Equal Employment Opportunity Contract Compliance Guide

March 2018
At Shimmick and SFI JV, the executive management team promotes diversity through equal opportunity. We hold management, employees and subcontractors to fair and reasonable standards not to discriminate and to take affirmative action not to discriminate and based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability or status as a protected veteran. SFI JVs obligation to diversity and equal opportunity are in accord with Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended Title VI of the Civil Rights Act of 1964 and related statues, and U.S. Department of Labor-Office of Federal Contract Compliance regulations at 41 Code of Federal Regulations Part 60 et seq. Wendy Bonnell is the EEO Office for Shimmick and SFI JV. Ms. Bonnell may be contacted at:

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This Equal Employment Opportunity Contract Compliance Guide (Guide) provides the procedural framework for administering federal and State equal employment laws, ensuring our subcontractors are equally compliant with undertaking affirmative steps to ensure equal employment opportunity in the workforce and ensuring allegations of non-compliance and complaints are investigated and resolved promptly.

The Guide will assist SFI JV’s management and supervisors on the importance of:

- Understanding SFI’S obligation to comply with nondiscrimination laws.
- Ensuring all applicants and employees are treated with respect and equality in relation to opportunities for hire, training and promotion regardless of race, ethnicity, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran.
- Disseminating the EEO policies to employees.
- Partnering with the EEO Officer to report disruptions, allegations of discrimination and resolve EEO related issues.
- Ensuring SFI’s subcontractors, suppliers, and services firms comply with nondiscrimination obligations.
- Submitting EEO reports as required in the affirmative action steps that are described in the Standard Federal Equal Employment Specifications published at 41 CFR 60-4.3.
- Soliciting Small Businesses, Disadvantaged Businesses, Disabled Veteran Businesses, Minority and Women-owned Businesses to participate in SFI’s subcontracting opportunities.

The Guide compiles information and direct excerpts obtained and derived from various resources including but not limited to Department of Labor websites and the Technical Assistance Guide for Federal Construction Contractors (may 2009) without specific attribution made herein.
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SFI JV complies with all federal and state equal employment opportunity laws. In all hiring and employment practices, Shimmick makes every effort to ensure that it does not discriminate against employees and applicants. This policy addresses SFI’s commitment to providing equal opportunity employment for all employees and applicants and to promoting diversity in the workplace.

SFI JV complies with all laws prohibiting discrimination against employees and applicants based on race, color, religion, sex, age, national origin, citizenship status, disability, genetic information or veteran status. Shimmick complies with all federal government contracting laws and is committed to providing equal employment opportunities for qualified employees and applicants, such as women, minorities, persons with disabilities and certain groups of veterans. Equal opportunity extends to all aspects of the employment relationship, including hiring, promotions, training, working conditions, compensation and benefits. SFI JV’s policies and practices are to reflect SFI JV’s commitment to nondiscrimination in all areas of employment, including contracting opportunities for vendors and suppliers.

Failure of an employee of SFI JV to comply with the terms of this policy should be brought to the immediate attention of a supervisor, manager or the Equal Employment Opportunity Officer. The Equal Employment Opportunity Officer has the responsibility to administer and promote a pro-active awareness program and has the authority to apply, exercise and implement this Equal Opportunity Policy at all times.

The Equal Employment Opportunity Officer is:

Wendy Bonnell, EEO Officer
8201 Edgewater Drive, Suite 202
Oakland, CA 94721
(510) 777-5000

This policy applies to all SFI JV’s Executive Management, Managers, Supervising personnel and or employees acting in a Supervisory capacity, our business partners and employees to ensure everyone is treated with dignity and respect, in a non-discriminatory work environment and free from harassment.

Refer to Appendix 1 EEO Policy, Affirmative Action Policy and Notice to Employees
Shimmick is a construction contractor with over 100 employees and contracts valued over $50,000. Shimmick pursues federal, State and local funded government construction contracts and is awarded contracts as a prime or subcontractor. As a condition of the government awarded contract, Shimmick is required to comply with federal and State equal employment laws.

**Federal Regulations**

The federal EEO laws apply to federal government contractors and subcontractors, including construction contractors.

*Title VII of the Civil Rights Act of 1964*, as amended, prohibits employment discrimination against an applicant or employee on the basis of race, color, religion, national origin or sex. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

Title VII is enforced by the U.S. Equal Employment Opportunity Commission.

*Executive Orders 11246, 11375 and 11478* prohibit federal contractors and subcontractors and federally-assisted construction contractors and subcontractors that generally have contracts that exceed $10,000 from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. They also require covered contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

In addition, the Executive Orders cover contractors and subcontractors who hold any federally assisted construction contract in excess of $10,000.

The Executive Orders are enforced by the Office of Federal Contract Compliance Programs (OFCCP) within the U.S. Department of Labor (*41 CFR Parts 60-1 through 60-741*).

*Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)*, prohibits discrimination and requires employers and federal contractors or subcontractors with contracts valued in excess of $10,000 to take affirmative action to hire, retain, train and promote qualified individuals with disabilities. In addition, the regulations implementing Section 503 require that covered contractors and subcontractors with a Government contract or subcontract valued to be $50,000 or more and who have 50 or more employees develop and maintain a written Section 503 affirmative action program.
Section 503 of the Rehabilitation Act of 1973, as amended is enforced by the Employment Standards Administration's OFCCP within the U.S. Department of Labor. 

(41 CFR Part 60-741 and 29 CFR Part 1630)


On March 24, 2014 the VEVRAA at 41 CFR Part 60-300 was implemented. VEVRAA prohibits federal contractors and subcontractors from discriminating in employment against protected veterans and requires employers to take affirmative action to recruit, hire, promote and retain these veterans. The Final Rule announced on August 27, 2013 strengthens the affirmative action provisions of the regulations to aid contractors in their efforts to recruit and hire protected veterans and improve job opportunities for protected veterans. VEVRAA states:

a. (1) Any contract in the amount of $100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans. This section applies to any subcontract in the amount of $100,000 or more entered into by a prime contractor in carrying out any such contract.

(2) In addition to requiring affirmative action to employ such qualified covered veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the Secretary of Labor shall prescribe regulations requiring that -

- (A) each such contractor for each such contract shall immediately list all of its employment openings with the appropriate employment service delivery system (as defined in section 4101(7) of this title), and may also list such openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the Department of Labor), except that the contractor may exclude openings for executive and senior management positions and positions which are to be filled from within the contractor's organization and positions lasting three days or less;

- (B) each such employment service delivery system shall give such qualified covered veterans priority in referral to such employment openings; and

- (C) each such employment service delivery system shall provide a list of such employment openings to States, political subdivisions of States, or any private entities or organizations under contract to carry out employment, training, and placement services under chapter 41 of this title.

(3) In this section:

- (A) The term "covered veteran" means any of the following veterans:

  - (i) Disabled veterans.

  - (ii) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized.
▪ (iii) Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order No. 12985 (61 Fed. Reg. 1209).

▪ (iv) Recently separated veterans.
  o (B) The term "qualified", with respect to an employment position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

b. If any veteran covered by the first sentence of subsection (a) believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor’s contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

c. The Secretary of Labor shall include as part of the annual report required by section 4107(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing employment openings, the nature, types, and number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2)(B).

d. (1) Each contractor to whom subsection (a) applies shall, in accordance with regulations which the Secretary of Labor shall prescribe, report at least annually to the Secretary of Labor on -

   (A) the number of employees in the workforce of such contractor, by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans;

   (B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are qualified covered veterans; and

   (C) the maximum number and the minimum number of employees of such contractor during the period covered by the report.

