

CLIENT ALERT

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New Scrutiny for Construction Companies Working on Federal Projects

For many years, the Office of Federal Contract Compliance Programs (“OFCCP”) has paid scant attention to construction companies working on federal projects. That is about to change now that Congress has authorized more than \$780 billion in federal spending as part of the American Recovery and Reinvestment Act (“Recovery Act”).

OFCCP, a division of the U.S. Department of Labor, has announced specific steps it will take to ensure that construction contractors and subcontractors receiving stimulus funds comply with federal equal employment opportunity (“EEO”) and affirmative action laws.

Under OFCCP’s approach announced in July, any construction company that has a contract or subcontract for \$10,000 or more in connection with a federally funded project and has 10 employees on the job site is subject to audit. Contractors working on so-called “Mega Projects” will face more intense scrutiny. Construction companies hoping to remain anonymous must banish the thought. OFCCP’s national office will identify subcontractors from information provided by federal contracting officers and prime contractors, compile an audit list by project, and notify OFCCP’s regional offices, including those in the Mid-Atlantic region, of which projects to review.

In issuing the notice of audit procedures under the Recovery Act, OFCCP stressed that this enforcement initiative was distinct from its regular audit program, which in the recent past has focused on supply and service contractors, not on construction contractors. OFCCP’s new emphasis on construction contractors arises from the simple fact that much of the stimulus money will be directed to infrastructure projects. OFCCP’s enforcement will intensify as more federal money is released. The Recovery Act authorizes as much as \$787 billion in federal spending through September 30, 2010.

Under OFCCP’s enforcement directive, Mega Projects will receive special attention. A Mega Project has a contract value of \$50 million or more, has a significant economic and/or employment impact on a community, and is expected to last more than one year. On Mega Projects, OFCCP would, among other things:

- Coordinate preliminary meetings with the contracting agency
- Coordinate establishment of an oversight committee to monitor the project
- Facilitate introductions of contractors with community and labor groups
- Conduct compliance evaluations of the prime and subcontractors as the project progresses

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Under Department of Labor regulations, construction contractors must demonstrate good-faith efforts to comply with EEO and affirmative action rules. A construction contractor's obligations include:

- Communicating its EEO policies both internally and externally
- Training supervisors in EEO and affirmative action issues
- Making affirmative outreach efforts to groups promoting employment of women and minorities in the construction trades
- Making affirmative outreach efforts to minority and women-owned businesses as potential subcontractors
- Preparing and maintaining applicant flow data
- Evaluating selection procedures
- Evaluating women and minority candidates annually for promotional opportunities
- Ensuring that seniority practices do not have discriminatory impact
- Ensuring that the workplace, except for restrooms and changing areas, is non-segregated

Construction contractors desiring federally funded work would be wise to review their policies and practices now. To learn more about how Stevens & Lee can assist you with EEO and affirmative action compliance, please contact [Jo Bennett](#), who heads the firm's affirmative action practice, at 215-751-2883, [Harry Horwitz](#) at 856-354-9200, or your Stevens & Lee attorney.

Labor & Employment Department

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