



# THE FACTS ABOUT MINORITY COMPLIANCE

A Proactive Plan to Simplify Affirmative Action Reporting

BY FRED ODE

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## A Proactive Plan to Simplify Affirmative Action Reporting

For the government-employed contractor or subcontractor, minority compliance reporting is a regular part of doing business. Sometimes difficult and often changing, this reporting requirement calls for businesses to stay current with affirmative-action regulations, as well as to maintain accurate and up-to-date employee information. Failing to do so can mean the loss of federal contracts or, worse, litigation and legal penalties.

The construction industry has come a long way since 1969, when the U.S. Department of Labor under Richard Nixon initiated the nation's first clearly defined affirmative-action program. The Revised Philadelphia Plan required contractors in that city to set goals and timetables for utilization of minority labor. Instead of imposing quotas on contractors, the plan established a percentage range of minority workers to be employed from a particular trade on each contract. Employers from the nearly all-white trades—ironworkers, plumbers and pipefitters, sheet-metal workers, electrical workers, roofers and others—were required to show statistical evidence of compliance. Today, minority compliance reporting follows the basic guidelines of the Philadelphia Plan, but 36 years later, it is larger and more complex.

## CONTRACTOR OBLIGATIONS

On the federal level, government construction contractors must comply with Executive Order 11246 (pertaining to racial minorities and females), the Rehabilitation Act of 1973 (pertaining to individuals with disabilities) and the Vietnam-Era Veterans Readjustment Assistance Act of 1974 (pertaining to "VEVRAA" veterans). Contractors must comply



under very clear-cut criteria, and companies must be sure to crunch their numbers in order to comply.

Generally, requirements extend to—or “cover”—any company with a federal contract or subcontract exceeding \$10,000 in any 12-month period. In addition, employers with contracts in excess of \$50,000 and 50 or more employees are obligated to maintain a written affirmative-action plan (AAP) for each of its establishments. In the case of VEVRAA coverage, single contracts must meet or exceed \$100,000, with AAPs required in the case of 50 or more employees. Minority-compliance legislation also applies to subcontractors when the subcontract is necessary, in whole or part, to the fulfillment of a federal prime contract. (Detailed federal compliance information can be found at [www.dol.gov/ofccp/](http://www.dol.gov/ofccp/).)

Governed by the Office of Federal Contract Compliance Programs (OFCCP) under the Department of Labor, covered federal construction contractors must take 16 affirmative-action steps as listed in the Code of Federal Regulation, “Standard Federal Equal Employment Opportunity (EEO) Construction Contract Specifications.”<sup>1</sup>

1. Ensure a harassment-free work environment. (CFR 60-4.3[a]7.a.)
2. Track minority and female recruitment efforts. (CFR 60-4.3[a]7.b.)
3. Track minority and female applicants. (CFR 60-4.3[a]7.c.)
4. Notify the Director when the union referral process is impeded. (CFR 60-4.3[a]7.d.)
5. Develop training opportunities that expressly include minorities and women. (CFR 60-4.3[a]7.e.)
6. Disseminate the EEO policy. (CFR 60-4.3[a]7.f.)
7. Review the EEO policy and obligations with appropriate employees. (CFR 60-4.3[a]7.g.)
8. Disseminate the EEO policy externally. (CFR 60-4.3[a]7.h.)
9. Direct recruitment efforts to minority, female and community organizations. (CFR 60-4.3[a]7.i.)
10. Encourage minority and female employees to recruit other minority persons and women. (CFR 60-4.3[a]7.j.)
11. Validate selection requirements where required. (CFR 60-4.3[a]7.k.)
12. Conduct evaluation for and encourage interest in promotion of all minority and female personnel. (CFR 60-4.3[a]7.l.)
13. Ensure standing practices do not have a discriminatory effect. (CFR 60-4.3[a]7.m.)
14. Ensure that facilities and activities are nonsegregated. (CFR 60-4.3[a]7.n.)
15. Document all solicitations for subcontracts from minority and female contractors and suppliers. (CFR 60-4.3[a]7.o.)