(2) The Secretary of Labor shall ensure that the administration of the reporting requirement under paragraph (1) is coordinated with respect to any requirement for the contractor to make any other report to the Secretary of Labor.

The new VEVRAA regulations became effective on March 24, 2014. However, contractors with a written affirmative action program (AAP) already in place on the effective date have additional time to come into compliance with the AAP requirements. This compliance structure seeks to provide contractors the opportunity to maintain their current AAP cycle.

Refer to Appendix 2

For a side by side comparison on the changes in the VEVRAA regulations. The new VEVRAA regulations became effective March 24, 2014.
The VEVRAA law is enforced by OFCCP. (41 CFR Part 60-300.)

**Title I of the Americans with Disabilities Act of 1990 (ADA),** as amended, prohibits employment discrimination by employers with 15 or more employees against qualified individuals on the basis of disability. The Equal Employment Opportunity Commission (EEOC) has primary authority for enforcing the ADA, but OFCCP is authorized to act as EEOC’s agent in processing and investigating ADA complaints falling within the overlapping jurisdiction of Section 503 and Title I of the ADA. (41 CFR Part 60-742 and 29 CFR Part 1630 and 42 USC 12101)

**Immigration Reform and Control Act of 1986 (IRCA),** requires employers to keep certain records (I-9 forms) for the U.S. Citizenship and Immigration Services (USCIS) that verify their employees’ eligibility to work in the U.S. (i.e., proof of citizenship or authorization to work).

**23 United States Code – Section 140(a) Nondiscrimination (Title 23 Highways)**

(a) Prior to approving any programs for projects as provided for in subsection (a) of section 105 of this title, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. He shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary shall, where he considers it necessary to assure equal employment opportunity, require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. The Secretary shall periodically obtain from the Secretary of Labor and the respective State highway departments information which will enable him to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as he shall deem necessary to carry out the equal employment opportunity program required hereunder. (Applicable to contracts with FHWA funding.)

**Who Enforces federal EEO laws and regulations?** The OFCCP generally monitors compliance with these laws primarily through compliance evaluations, during which a compliance officer examines the contractor’s affirmative action efforts and employment practices. The OFCCP also investigates complaints filed by individuals alleging employment discrimination under any of these laws.

Federal Highway Administration (FHWA) enforces 23 USC 140 and 23 CFR 230, which applies to State and local government Departments of Transportation, as recipients or subrecipients of FHWA funding.
State Regulations

**California Government Code 12990 et seq** (a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part relating to discrimination in employment and to the nondiscrimination requirements of this section and any rules and regulations that implement it. (b) Prior to becoming a contractor or subcontractor with the state, an employer may be required to submit a nondiscrimination program to the department for approval and certification and may be required to submit periodic reports of its compliance with that program. *(Fair Employment and Housing Act--FEHA)*

**California Labor Code 1735** – A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

**California Labor Code 1777.6** - An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

**Who Enforces State EEO laws and regulations?** The Department of Fair Employment and Housing enforces State EEO laws and regulations. Entities and Persons Covered by the FEHA – generally, any employer regularly employing five or more persons is covered by the FEHA. Such employers include the state, cities, counties, other government bodies and private employers. Also subject to the provisions of the FEHA are labor organizations, employment agencies, and apprenticeship programs. An exception to the five-employee minimum occurs whenever harassment is at issue. Every employer employing one or more persons or receiving the services of one or more independent contractor(s) is subject to the FEHA’s prohibition of harassment. Individual co-workers who harass another employee in violation of the FEHA are personally liable. The FEHA also investigates complaints filed by individuals alleging employment discrimination under any of these laws.

State and local government Departments of Transportation, as recipients or sub-recipients of State funding are required to notify the FEHA when an allegation of discrimination has occurred.
The OFCCP carries out its enforcement responsibilities by:

✔ Offering technical assistance, including providing training workshops and publications to federal contractors and subcontractors to help them understand regulatory requirements and the compliance evaluation process;

✔ Conducting compliance evaluations and complaint investigations of federal contractors' and subcontractors' personnel policies and practices;

✔ Forming linkage agreements between contractors/subcontractors and the Department of Labor's employment and training programs, outside organizations, and recruitment sources to help employers identify and recruit qualified employees;

✔ Negotiating agreements, including formal Conciliation Agreements with contractors and subcontractors found in violation of regulatory requirements;

✔ Monitoring contractors' and subcontractors' progress in fulfilling the terms of their conciliation agreements through periodic compliance reports (EEO-1 Report).

The FHWA through the State and Local government Department of Transportation carries out its enforcement responsibilities by:

✔ Offering technical assistance, including providing training workshops and publications to contractors and subcontractors to help them understand regulatory requirements and the compliance evaluation process;

✔ Delegating the primary responsibility of conducting compliance evaluations and complaint investigations on contractors' and subcontractors' EEO policies and practices on contracts with FHWA financially assistance to State and Local government Departments of Transportation;

✔ Offering federal financial assistance to State Departments of Transportation to promote On-The-Job/ Pre-Apprenticeship grants as for employment and training programs that will further assist outside organizations, and recruitment sources to help employers identify and recruit qualified employees; and

✔ Monitoring contractors' and subcontractors’ progress in fulfilling the terms of their conciliation agreements through periodic compliance reports (FHWA 1391 reports).
State Responsibilities

Generally, State responsibilities in this Guide means State Departments of Transportation, such as Caltrans.

✔ Offering technical assistance, including providing seminars and conferences and publications to contractors and subcontractors to help them understand regulatory requirements;

✔ Conducting compliance evaluations and complaint investigations of contractors' and subcontractors’ personnel policies and practices;

✔ Caltrans selects contracts for compliance evaluations when the contract award is above $10,000,000 and the project is 50-80 percent complete. Unless there are several allegations of discrimination from applicants and or employees, then a compliance evaluation will be conducted regardless of contract award size.

✔ Forming linkage agreements between contractors/subcontractors and the Department of Labor’s employment and training programs, outside organizations, and recruitment sources to help employers identify and recruit qualified employees (e.g., pre-apprentice programs through Workforce Investment Board grants);

✔ Negotiating agreements, including formal Conciliation Agreements with contractors and subcontractors found in violation of regulatory requirements;

✔ Monitoring contractors’ and subcontractors’ progress in fulfilling the terms of their conciliation agreements through periodic compliance reports (FHWA 1391, EEO-1 Reports and firm's employment statistics).
Who is Subject To OFCCP – FHWA – FEHA?

The OFCCP, FHWA and FEHA are responsible for enforcing federal and State laws and regulations that prohibit discrimination and require contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran.

Which construction contractors and subcontractors are subject to OFCCP and FHWA administered laws.

A construction contractor or subcontractor is covered if they have:

- A federal construction contract or subcontract of over $10,000;
- A federally assisted construction contract or subcontract of over $10,000;
- A construction contract or subcontract of over $10,000 with a federal non-construction contractor or subcontractor, if the construction contract/subcontract is necessary in whole or in part to the performance of the Federal non-construction contract or subcontract; or

Multiple federal construction contracts or subcontracts of less than $10,000 that, when added together total more than $10,000 within any 12 month period or can reasonably be expected to total more than $10,000 during that time. Section 503 applies if they have a construction contract/subcontract in excess of $10,000.

VEVRAA applies if they have a construction contract/subcontract of $100,000 or more (or a contract entered into prior to December 1, 2003 and not since modified of $25,000 or more).

Federal and federally assisted construction contractors and subcontractors who are subject to OFCCP requirements have a contractual obligation to comply with the applicable OFCCP-administered laws governing equal employment opportunity and affirmative action.
Are construction contractors required to place the EEO and affirmative action obligations specified in the contract documents in the Subcontract agreements in excess of $10,000?

