within OFCCP jurisdiction, a key component of the pre-award evaluation will be

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<sup>4</sup> OFCCP will notify the contractor of any alleged violations of the Conciliation Agreement and may initiate enforcement proceedings pursuant to violations of a Conciliation Agreement. See 41 CFR § 60-1.34.

the performance of onsite compliance assistance. Specifically, OFCCP will, at a minimum:

- Review the contractor's equal employment opportunity requirements and obligations under EO 11246, Section 503 and VEVRAA; e.g., how to develop an AAP, or maintain records;
  - Review OFCCP's enforcement role and procedures; and
  - Ensure that the contractor has copies of the "Equal Employment Opportunity is the Law" poster.
- b. As part of the pre-award compliance evaluation OFCCP will also determine whether the bidder, prospective prime contractor or proposed subcontractor, will be able to comply with all of the equal opportunity obligations of a Federal contractor.
- If OFCCP identifies signs of potential discrimination, the District Director should work with the contractor to resolve the issues.
  - If egregious discrimination is identified during the pre-award evaluation, the District office should contact the National Office DPO.
- c. Based upon the results of the evaluation, OFCCP will issue the appropriate closure document to the contractor as outlined in the Federal Contract Compliance Manual (FCCM).
- d. Once the evaluation has been closed, the contractor establishment should be added to the National Pre-award Registry, with an indication that an ARRA pre-award evaluation has taken place.
- 3) Additional Procedures for Pre-award Evaluations of Established Federal Contractors: Pre-award clearance evaluations of established Federal contractors seeking an ARRA funded contract will be processed

according to the pre-award procedures in Section 60-1.20(d).

- a. Once OFCCP confirms that the ARRA contract has been awarded, the contractor receiving ARRA funds should be scheduled for an ARRA S&S compliance evaluation.<sup>5</sup> The Compliance Officer (CO) handling the compliance evaluation will:
- Schedule the evaluation in order using the date of the original pre-award request;
  - Send the contractor the S&S ARRA Notification Letter<sup>6</sup> immediately after mailing the standard S&S scheduling letter;
  - Add the contractor to CMS and identify the evaluation as an ARRA review; and
  - Conduct a full review with an on-site investigation.

## II. Supply and Service Compliance Evaluations:

### A. Scheduling Procedures:

The National Office (NO) will compile and provide the Regional offices with an electronic ARRA Federal Contractor Scheduling System (ARRA-FCSS) list every 45 days. This list will identify the ARRA funded contractor establishments that each Regional/District office will schedule for an ARRA compliance evaluation. Regions will maintain all ARRA-FCSS lists on a cumulative basis.

To ensure consistency and fairness in the selection process, regions must schedule evaluations in strict sequential order; beginning with the first contractor on the first ARRA-FCSS release, and continuing down the list until reaching the end, before supplementing with the second ARRA-FCSS list, etc. When scheduling ARRA compliance evaluations, offices will issue the

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<sup>5</sup> Contractors with fewer than 50 employees are not required to develop an AAP, however an onsite review may still be conducted to determine compliance with EO regulations.

<sup>6</sup> See attached S&S ARRA Notification Letter.

established scheduling letter to each contractor being scheduled. Regional/District offices will track the status of all ARRA reviews using the same CMS system that is used to track non-ARRA reviews, but will identify the ARRA reviews, accordingly.

Before scheduling an ARRA funded contractor establishment for a compliance evaluation, Regional/District offices must verify that the establishment does not appear on the regular FCSS list or on the ARRA Pre-Award Scheduling List. Additionally, Regional/District offices must verify that a regular FCSS compliance evaluation is not currently open for the ARRA funded contractor establishment.

If an ARRA funded contractor establishment appears on any of the aforementioned lists, Regional/District Offices should follow the procedures below:

- 1) If an ARRA funded contractor establishment appears on both the regular FCSS list and the ARRA-FCSS list:
  - a. The office should reject the establishment on the FCSS list for evaluation and identify the establishment's presence on the ARRA-FCSS list as the reason for the rejection; and
  - b. The office should schedule the establishment for an evaluation in the order it appears on the ARRA-FCSS list.
  
- 2) If an ARRA funded contractor appears on the ARRA-FCSS list and the ARRA Regional Pre-award Clearance list:
  - a. The office should not reject the establishment for evaluation from either list until the establishment has actually been scheduled from either one of the lists. Once scheduled, the establishment should be removed from the list from which it was not scheduled. If the establishment is rejected from the ARRA-FCSS list, the office should identify the scheduling for a pre-award evaluation as the reason for the rejection. Similarly, if rejected from the Pre-award Clearance list, the office should identify the

scheduling of an ARRA compliance evaluation as the reason for rejection.

- 3) If an ARRA funded contractor that appears on the ARRA-FCSS list has an open compliance evaluation pursuant to the FCSS list:
  - a. The Regional/District office should continue the non-ARRA evaluation, using ACM procedures, as appropriate. See OFCCP Directive Transmittal #285 (September 17, 2008); and
  - b. The office should reject the establishment on the ARRA-FCSS list for evaluation and identify the open review pursuant to FCSS as the reason for the rejection.

