UNDERSTANDING COMPLIANCE REVIEWS

Office of Strategy, Research and Communications
Division of Economic Opportunity & Regulatory Compliance
Agenda

- Overview of Executive Order 50.
- Understanding Documentation Requirements.
  - Review of submission thresholds and timeframes.
Executive Order 50 (1980)

- The local equivalent of federal E.O. 11246.
- E.O. 50 requires that companies doing business with the City of New York not discriminate against former, present or potential employees or subcontractors because of:

  age, alienage or citizenship status, arrest or conviction record, caregiver, color, credit history, disability, gender, gender identity, marital or partnership status, national origin, pregnancy, race, religion/creed, sexual orientation, unemployment status or status as victim of domestic violence, sexual violence, or stalking.

  in all employment or contracting decisions.
Definitions – Who is Covered

- Prime Contractors: Developers, Borrowers, General Contractors, specialty contractors, Service and Goods suppliers engaged in a direct contractual relationship with the Agency;

- Subcontractors, defined as contractors and vendors contractually obligated to a Prime Contractor. Includes lower tier contractors.

**NOTES:**
- EO50 includes prevailing and non-prevailing wage projects;
- Contractors are responsible for ensuring submission of the appropriate documentation to the Agency by their subcontractors.
EO 50 requires the submission of an Employment Report (ER) detailing the business entity’s employment practices and policies prior to the award of a contract:

- CERs (Construction Employment Reports) are completed and submitted for construction related contracts. CERs are reviewed by the Agency;

- SSERs (Service and Supply Employment Reports) are completed and submitted to the Agency by goods and service providers. SSERs are then forwarded to the NYC Department of Small Business Services for their review.
Contractor Affirmation Statement

- The Affirmation Statement provides information that satisfies the compliance requirements of:
  - Federal and State labor law provisions by which no contract may be awarded to a contractor that is debarred, suspended or ineligible to participate in Federally or State funded programs.
  - Federal Executive Order 12432 and Local Law 1, which requires the collection of information on the participation of minority and women owned firms projects.

- The Contractor Affirmation Statement also provides information that connects the contractor to the contractual structure of the project (trade, contract amount, construction start/end dates, lower tier contractors listing)
Submission Thresholds

Construction Contractors (including Developers and Borrowers) must submit a **Construction Employment Report** if the loan agreement or contract is a:
- Federally funded contract and subcontract valued at $10,000 or more;
- State or City funded contract valued at $1,000,000 or more;
- State or City funded subcontract valued at $750,000 or more.

State or City funded subcontract valued at less than $750,000 must submit a “**Less Than $750,000 Subcontract Certificate**”.

Service and Supply Providers must submit a **Supply & Service Employment Report** if the contract or subcontract is valued at $100,000 or more and the company has 50 or more employees.

Companies with a contract or subcontract is valued at $100,000 having fewer than 50 employees must submit a “**Less Than 50 Employees Certificate**”.

All entities must submit a **Contractor Affirmation Statement** regardless of the funding source or dollar value of the contract.

Contractors are responsible for ensuring submission of the appropriate documentation to the Agency by their subcontractors.
Pre-Award Compliance Review

Pre-Award Conference

**Topics:** EEO, Labor Standards, Business Utilization, Fair Housing

- **Tuesdays at 10am**

Entity representatives should be in the lobby by 9:30 for security screening;
Entity representatives need not call to schedule;
Attendance is limited to once every three years.
Compliance Review Process

- HPD will review the compliance documents for completeness and accuracy within ten (10) business days of receipt.
- If any information is omitted or incorrect, or if necessary documents are not submitted, the submission shall be deemed incomplete and HPD will inform the agency program manager and the contractor. An incomplete submission will delay the review process.
- HPD will also review Pre-Award Conference lists to ensure that an entity representative has attended;
- The Compliance Review will result in the issuance of a certificate memo to the agency project manager and the contractor.
Parent entities - defined as one that has a controlling interest in and so is in control of a subsidiary or child (i.e.: the subsidiary of a development entity, such as a LLC or HDFC (otherwise known as a borrower) or a subsidiary or child of a contractor that is entering into a direct or indirect contractual relationship with the Agency must submit a complete Construction Employment Report. Parent entities will receive a Certificate of Compliance valid for three years.

Child entities will be required to submit the parent’s Certificate of Compliance along with Parts I, III, IV and Form B of the CER for each project entered into within the 36 month period for which the Certificate of Compliance is valid. Child entities will be issued a Continued Compliance Certificate for each project. Representatives of Child entities are not required to attend a Pre-Award Conference.
Compliance Certificates

- **Certificate of Compliance:** The business entity has submitted a complete CER. HPD’s review finds the business entity to be in compliance. The Certificate is valid for 36 months.

- **Continued Compliance Certificate:** issued for each project entered into by the business entity within the 36 month period for which the Certificate of Compliance is valid. Business entities need only submit a copy of the Certificate of Compliance and complete Parts I, III, IV and Form B of the CER.

- **Conditional Certificate of Compliance:** issued when the business Entity must take corrective actions in order to be in compliance with EO 50.

- **Determination of Nonperformance:** issued when a business entity has failed to take the required corrective actions stipulated in the Conditional Certificate. A determination of nonperformance may prevent a business entity from receiving an award.

- The Department of Small Business Services will issue similar certificates upon review of SSERs.