YES

Refer to Appendix 3 for EEO Clause language

The construction contractor’s EEO and affirmative action obligations as specified in the Government contract must flow down to each subcontract agreement in excess of $10,000. Every covered subcontract must contain the equal opportunity clause found at 41 CFR 60-1.4(a), which specifies the obligations imposed under Executive Order 11246. Covered federally assisted construction subcontracts must incorporate the equal opportunity clause found at 41 CFR 60-1.4(b). In addition, covered construction subcontracts must incorporate the equal opportunity clauses found at 41 CFR Parts 60-250.5, including the specified goals for minority and female participation for the contract.

The text of these equal opportunity clauses may be expressly included in each subcontract or incorporated by reference. Importantly, the equal opportunity clauses are deemed to be a part of every covered construction and subcontract even if they are not physically incorporated in the contract documents.

In addition to the equal opportunity clauses, Federal and federally assisted construction contracts and subcontracts in excess of $10,000 must include the “Standard Federal Equal Employment Opportunity Construction Contract Specifications,” which are found at 41 CFR 60-4.3. The specifications describe the affirmative action obligations and set forth the specific affirmative action steps the construction contractor must implement in order to make a good faith effort to achieve the goals for minority and female participation that were listed in the bid solicitation.

The OFCCP’s compliance evaluation determinations methodology is the model followed by FHWA and FEHA. This Guide will reference and follow OFCCP’s model as the industry standard used to comply with federal and State nondiscrimination laws.

To comply with federal and State nondiscrimination laws, contractors must demonstrate good faith efforts to meet their affirmative action goals for the employment of minorities and women in the construction industry.

In order to take into account the fluid and temporary nature of the construction workforce, OFCCP does not require construction contractors to develop written affirmative action programs. Instead, OFCCP has established utilization goals based on civilian labor force participation rates, and has outlined in the regulations good faith steps for construction contractors to follow.

The goals, by geographic area, are determined by the Deputy Assistant Secretary, OFCCP, and are issued pursuant to 41 CFR 60-4.6. A “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity” is included in the bid
specifications for all federal and federally assisted construction contracts and subcontracts in excess of $10,000. The Notice sets forth the goals for minority and female participation.

The goals are expressed as a percentage of the hours worked by the contractor’s aggregate workforce in each trade on all construction work performed in the geographic area, regardless of whether the work is federal, federally assisted or non-federal. Where a contractor performs construction work in a geographic area located outside the geographic area in which it has a covered contract, it must apply the goals established for the geographic area where the work is actually performed. Goals in this second geographic area also are applicable to both federally involved and non-federally involved construction work in that area. See the example in (b) below.

(a) Goal for Women: The current nationwide goal for the utilization of women is 6.9% of work hours and applies to all of a contractor’s construction sites regardless of where the federal or federally assisted contract is being performed.

(b) Minority Group Goal: The individual goal for minority utilization for work in the States of California, Hawaii, Oregon, and Washington are listed in Appendix 4. Additional State minority utilization goals are available on the OFCCP website at: www.dol.gov. Minority goals are formulated in terms of work hours performed in a specific Standard Metropolitan Statistical Area (SMSA) or Economic Area (EA). For example, ABC Company has a federal contract for construction work in SMSA X. The goals for SMSA X apply to all of ABC’s construction work in SMSA X, both the federally involved and the non-federally involved construction work. In addition, if ABC Company performs construction work in SMSA Y, it would apply the SMSA Y goals to all its construction work in SMSA Y, whether or not it has a Federal or federally assisted contract in SMSA Y. Although SMSAs were subsequently realigned into “Metropolitan Statistical Areas” (MSAs) for use in a subsequent census, construction goals continue to be expressed as SMSAs.

(c) Goal for Individuals with Disabilities: Section 503 of The Rehabilitation Act of 1973 (effective March 24, 2014) and regulations issued thereunder currently establish a nationwide 7% utilization goal for qualified Individuals with Disabilities. Contractors will apply the goal to each of their job groups or to their entire workforce if the contractor has 100 or fewer employees. Contractors must conduct an annual utilization analysis and assessment of problem areas, and establish specific action-oriented programs to address any identified problems.

(d) Goal for Protected Veterans: VEVRAA (effective March 24, 2014) requires that contractors establish annual hiring benchmarks for protected veterans. Contractors may choose to establish a benchmark equal to the national percentage of veterans in the civilian labor force, which will be published and updated annually by OFCCP (currently 7.2%). Alternatively, contractors may establish their own benchmarks
using certain data from the Bureau of Labor Statistics (BLS) and Veterans’ Employment and Training Service/Employment and Training Administration (VETS/ETA) that will be also be published by OFCCP, as well other factors that reflect the contractor’s unique hiring circumstances.

These goals are not a requirement for quotas. Quotas are expressly forbidden by law. Affirmative action goals under Executive Order 11246 are targets for recruitment and outreach and should be reasonably attainable by means of applying good faith efforts. The standard of compliance is good faith. Numerical goals do not create guarantees for specific groups, nor are they designed to achieve proportional representation or equal results.

Construction contractors are not required to develop written Executive Order affirmative action programs. In lieu of a written affirmative action program, the regulations enumerate sixteen (16) good faith efforts in order to increase the utilization of minorities and women in the skilled trades. Refer to Section on the Sixteen EEO and Affirmative Action Requirements.

Depending on the type of relationship it has with the federal Government, covered construction contractors may have additional responsibilities, such as the following:

- Include the provisions of the applicable Executive Order 11246, Section 503, and VEVRAA equal employment opportunity clauses in subcontracts;
- Notify OFCCP about any construction subcontract awards in excess of $10,000 that are made under covered federal or federally assisted construction contracts;
- Comply with personnel record retention requirements;
- Completing and submitting the annual EEO report, Standard Form 100 (also known as the “EEO-1 Report”), if the construction contractor or subcontractor has 50 or more employees and a covered contract or subcontract of $50,000 or more. For FHWA funded contracts complete and submit the FHWA 1391 form. Refer to Appendix 5 for EEO-1 and FHWA 1391 forms;
- Comply with the “Uniform Guidelines on Employee Selection Procedures,” which are published at 41 CFR Part 60-3;
- Maintain a written affirmative action program for qualified individuals with disabilities if the contractor has 50 or more employees and a non-exempt Government contract or subcontract of $50,000 or more;
g) Maintain a written affirmative action program for covered veterans, if the contractor has 50 or more employees and a non-exempt Government contract or subcontract of $100,000 ($50,000 for a contract covered by the Part 250 regulations);

h) Complete and submit the Federal Contractor Veterans’ Employment Report using Form VETS 100A, as appropriate\(^1\); and

i) Comply with the Immigration Reform and Control Act (IRCA) of 1986 (i.e., proof of citizenship or authorization to work—I-9 Form).

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Construction contractors must document the steps and actions that they take to ensure that these good faith effort steps are followed. These documented efforts will demonstrate compliance with the nondiscrimination laws.

Sixteen EEO and Affirmative Action Requirements

The Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), which are published at 41 CFR 60-4.3, and 23 USC 140, require federally-involved construction contractors with a construction contract in excess of $10,000 to take affirmative action steps that are at least as extensive as the 16 affirmative action steps listed in the Specifications.

Examples of suggested or alternative actions that would enable a contractor to comply with the specifications are also listed. The examples listed should not be viewed as being the only possible ways to comply with these specifications. Also, depending on the situation, a contractor may need to take more than one action to comply with the particular specification, as well as take actions that are not specifically listed below.