B. Compliance Evaluation Procedures:

- 1) ACM procedures are not to be used in ARRA compliance evaluations. ARRA compliance evaluation procedures require that Regional/District offices conduct a full compliance review, including a full desk audit and an onsite review, in every ARRA funded compliance evaluation, even in the absence of systemic discrimination indicators. See 41 CFR §60-1.20(a)(1).<sup>7</sup>
  - a. OFCCP will send the contractor the S&S ARRA Notification Letter<sup>8</sup> immediately after mailing the standard S&S scheduling letter.
  - b. All established procedures<sup>9</sup> for conducting the desk audit and onsite review should be followed.
  - c. The CO will evaluate the contractor's compliance with its obligations under EO 11246, Section 503 and VEVRAA. See 41 CFR Parts 60-1 through 60-50, 60-741, 60-250 and 60-300.
- 2) If the ARRA compliance evaluation indicates that there is no systemic discrimination or other

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<sup>7</sup> In particular, 41 CFR § 60-1.20(a)(1) states that "a compliance review may proceed in three stages:" desk audit, onsite review, and off-site analysis.

<sup>8</sup> See attached S&S ARRA Notification Letter

<sup>9</sup> Procedures followed in every 50<sup>th</sup> compliance evaluation as outlined in the Directive Transmittal #285.

apparent non-compliance with EO 11246, Section 503 or VEVRAA, the CO will follow established closure procedures, including the issuance of the appropriate closure letter. If violations are identified, the CO will follow established procedures to resolve the issues.

- 3) Absent indicators of possible discrimination, each full compliance evaluation should be completed within 60 days.

### **III. Construction:**

#### **A. Construction Contract Notification Requirements:**

Federal contracting officers, applicants for and recipients of Federal financial assistance and current contractors are required to give written notice to OFCCP within 10 working days of award of a construction contract or subcontract in excess of \$10,000. See 41 CFR 60-4.2(c) and (d). The notice should be sent to the OFCCP Regional office in which the work will be performed and should include:

- The name, address and telephone number of the contractor or subcontractor;
- Employer Identification Number (EIN);
- Dollar amount of the contract;
- Estimated starting and completion dates of the contract or subcontract;
- Contract number;
- The geographical area(s) in which the contract or subcontract is to be performed; and
- If a prime contractor, a list of all known construction subcontracts of \$10,000 or more.

#### **B. Scheduling Procedures:**

The National Office (NO) will compile and provide electronic lists of ARRA funded projects identified by

the F.W. Dodge Report to the Regional offices. These ARRA Construction Project Lists will identify ARRA funded Federal and federally-assisted construction projects that each Regional office will use to identify and schedule contractors for construction compliance evaluations.

To ensure consistency and fairness in the selection process, regions must schedule eligible projects on their list in sequential order, following steps 1-7 below. The NO will periodically supplement the lists with updates from the Dodge report. Approved ARRA funded Mega Projects are excepted from being scheduled based on this List. Scheduling for ARRA funded Mega Projects will be based on the terms of the Mega Project agreement. See Section C, Mega Projects, below.

- 1) Region/District offices will contact the owner of a project selected from the region's List, in order to identify the prime contractor. Once the prime contractor is identified, the office should contact the prime contractor by phone to ensure that construction has actually begun on the project. If construction has not yet begun, the project is ineligible for review, and the office will return to its ARRA Construction Project List and select the next project. If the prime contractor confirms that construction has begun, the office should determine the following information:
  - a. The starting and estimated completion dates of construction and current stage of construction;
  - b. The names, addresses, telephone numbers and sizes of their construction subcontractors. The data for each subcontractor should include the number of trade and laborer employees (existing or yet to be hired) that are or will be working on the project, the dollar value of the subcontract and the estimated start and completion dates of the subcontract;
  - c. Region/District office will inquire as to whether the prime contractor has submitted a Contract Notification to OFCCP, and, if it has not, remind the contractor of its obligation to do so;

- d. The total number of trade employees and laborers working for the prime contractor on the project.
- 2) Once an onsite date is established, regions will identify the subcontractors working on the current phase of the project as of the date of the onsite.
  - 3) Based on the scheduled onsite evaluation, regions will contact the subcontractor(s) working on the current phase of the project as of the onsite date to gather any relevant information that has not previously been provided by the prime contractor, such as:
    - a. The estimated starting and completion dates of the subcontractor's construction work on the project;
    - b. The names, addresses, telephone numbers and sizes of any additional construction subcontractors. The data for each subcontractor should include the number of employees (existing or yet to be hired) that are or will be working on the project, the dollar value of the subcontract and the estimated start and completion dates of the subcontracts; and
    - c. The total number of trade employees and laborers working for the subcontractor on the project.
  - 4) All prime and subcontractors identified on the project may be eligible for review. A contractor may be selected for review if:
    - a. It is working on the current phase of the project on the date of OFCCP's scheduled on-site;<sup>10</sup>
    - b. It has a minimum of 5 trade employees and laborers assigned to the project;
    - c. It has a contract of \$10,000 or more;
    - d. It has not previously undergone an ARRA construction evaluation within the same