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<sup>1</sup> Executive Order no. 11,246, Code of Federal Regulations, title 41, § 60-4.3.

16. Review adherence of all supervisors to the EEO policies and obligations. (CFR 60-4.3[a]7.p.)

Contractors should review the detailed directive (found at [www.law.cornell.edu/cfr/text/41/60-4.3](http://www.law.cornell.edu/cfr/text/41/60-4.3)) carefully. It may be overwhelming to the novice government contractor; however, with preparation and planning, contractors can easily meet their responsibilities.

## PRE-PLANNING REDUCES RISKS

Posting an EEO policy statement at your jobsite will already meet one specification, and every contractor has on-the-job training, so it's a short extra step for contractors to make sure they are documenting women and minority participation. Measures like this will comprise, in part, the "good faith efforts" that add up to compliance. To ensure that covered contractors cover themselves, however, they should include affirmative action items in the yearly calendar. This would include, for example, scheduling an annual meeting with managers to discuss affirmative action programs. Further, documentation of affirmative-action compliance should be kept in a centralized location as you complete compliance actions. Rather than seeing the requirements as various hoops to jump through, contractors will do better to view the 16 steps as an outline for an affirmative-action plan that will keep them free from violations year after year.

## STATE AND LOCAL REGULATIONS

Most states and many municipalities have similar affirmative-action requirements; however, some agencies may even have additional considerations. A contractor who is in complete compliance at the federal level, cannot assume that the same affirmative-action plan will therefore comply with state or local requirements. Cleveland, Ohio, for example, passed a controversial law mandating that on construction projects for which the city invests more than \$100,000, at least 20 percent of the jobs must go to Cleveland residents. Projects that involve state and federal money were called into question, and federal regulators claimed the 20-percent law violates federal "regulations that prohibit the use of local hiring preferences."<sup>2</sup> Cleveland made its case to Ohio officials, who eventually changed their ruling in favor of the local law.

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<sup>2</sup> City of Cleveland v. State of Ohio, Ohio Department of Transportation, No. 06-3611 (6th Cir. 2007), Justia.

Access to state and local compliance agency Web sites is the single best way to stay current on regulation changes and filing requirements. Some agencies, such as Ohio's Construction Compliance Unit, request that all forms be submitted electronically through their Web sites.

## MANAGING COMPLIANCE RECORDS

Fortunately, computerized bookkeeping practices and software packages can easily track minority employee information, making reporting much easier and faster for many government contractors.

A majority of construction-specific software products have some type of user-defined fields that link to employees, either in payroll or human-resources modules. These fields allow companies to define and track employees according to race, gender, age, disability, veteran status or other predetermined criteria.

Some applications offer built-in features designed exclusively for minority compliance reporting purposes. For example, these programs make it possible to define minority compliance groups according to specific agency requirements, attach groups to specific trades (even assigning trainee, apprentice and journeyman status, as required by some agencies) and then indicate a minority status for each employee record. Once the setup is complete, minority reports can be run at any time from data already entered through regular payroll processing.

To comply with the numerous affirmative-action specifications that require detailed record-keeping, many software systems also offer features that allow an unlimited number of attachments, including pictures, images and documents, for virtually any record. For instance, employers can attach recruitment letters, employment applications, training certifications and personnel reviews as proof of its "good faith efforts" to attract, retain and promote minority employees.

## COMPLIANCE BEGINS WITH ATTITUDE

Affirmative action leads companies to attract and place qualified females and minorities considered under-balanced or underutilized in jobs. It is not about strict hiring quotas. Neither is it about merely jumping through hoops and collecting certifications. The last thing a contractor should want to do is appear unwilling and uncooperative to a compliance officer. Contractors who may have been unaware of their responsibilities under affirmative-action legislation until now should take the opportunity to begin before negative consequences accrue. Compliance will begin with the right attitude and a bit of research, with a little help from construction-specific software to make reporting requirements more manageable.



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A version of this whitepaper first  
appeared in Construction Executive



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