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2 The following materials are derived from the Technical Assistance Guide for Federal Contractors (May 2009)
EEO and Affirmative Action Specification #1

Contractors and subcontractors must maintain a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor’s employees are assigned. (41 CFR 60-4.3(a)7.a.—FHWA 1273)

Take pro-active steps to ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the company’s contractual obligation to maintain such a working environment. Document and maintain records of the efforts to fulfill this specification.

Examples of Actions That Demonstrate Compliance

✔ Appoint an individual to be responsible to implement and administer the EEO Policies and to document compliance. The EEO Officer should have access to the company Owner/President and or Board of Directors on EEO issues.

✔ Distribute copies of policy statements prohibiting harassment to all employees.

✔ Post EEO policy statements at all construction sites.

✔ Provide supervisory personnel and other employees with memos and other written instructions addressing the need to maintain a work environment free of harassment, intimidation, and coercion.

✔ Hold meetings to inform supervisory personnel of their duty to carry out the obligation to maintain a workplace free of harassment, intimidation, or coercion.

✔ Make efforts to assign more than one woman to each construction project.

✔ Maintain formal procedures to handle complaints of harassment and maintain records of such complaints and how the company handled them.

✔ Prepare and retain reports, diaries, analyses, etc., of specific efforts made to monitor the work environment for the presence of any forms of harassment, intimidation, or coercion, such as verbal, visual or written abuse; physical aggressiveness; or assigning women and/or minorities to more difficult or dangerous work than men/non-minorities.

✔ Provide harassment awareness training to supervisors and or employees. The awareness is not limited to formal training. It may be advising supervisors and employees to view an on-line video, reading article(s), and including as a meeting agenda item. Document the harassment awareness efforts with dates of the training, the names of attendees, and a copy the materials distributed.
EEO and Affirmative Action Specification #2

Contractors and subcontractors must establish and maintain current lists of recruitment sources; provide written notification to minority, female, individuals with disabilities and protected veteran recruitment sources and to community organizations when the contractor or its unions have employment opportunities available; and maintain a record of the organizations’ responses. (41 CFR 60-4.3(a)7.b.—FHWA 1273)

Examples of Actions That Demonstrate Compliance

✔ Recruitment sources should include the state employment offices serving the recruitment areas for the company’s construction projects, and may also include organizations such as the Workforce Investment Boards, YWCA, National Association of Women in Construction, Youth Build, National Organization of Women in Construction, County sponsored Pre-Apprenticeship Councils and others. In addition, local community organizations are extremely effective as employer/employee linkage resources. Refer to Appendix 6 for a list of Community Based Organizations, Pre-Apprentice and Apprentice Programs, Faith Based Organizations, Minority and Women Business organizations, and Newspaper publications.

✔ Maintain files of letters to minority and female recruitment sources announcing the employment opportunities and application procedures. In order to maintain a record of recruitment organizations’ responses, contractors may retain any written responses received from the sources, or log or otherwise record the responses.

✔ Maintain a log to identify employment solicitations and referrals, and to track the results of the applications. Maintain copies of correspondence from recruitment sources, and copies of notes, diaries, phone logs and/or other written records of contacts with recruitment organizations.

Refer to Appendix 6
Examples of Actions That Demonstrate Compliance

✔ Establish files that show the names, addresses, telephone numbers and trades of each minority and female applicant and referral.

✔ Take note on the actual employment application forms what action was taken with respect to each applicant and the reason for non-hire.

✔ Where an applicant has been referred to the union for referral back to the contractor, document this action and its results or any follow-up contacts made with the applicant or the union.

Contractors and subcontractors must maintain current files containing the names, addresses and telephone numbers of each targeted group female off-the-street applicant and minority or female referral from a union, recruitment source or community organization and of what action was taken with respect to each individual. Occasionally, contractors/subcontractors will send individuals to the union hiring hall for referral back to the contractor. If the union did not refer the individual to the contractor or if the individual was referred but was not hired, the contractor/subcontractor must keep a record of all actions taken, along with the reasons why the referral or hiring did not occur. (41 CFR 60-4.3(a)7.c—FHWA 1273)
Examples of Actions That Demonstrate Compliance

✔ Keep copies of all letters to and from the unions, minutes of meetings, etc., related to any claims that the union has impeded the company’s efforts to comply with its EEO obligations.

✔ Obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority, female, individuals with disabilities and protected veteran employees.

a. Use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. Use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability or protected veteran status.

c. In the event the union is unable to provide the contractor with a reasonable flow of targeted individuals referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women.

Neither the provisions of a collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor’s obligations under the contract specifications, Executive Order 11246, as amended, or the applicable regulations (see 41 CFR 60-4.3(a)5.).
Contractors and subcontractors must develop on-the-job training opportunities or participate in training programs for the job area(s) which expressly include minorities and women. Contractors’ actions must include upgrading programs, apprenticeships and trainee programs relevant to the contractor’s employment needs, especially those programs approved by the Department of Labor. Contractors and subcontractors must provide notice of these training opportunities and job programs to recruitment sources, state employment offices and other referral sources that the contractor/subcontractor has compiled under Specification 2 above. (41 CFR 60-4.3(a)7.e.—FHWA 1273)

**Examples of Actions That Demonstrate Compliance**

✔ Maintain records of the on-the-job training opportunities and the employees who participated in the training program.

✔ Maintain records of on-the-job training programs that are contacted as recruitment efforts. Refer to Appendix 6 for a list of On-The-Job Pre-apprenticeship and Apprenticeship training programs.

✔ Document any contributions of cash, equipment or personnel provided in support of training or apprenticeship programs.

✔ Inform minority and female recruitment sources and schools of these programs in writing. Maintain copies of any such letters.

✔ Per FHWA 1273 – On FHWA funded contracts and where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under the contract, the 25 percent of apprentice or trainee requirement in the contract will be superseded as indicated in the special provision.

**EEO and Affirmative Action Specification #5—Con’d**
EEO and Affirmative Action Specification #6

Contractors and subcontractors must disseminate EEO policies by:

- Providing notice of the policies to unions and training programs and requesting their cooperation and assistance in meeting EEO obligations;
- Including EEO policy statements in all policy manuals and collective bargaining agreements;
- Publicizing these policies in company newsletters, the annual report, etc.;
- Specifically reviewing the policy with all management personnel and with all minority and female employees at least once a year; and,
- Posting the EEO Policy on bulletin boards accessible to all employees at each location where construction work is performed. (41 CFR 60-4.3(a)f—FHWA 1273)

Examples of Actions That Demonstrate Compliance

✔ In addition to including EEO policies in all policy manuals, contractors may include EEO policies in employee handbooks provided to each employee when they are hired (if such a handbook exists).

✔ Post EEO policies on bulletin boards that are accessible to all employees at each location where construction work is performed.

✔ Document discussions with employees about EEO policies. For example, employees may be asked to sign a receipt for an employee handbook that contains EEO policies. Employees can be asked to sign a form at a new employee orientation indicating that the company’s EEO policies have been reviewed with them.

✔ Maintain copies of letters, memoranda and notices to unions and training programs notifying them of the contractor’s EEO policies and requirements and requesting their assistance in meeting those obligations.

✔ Maintain a file containing company newsletters and annual reports which contain descriptions of EEO policies.
EEO and Affirmative Action Specification #7

Examples of Actions That Demonstrate Compliance

✔ Maintain written records (memoranda, diaries, minutes of meetings, etc.) that identifies the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

✔ Periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

✔ Periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

✔ Promptly investigate all complaints of alleged discrimination made in connection with the obligations under the federal aid contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of their avenues of appeal.

✔ Ensure the EEO Complaint form is available to all applicants and employees.