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<sup>10</sup> Contractors that are working on the current phase of the project but are not necessarily onsite on the day of the evaluation are eligible for review.



geographical area;<sup>11</sup> and

e. OFCCP has not reviewed the contractor, within the same geographical area, within the past 6 months.<sup>12</sup>

- 5) Regions/District will select three contractors, per identified project, for review. If more than three contractors on a project meet the basic selection criteria, above, then OFCCP will conduct an evaluation of the three contractors with the greatest number of trade employees and laborers on the project. If fewer than three contractors meet the basic selection criteria, then all contractors that satisfy the basic criteria will be reviewed. If no contractor meets the basic selection criteria, the project is ineligible and should be closed.
- 6) OFCCP will issue the ARRA Construction Scheduling Letter to the contractors selected for a compliance evaluation.<sup>13</sup>
- 7) If a project has a value of at least \$50 million, the Region/District office should contact the contracting official and the prime contractor to determine if the contract should be considered a "Mega Project." See Section C, below. The field office should discuss the Mega Project requirements and benefits (e.g., oversight committees, monitoring procedures, enhanced community relations), and assess the willingness of the contractor and contracting agency to proceed as a Mega Project. If the contractor is unwilling, proceed as a normal construction review. If the contractor is willing to proceed, and regional resources permit, follow Mega project procedures as outlined below.

#### C. Mega Projects:

- 1) A Mega Project is defined as:<sup>14</sup>

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<sup>11</sup> This applies only if the previous ARRA review was conducted by OFCCP. ARRA reviews conducted by any other agency will not prevent an ARRA construction evaluation by OFCCP.

<sup>12</sup> Reviews conducted within the past 6 months by other Federal or State agencies will not prevent an ARRA construction evaluation by OFCCP.

<sup>13</sup> The Construction Scheduling Letter is attached.

<sup>14</sup> See OFCCP Directive Transmittal #239, MOU between U.S. Department of Labor (DOL),

- a. A construction project which is directly federally funded or financially federally-assisted;
- b. Has a contract value of \$50 million or more;
- c. Will have significant economic and/or employment impact on a community; and
- d. Is expected to last more than one year.

2) The purpose of a Mega Project is to:

- a. Promote and support the goal of ensuring equal opportunity in the skilled trades, through effective recruitment and training, including apprenticeship programs; and
- b. Maintain and enhance relations and coordination among all concerned governmental entities, community groups, labor organizations, sponsors, and prime and subcontractors.

As part of the Mega Project, OFCCP will work to:

- Coordinate preliminary meetings with the contracting agency;
- Provide pre-construction technical assistance to the prime contractor and major subcontractors;
- Coordinate the establishment of an oversight committee to monitor and promote equal opportunity activities;
- Facilitate the introduction of contractors with community and labor groups;
- Provide technical assistance to the contractor and subcontractors in preparing comprehensive staffing data reports; and

- Conduct compliance evaluations of the prime contractor and its subcontractors as the project progresses.

3) All proposed Mega Projects should be sent to DPO for approval.

D. Compliance Evaluation Procedures:

The major focus of a construction compliance review should be the contractor's trade workforce in the geographical area(s) where the contract work is being performed. This review should consider the contractor's total on-site construction workforce, including those employees working on other construction projects in the relevant geographical area, whether or not those other projects are federally funded or federally-assisted, ARRA funded or non-ARRA funded.

- 1) ARRA construction compliance evaluations should be conducted using the current procedures for conducting non-ARRA funded compliance evaluations, e.g., aggregate the workforce in each trade on all construction work in the covered area. If this is the construction contractor's first Federal or federally-assisted construction contract, the Region/District office should provide technical assistance and ensure that the contractor's current employment practices comply with the appropriate equal employment statutes.
- 2) If potential discrimination is identified during a construction compliance evaluation, OFCCP will follow established procedures to resolve the issues. If this is the construction contractor's first Federal or federally-assisted construction contract, the field office should contact the Regional Solicitor to discuss the finding.
- 3) Absent indicators of discrimination, a construction compliance evaluation should be completed within 60 days.

- 4) The procedures in the FCCM should be followed when closing a construction compliance evaluation, including the issuance of the appropriate closure documents.

E. ARRA Recordkeeping Requirements: The case record of each construction contractor reviewed should specify ARRA funding as the reason the contractor was reviewed. The case record should also include the following:

- 1) The contract number and dollar amount used to establish jurisdiction. If the review is of a subcontractor, include the dollar amount of the subcontract and the work the subcontractor is to perform. The case record should also identify the prime contractor, the prime contractor's contract number, and the dollar amount of the prime contract.
- 2) Whether the contract is a Mega Project.
- 3) The Federal or federally-assisting agency awarding the prime contract.



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LORENZO D. HARRISON  
Acting Deputy Assistant Secretary for  
Federal Contract Compliance



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DATE