Refer to Appendix 7

At least once a year, contractors and subcontractors must review EEO policies and affirmative action obligations (under these specifications) with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions. These EEO policies and affirmative action obligations must be specifically reviewed with on-site supervisory personnel such as superintendents, general foremen, etc., prior to starting construction work at any job site. (41 CFR 60-4.3(a)7.g.—FHWA 1273)
Examples of Actions That Demonstrate Compliance

✔ Maintain copies of any employment advertisements or job announcements which specifically include the EEO “tagline.” The tagline may state that the contractor is “an equal opportunity employer,” or it may alternatively state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or protected veteran status.

✔ Maintain copies of correspondence with subcontractors that notify them of EEO contractual obligations and the contractor’s commitment to compliance.

✔ Document meetings with construction industry associations and organizations where the federal EEO and affirmative action contract obligations and methods for facilitating compliance have been discussed or acted upon.

✔ For list of Newspaper Publications and trade papers.

EEO and Affirmative Action Specification #8

Contractors and subcontractors must disseminate EEO policies externally by including them in any advertising in the news media (including minority and female news media). Contractors and subcontractors must also provide written notification to and discuss EEO policies with other contractors and subcontractors with whom the contractor/subcontractor does or anticipates doing business. (41 CFR 60-4.3(a)7.h.)

EEO Tagline

“SFI JV is an equal opportunity employer and gives consideration for employment to qualified applicants without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or protected veteran status.”

EEO and Affirmative Action Specification #9

Refer to Appendices 6 & 10
Contractors and subcontractors must direct recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor’s recruitment area and employment needs. Contractors/subcontractors must send notice to its recruitment sources for women and minorities announcing acceptance of applications for apprenticeship or other training. This notice must be sent no later than one month before publication of apprenticeship and training announcements. Notices must describe the openings, screening procedures and tests to be used in the selection process. (41 CFR 60-4.3(a)7.i.—FHWA 1273)

**Examples of Actions to Demonstrate Compliance**

✔ Maintain written records of contacts (such as written communications, telephone calls or personal meetings) with minority and female community organizations, recruitment sources, schools and training organizations. Records should specify the date of the contact, the individual contacted, results of the contact, and any follow-up efforts.

✔ Document contacts with local offices of the state employment service, Private Industry Council, vocational/technical schools or high schools with construction related training programs, training and referral programs, or other community based organizations.

✔ If a union is responsible for acceptance into the training programs, contractors should ensure that information is obtained from the union on individuals who were referred from the recruitment sources/organizations that were accepted in the program.

✔ Maintain records of written contacts to recruitment sources announcing training and apprenticeship opportunities. Recruitment sources must be notified one month before the company begins accepting applications.

✔ Refer to Appendix 6 for a list of Pre-Apprenticeship and Apprenticeship Programs, Community Based Organizations, Faith Based Organizations, Veteran Based Organizations and Minority and Women Business Organizations.
Contractors and subcontractors must encourage current minority, females, individuals with disabilities and veteran employees to recruit other similar persons and, where reasonable, provide after school, summer and vacation employment to minority, female and individuals with disabilities both at the work site and in other areas of the contractor’s work force. (41 CFR 60-4.3(a)7.j.)

**Examples of Actions That Demonstrate Compliance:**

✔ Maintain copies of diaries, telephone logs or memos indicating contacts (both written and oral) with company employees requesting their assistance in recruiting minorities, women, individuals with disabilities and protected veterans.

✔ Supervisors and crew leaders may keep a log of worker referrals from current employees who make referrals or from recruitment sources.

✔ If the company provides after-school, summer and vacation employment to minority, female and individuals with disabilities youth, maintain records of such employment or internships.

✔ Maintain records of contact with recruitment sources or local state employment agencies regarding these youth employment opportunities.

✔ When permissible consider sponsoring a “Take Our Daughters And Sons To Work Day” The day goes beyond the average “shadow” an adult. Exposing girls and boys to what a parent or mentor in their lives does during the work day is important and motivates the child to pursue a life-long career in construction.

✔ Consider sponsoring and or co-sponsoring and or exhibiting the company’s support at a “Construction Career Day.” Maintain records of attendance to show support towards education and recruitment.
Contractors and subcontractors must validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3, the “Uniform Guidelines on Employee Selection Procedures (1978).” (41 CFR 60-4.3(a)(k)). Actions for demonstrating compliance vary by the number of people employed by the contractor. (41 CFR 60-3.15A(1)).

FHWA 1391 report is required for contracts or subcontracts that equal or exceed $10,000 per contract/subcontract. (23 CFR 230)

**Examples of Actions That Demonstrate Compliance**

✔ The company with over 100 employees are required to file an EEO-1 Report.

✔ Subcontractors with fewer than 100 employees are not required to file an EEO-1 Report.

✔ FHWA 1391 report is required if the contract or subcontract is equal to or exceeds $10,000.

✔ The EEO-1 Report and FHWA 1391 both require the collection of data to help determine if the test or selection requirement has a possible adverse impact on any protected group.

✔ Maintain and have available records showing annual completion of the reports to show compliance in the event OFCCP or FHWA conducts a compliance review.

✔ Submit the completed EEO-1 Report and FHWA 1391 reports to the respective agency on an annual basis.

✔ Submission of the EEO-1 Report through the EEO-1 Online Filing System is strongly preferred.

✔ The annual EEO-1 report must be filed not later than September 30. Report on employment figures from any pay period in July through September may be used. Refer to Appendix 5 for EEO-1 Report form and instructions.

**EEO and Affirmative Action Specification #11 (Con’d)**

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Examples of Actions That Demonstrate Compliance

✔ Maintain the records for three (3) years following completion of the contract.

The reports require:

1) The number of persons hired, promoted and terminated in each trade (e.g., carpenter, brick masons, concrete finishers, ironworkers, mechanics, equipment operators), by sex (gender), and where appropriate, by race and national origin.

2) The number of applicants for hire and promotion by trade and sex, race, national origin, disability and protected veteran status.

3) The selection procedures used (such as standardized testing or unstructured interviews and qualifications review) for each trade.

4) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women.

5) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

6) Submit the annual FHWA 1391 report to Civil Rights Office of the State Department of Transportation by August 15 for laborers worked in the month of July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work.

✔ For FHWA 1391 form and instructions.

7) If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.
Examples of Actions That Demonstrate Compliance

✔ Maintain records (memos, letters, personnel files, etc.) showing that promotional opportunities for the protected groups are reviewed annually.

✔ Maintain records documenting that the participation of the protected groups are encouraged to apply for promotional opportunities.

✔ Maintain records on Shimmick’s Mentoring Program that advocates for career development and preparation for consideration to promote.

✔ Periodically review the training and promotion potential of minority group and women employees and encourage eligible employees to apply for such training and promotion.

At least once a year, contractors and subcontractors must inventory and evaluate all minority, female, individuals with disabilities, and protected veteran personnel for promotional opportunities. Contractors must also encourage these employees to seek or prepare for, through appropriate training, etc., promotional opportunities. (41 CFR 60-4.3(a)7.l—FHWA 1273)
EEO and Affirmative Action Specification #13

Contractors and subcontractors must ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect, by continually monitoring all personnel and employment related activities to ensure that EEO policies and contractors’ obligations under the contract specifications are being carried out. (41 CFR 60-4.3(a)7.m.)

Examples of Actions That Demonstrate Compliance

✔ May use data collected under Specification 11 to determine if seniority practices, job classifications, work assignments or other personnel practices have an adverse impact on protected groups.

✔ May want to examine existing personnel practices periodically or establish an EEO task force when developing new personnel practices to ensure that EEO obligations are being adequately addressed and incorporated.

✔ Must ensure current policies are reviewed on a regular basis to identify factors that are not equally applied.
Contractors and subcontractors must ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities designed to assure privacy between the sexes shall be provided. (41 CFR 60-4.3(a)7.n.—FHWA 1273 (23 USC 140)

The term “facilities” refers to waiting rooms, work areas, eating areas or restaurants, time clocks, rest rooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or transportation, and housing facilities provided for employees. Exceptions may exist when demands for accessibility override (e.g. disabled parking).

**Examples of Actions That Demonstrate Compliance**

✔ Have evidence that adequate toilet and changing facilities are available to all employees to guarantee privacy between the sexes.

✔ Maintain announcements (e.g., flyers, posters, e-mails) of company sponsored events such as training, parties or picnics and documentation reflecting that notification has been disseminated equally to all employees.

✔ On federal-aid construction contract the contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

✔ Use the Subcontractor EEO Contract Compliance Checklist to ensure the subcontractor has non-segregated facilities.
Contractors and subcontractors must document and maintain records of all solicitations of offers for subcontracts from minority and female and Disadvantaged Business Enterprises (DBE) construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations. (41 CFR 60-4.3(a)7.o.—49 CFR Part 26 and Appendix A—DBE Regulations)

**Examples of Actions That Demonstrate Compliance**

✔ Maintain letters or other direct solicitations for subcontracts from minority or female and Disadvantaged Business Enterprises (DBE) with a record of the specific responses and any follow-up activities done to obtain price quotations.

✔ Document and maintain the Good Faith Efforts to demonstrate efforts to meet the DBE goal. Advertise in Minority/Women and Disabled Veteran Business trade papers. Documentation to include a list of subcontracts that have been awarded to minority, female or DBE contractors or suppliers, showing the dollar amounts involved.

✔ Document and maintain the Good Faith Effort requirements set forth in 49 CFR Part 26, Appendix A that includes retaining copies of solicitations sent to minority, women and DBE contractor associations or other business associations and state or local governmental agencies.

✔ Document and maintain the DBE utilization report, regardless of tier level, on all FHWA federal aid contracts to show the DBE utilization after contract award.

✔ Notify all potential subcontractors and suppliers of their EEO obligations under the contract.

✔ After award of contract notify subcontractors of EEO obligations.

✔ Ensure the subcontractor completes the “Subcontractor EEO Contract Compliance Checklist.”

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**EEO and Affirmative Action Specification #16**
At least once a year, contractors and subcontractors must conduct a review of all supervisors’ adherence to and performance under the company’s EEO policies and affirmative action obligations. (41 CFR 60-4.3(a)7.p.—23 USC 140)

**Examples of Actions That Demonstrate Compliance**

✔ Maintain copies of performance evaluations, memos, letters, reports, and minutes of meetings or interviews with supervisors and management personnel about their employment practices as they relate to EEO policy and affirmative action obligations.
**Explanation of Requirements**

Federal construction and federally assisted construction contractors must include or reference provisions of the Executive Order 11246 equal opportunity clause shown in 41 CFR 60-1.4(a) or (b), as applicable, in each subcontract or purchase order of more than $10,000 per year resulting from the contract.

Whenever a contractor or subcontractor subcontracts a portion of the work involving any construction trade, the Specifications, including the sixteen EEO and affirmative action program requirements described above and the “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity” (41 CFR 60-4.2(d)) containing the applicable goals for protected groups must be included in subcontracts larger than $10,000.

Regulations implementing the Section 503 of the Rehabilitation Act of 1973, and Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), require that contractors include or reference the provisions of the equal opportunity clause for individuals with disabilities and covered veterans in each subcontract and purchase order in excess of $10,000. See 41 CFR Parts 60-250.5, 300.5, and 741.560.
Additional Requirements
Notification of Awards

Contractors and subcontractors must notify OFCCP in writing within 10 working days of the award of any construction subcontract in excess of $10,000 that is made under a covered Federal or federally assisted construction contract. Contractors/subcontractors may fulfill this requirement by notifying the nearest OFCCP district office.

Explanation of Requirements

Per 41 CFR 60-4.2d(3), written notification must include:

► Name, address, telephone number and employer identification number for the prime contractor;
► Contract number and name and contact information of the contract owner;
► Contract value;
► Contract start date and approximate end date;
► Name, address and telephone number of each subcontractor on contract;
► Each subcontractor’s employer identification number;
► Estimated dollar amount of each subcontract;
► Estimated starting and completion dates of each subcontract; and
► Geographic area in which the subcontract work is to be performed.

✔ For National and Regional OFCCP addresses.
Explanation of Requirements

A covered area (also referred to as a geographical area) is the area identified in the solicitation that generated the Federal or federally assisted construction contract or subcontract.

Any personnel or employment record made or kept by the contractor must be preserved. Federal construction contractors with 150 or more employees and a Government contract of at least $150,000 must preserve such records for no less than two years from the date of making the record or the date the personnel action occurred, whichever is later.

Federally assisted construction contractors, and federal construction contractors with fewer than 150 employees or a Government contract of less than $150,000, must retain such records for a minimum of one year from the date they were created or the date the personnel action occurred, whichever is later.

Relevant records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, layoffs, terminations, rates of pay or other terms of compensation, selection for training and apprenticeship, results of physical examinations (kept in a confidential medical file), job postings, job advertisements, applications, resumes, tests, test results, and job interview notes.

Contractors must keep records that include, at a minimum for each employee, the name, address, telephone number, social security number, race, gender, rate of pay, construction trade, job title (for example, “Equipment Operator,” “Apprentice Trainee,” “Laborer”), dates of change in job status, hours worked per week in each indicated trade, locations at which the work was performed, union affiliation if any, and employee identification number if any. The records must be maintained in an easily understandable and retrievable form. However to the extent that existing records satisfy this requirement, contractors are not required to maintain separate records.

It is acceptable to transfer original paper records to an electronic recordkeeping system, if the medium used accurately reproduces the paper original and would constitute a duplicate or substitute copy of the original paper record under Federal law.
Additional Information
EEO-1 Report and FHWA 1391

Contractors and subcontractors with 50 or more employees and with a covered contract or subcontract of $50,000 or more must submit an annual EEO-1 Report (41 CFR 60-1.7a).

This report is due from all primes and subcontractors on all Federal-aid highway projects where the value of each contract or subcontract is $10,000 or more. (FHWA 1273 and 23 CFR 230)

Explanation of Requirements

The EEO-1 Report (which identifies employees in job categories by race, ethnicity, and sex) is sent to the Joint Reporting Committee (JRC), which is comprised of representatives from the Department of Labor and the Equal Employment Opportunity Commission.

EEO-1 Reports must be filed with the JRC by September 30.

Contractors that maintain a single establishment must only complete one EEO-1 Report yearly.

Contractors that maintain multiple establishments must file:

- One report covering the company’s principal or headquarters office;
- A separate report for each establishment employing 50 or more people;
- A consolidated report for the entire company which includes all employees.

The EEO-1 Joint Reporting Committee can be reached at: P.O. Box 19100, Washington, DC 20036-9100; by calling 1-866-286-6440; or by e-mailing e1.techassistance@eeoc.gov.

FHWA 1391 Report must be filed with the Civil Rights Office of the State Department of Transportation.

Refer to Appendix 5

For instructions to complete the EEO-1 Report and FHWA 1391 Report
**Explanation of Requirement**

*Equal opportunity clauses.* Federal contractors must include or reference the Section 503 equal opportunity clause in all subcontracts and purchase orders in excess of $10,000. Federal contractors must include or reference the VEVRAA equal opportunity clause in all subcontracts and purchase orders of $100,000 or more.

For Shimmick's EEO Policy and EEO Clause that includes reference to Section 503 and VEVRAA.

Invitation to self-identify: Section 503. The contractor shall, after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, invite the applicant to inform the contractor whether the applicant believes that he or she may be protected by Section 503 and wishes to benefit under the contractor's Section 503 affirmative action program. The contractor may also invite self-identification prior to making a job offer.

- The invitation is made when the contractor actually is undertaking affirmative action for individuals with disabilities at the pre-offer stage; or

- The invitation is made pursuant to a Federal, state or local law, such as Section 503, that requires affirmative action individuals with disabilities.

Covered federal government construction contracts or subcontracts are required to create and maintain written AAPs for disabled individuals and veterans (and collect and analyze applicant and workforce data when the new final rules become effective) if such contracts meet the following criteria:

1. A written affirmative action program for qualified individuals with disabilities if the contractor has 50 or more employees and a non-exempt government contract or subcontract of $50,000 or more;

2. A written affirmative action program for covered veterans if the contractor has 50 or more employees and a non-exempt government contract or subcontract of $100,000.
For sample Invitation to self-identify under Section 503 and VERRA.

For further explanation of self-identification requirements, see 41 CFR Part 60-741.42. *Invitations to self-identify: VEVRAA*. The invitation to self-identify requirement for disabled veterans mirrors the Section 503 requirement for individuals with disabilities. The contractor may invite disabled veterans to self-identify prior to making a job offer only when:

- The invitation is made when the contractor actually is undertaking affirmative action for disabled veterans at the pre-offer stage; or
- The invitation is made pursuant to a Federal, state or local law, such as VEVRAA, that requires affirmative action for disabled veterans at the pre-offer stage.

The contractor must also invite applicants to inform the contractor whether the applicant believes that he or she is a recently separated or other protected veteran under VEVRAA and wishes to benefit under the affirmative action program. This general invitation to veterans may be extended at any time before the applicant begins his or employment duties.

**Personnel Practices.** Contractors must review personnel practices to ensure that the qualifications of known protected veterans or individuals with disabilities are given proper consideration for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available.

If contractors find that any of these practices have been discriminatory, the practice must be changed and the change must be noted in the contractor’s affirmative action program.

Individual personnel actions (including pre-employment testing) should also be carefully documented. Contractors should be able to provide records of every opening for which an individual with a disability or protected veteran had been considered. Personnel records or employment application forms should identify a specific job opening. If a worker or an applicant who is an individual with a disability or a protected veteran was not selected, contractors should provide a comparison of the qualifications of the person selected with those of the individual with a disability or protected veteran. Records should also indicate what accommodations (if any) were considered to enable the disabled or veteran worker to perform the job.

With respect to protected veterans, contractors may only use those portions of a person’s military record that are job-related.

**Mental and Physical Job Requirements.** Contractors must review all mental and
physical job requirements used in selection processes and in medical standards, information and qualifications.

Examples of mental and physical job requirements include job descriptions containing phrases such as “must be able to lift 50 pounds,” or “carry heavy mail bags to and from the accounting department,” or “must be able to tolerate heights.” Other examples may include policy statements about desired weight, height, physical condition, vision, etc. of the employee.

Except in the following circumstances, it is unlawful under Section 503 and the Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. 12112(c), for contractors to require a medical examination of an applicant or employee, or to make inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability.

- The contractor may make pre-employment inquiries into the abilities of an applicant to perform job-related tasks, or may ask the applicant to describe or demonstrate how with or without reasonable accommodation they will be able to perform job-related functions.

- The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

- Post-employment, the contractor may only make a disability-related inquiry of an employee, or require that an employee have or submit to a medical test or examination, if the inquiry, test, or examination is job related and consistent with business necessity.

Reasonable Accommodation. Contractors must provide reasonable accommodation to the known physical and/or mental limitations of applicants and employees with disabilities or disabled veterans, unless the contractor can demonstrate that the needed accommodation would impose an undue hardship on the operation of its business.

The term reasonable accommodation means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant who is an individual with a disability or a disabled veteran to be considered for the position such applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability or disabled veteran to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor’s employee who is an individual with a disability or a disabled veteran to enjoy equal benefits and
privileges of employment as are enjoyed by the contractor’s other similarly situated employees who are not individuals with disabilities or disabled veterans.

*Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities and disabled veterans; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities or disabled veterans.

*Employment Practices Review.* Contractor must undertake appropriate outreach and recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, qualified disabled veterans, and other protected veterans. The extent to which a contractor needs to adopt outreach and recruitment efforts depends on all the circumstances, including the contractor’s size and resources, and the extent to which existing employment practices are adequate. To comply with this requirement, a contractor may undertake practices such as the following:

- Develop a system of internal company communications that fosters acceptance and support of the affirmative action program within their company.
- Develop a system of checks and audits to ensure that affirmative action measures are being fully implemented.
- Actively recruit applicants who are individuals with disabilities and protected veterans through schools and training institutions, consumer groups, veterans’ employment representatives at state employment services, vocational training programs and any other sources that can provide support and assistance (*e.g.*, a state vocational rehabilitation agency).
- Include individuals with disabilities in consumer, promotional or recruitment advertising.
- Secure the cooperation and understanding of subcontractors and unions, vendors and suppliers.
- Review employees’ records to see if their abilities are being fully used.
- Review employees’ records to determine who is eligible for promotion or transfer.

*These requirements are similar to Reviewing Personnel Practices,* but goes beyond demanding equal opportunity by requesting specific affirmative actions. *These elements also apply to a broader range of activities.*
**Mandatory Job Listing.** Contractors are required, under VEVRAA, to list with the State workforce agency job bank or the local employment service delivery system all employment openings except executive and top management positions, those positions that will be filled from within the contractor’s organization, and positions lasting three days or less. All employment openings include full-time employment, temporary employment of more than three days’ duration, and part-time employment.

✔ Employment Development Department
[www.caljobs.ca.gov/vosnet/Default.aspx](http://www.caljobs.ca.gov/vosnet/Default.aspx)

✔ Helmets to Hardhat
[www.helmetstohardhats.org/employers](http://www.helmetstohardhats.org/employers)
Once a year, federal contractors and subcontractors covered under VEVRAA must compile a report of the numbers of disabled and other covered veterans in their workforce by job category and hiring location. Contractors/subcontractors must also collect data indicating the total number of employees and the number of disabled veterans, Armed Forces service medal veterans, recently separated veterans, and other covered veterans hired during the reporting period. Contractors and subcontractors must use the VETS-100A form, as appropriate. [41 CFR Part 61-300.]

**Explanation of Requirements**

The VETS-100A Report is to be completed by each federal contractor or subcontractor with a contract or subcontract entered into or modified on or after December 1, 2003, in the amount of $100,000 or more.

Contractors or subcontractors with multiple work establishments must prepare a VETS-100A report for:

The company’s principal or headquarters office;

Each hiring location employing 50 or more persons; and

Each hiring location with less than 50 employees or consolidated reports for all hiring locations in each state.

For the VETS 100A report and instructions.

For more information, visit the VETS-100/100A website at [www.dol.gov/vets/vets-100.html](http://www.dol.gov/vets/vets-100.html), or call 1-866-237-0275.
Explanation of Requirement

OFCCP will review contractors’ records to verify the following actions have been performed to comply with this law:

New employees must complete an I-9 form when they start work;

Contractors must check documents that indicate the employee’s identity (e.g., driver’s license, passport) and eligibility to work (e.g., work visa, social security card);

Contractors must properly complete the verification sections on the I-9 form;

Contractors must keep I-9 forms for at least three (3) years or at least one year after a person leaves the contractor’s employment for employees who stay for more than three (3) years; and

I-9 forms must be presented to U.S. Citizenship and Immigration Services (USCIS) or DOL investigators for inspection upon request.

USCIS has additional information about the I-9 requirement on online at http://www.uscis.gov/i-9.

IRCA also prohibits discrimination. Under this law, contractors with four (4) or more employees may not discriminate against any individual (other than an unauthorized alien) in hiring, discharging, or recruiting or referring for a fee because of that individual’s national origin or citizenship status (in the case of U.S. citizens, U.S. nationals, and the following classes of aliens with work authorization: permanent residents, refugees, and asylees).

For more information concerning the anti-discrimination section of this law, contact the U.S. Department of Justice at:

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related
Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Main Number: (202) 616-5594
Online: http://www.usdoj.gov/crt/osc.
Examples of Actions That Demonstrate Compliance

✔ At Pre-job conference advise the Subcontractors that they are equally required to comply with the EEO provisions.

✔ Obtain written confirmation from Subcontractors of compliance with Required Contract Provisions for Federal-Aid Construction Contracts (Appendix 8).

✔ Assist the Subcontractors to comply with the EEO and affirmative action requirements.

✔ Maintain Subcontractor compliance confirmations and have available in the event the OFCCP or FHWA conducts a compliance review.

✔ Annually complete a Subcontractor EEO Contract Compliance desk review on two (2) randomly selected subcontract agreements.

*Request the randomly selected Subcontractors to submit evidence of compliance with the Required Contract Provisions for Federal-Aid Construction Contracts.

*Contact the Subcontractor’s EEO Officer on the desk audit results.

Caltrans selects contracts for compliance evaluations when the contract award is above $10,000,000 and the project is 50-80 percent complete. If there are several allegations of discrimination from applicants and or employees, Caltrans will conduct a compliance evaluation regardless of the size of the contract award.
Preparing for a Compliance Review

Prepare for an EEO compliance evaluation by conducting a self-audit as a component of the affirmative action development process, or responding to inquiries likely to be asked by an OFCCP compliance officer during an evaluation.

The OFCCP and FHWA conduct compliance evaluations and may ask to see documented evidence of a contractor’s compliance efforts in the following areas:

- Whether a contractor’s affirmative action efforts comply with regulatory requirements;
- Whether a contractor has demonstrated good faith efforts in meeting its affirmative action requirements;
- Whether a contractor’s employment policies and practices are free of discriminatory intent or impact;
- Whether a contractor has provided reasonable accommodation to qualified individuals with disabilities;
- Checks to see that the contractor EEO Officer is present during the evaluation and is empowered to make and discuss policy and to make commitments for corrective action, where necessary.
- Has the contractor conspicuously displayed the required EEO poster (available from any OFCCP office) at each work site or company location in areas accessible to both applicants and employees?
- Do the contractor’s contracts and purchase order forms display or reference the equal opportunity clauses as required?
- At the start of each new job, has the contractor reviewed its EEO policy and affirmative obligations with all on-site supervisory and management personnel? Has the contractor kept records of these reviews?
- Per the guidelines on discrimination because of religion or national origin (41 CFR Part 60-50), have employees been informed of the contractor’s commitment to equal employment opportunity for all persons, without regard to religion or national origin?
- Does the contractor use or solicit offers for subcontracts to minority, female and DBE owned businesses?
- Does the facility have written personnel policies and procedures? Have these policies and practices had an adverse impact on minorities, women, qualified individuals with disabilities, qualified disabled veterans, or other protected veterans?
- Are job descriptions in written form? Are job criteria objective and job-
related?

✔ Does the contractor maintain proper applicant flow records?

✔ Does the contractor maintain proper records about terminations and separations?

✔ Does the contractor maintain a system for identifying minority and female applicants and applicants who are individuals with disabilities and protected veterans for future consideration?

✔ Are written employment tests used by the contractor? If so, does the use of the test have an adverse impact on the hiring of minorities or women? Have tests been validated to ensure that they are valid predictors of an applicant’s success in that position?

✔ What recruitment sources are used by the contractor? Do these sources refer women, minorities, qualified individuals with disabilities, qualified disabled veterans, recently separated veterans, and other covered veterans?

✔ Are applicant processing procedures carried out in a uniform, nondiscriminatory fashion?

✔ Is there a disparity between the separation and termination rate of minorities and women as compared to non-minorities and males; or for individuals with disabilities and protected veterans as compared to individuals without disabilities and those who are not protected veterans? If so, why is that?

✔ Are there any restrictions to the granting of fringe benefits, including medical and life insurance, pension and retirement benefits, credit union benefits, and profit sharing and bonus plans based on the gender of the employee, status as a protected veteran or status as an individual with a disability?

✔ Are employment benefits available to the wives and families of male employees also available to the husbands and families of female employees? Are the benefits available to the families of individuals without disabilities and those who are not protected veterans also available to the families of individuals with disabilities and protected veterans?

✔ Does the contractor employ minorities, women, qualified individuals with disabilities, and protected veterans in each of its crafts? If so, to what extent? If not, what efforts has the contractor made to recruit members of these groups?

✔ Are training programs, including apprenticeship programs, available to employees without regard to race, color, sex, national origin, religion, or their status as an individual with a disability or protected veteran?

✔ Do jobs offered by the contractor have similar duties but different pay rates? If so, do minorities or women earn less than their non-minority or male
counterparts? Do individuals with disabilities or protected veterans earn less than their counterparts who are not individuals with disabilities or protected veterans?

✔ Do minorities, women, individuals with disabilities or protected veterans receive lower starting rates of pay than their counterparts with similar education and experience?

✔ Has the contractor reviewed its salary structure to ensure that it does not discriminate against minorities, women, individuals with disabilities or protected veterans?

✔ Has the contractor reviewed its employment practices to determine whether members of various religious or ethnic groups receive fair consideration for job opportunities?

✔ Have reasonable accommodations to the religious observances and practices of employees or prospective employees been made, unless the accommodation would impose an undue hardship?

✔ Have recruiting sources been informed of the contractor’s commitment to provide equal employment opportunity without regard to religion or national origin?

✔ Does the contractor’s policy on maternity leave meet regulatory requirements?

✔ Has the contractor implemented policies and procedures to prevent, identify, and remedy instances of sexual harassment, and of harassment based on race, color, religion, national origin, gender, disability, or status as a protected veteran?

✔ Does the contractor’s policy on mandatory or optional retirement age differ based upon the gender of the employee or their status as an individual with a disability or protected veteran?

Contractors should also know that when a compliance evaluation is scheduled, compliance officers will request the following documents for on-site inspection:

✔ Books, records, payrolls, accounts and other relevant documents, including a list, separated by construction project, of all employees who are members of protected groups who worked during the 12 months preceding this evaluation;

✔ Documentary evidence of the implementation of each of the specific affirmative action standards set forth in the sixteen specifications;

✔ A list of all Federal projects, including contract numbers, locations, estimated dollar values, percent completed and projected completion dates;

✔ A list of all non-Federal projects;
✔ A copy of the EEO-1 Report and or FHWA 1391 report, where available;

✔ A copy of the written affirmative action program for individuals with disabilities, and the written affirmative action program for protected veterans (for contractors with federal construction contracts only, not federally assisted construction contracts);

✔ A copy of the VETS-100A reports (for contractors with federal construction contracts only, not federally assisted construction contracts); and

✔ U.S. Citizenship and Immigration Services I-9 Form.
OFCCP National and Regional Offices

**National Office**
Office of Federal Contract Compliance Program
Room C-3325
200 Constitution Avenue, NW
Washington, DC 20210
(202) 693-0101
(202) 693-1304 FAX

**Pacific Region**
Regional Office
(Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington)
90 7th Street, Suite # 18-300
San Francisco, CA 94103
(415) 625-7800
(415) 625-7799 FAX