

July 31, 2014

Executive Order --Fair Pay and Safe Workplaces

EXECUTIVE ORDER

FAIR PAY AND SAFE WORKPLACES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 121, and in order to promote economy and efficiency in procurement by contracting with responsible sources who comply with labor laws, it is hereby ordered as follows:

Section 1. Policy. This order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that they understand and comply with labor laws. Labor laws are designed to promote safe, healthy, fair, and effective workplaces. Contractors that consistently adhere to labor laws are more likely to have workplace practices that enhance productivity and increase the likelihood of timely, predictable, and satisfactory delivery of goods and services to the Federal Government. Helping executive departments and agencies (agencies) to identify and work with contractors with track records of compliance will reduce execution delays and avoid distractions and complications that arise from contracting with contractors with track records of noncompliance.

Sec. 2. Compliance with Labor Laws. (a) Pre-award Actions. (i) For procurement contracts for goods and services, including construction, where the estimated value of the supplies acquired and services required exceeds \$500,000, each agency shall ensure that provisions in solicitations require that the offeror represent, to the best of the offeror's knowledge and belief, whether there has been any administrative merits determination, arbitral award or decision, or civil judgment, as defined in guidance

issued by the Department of Labor, rendered against the offeror within the preceding 3-year period for violations of any of the following labor laws and Executive Orders (labor laws):

(A) the Fair Labor Standards Act;

(B) the Occupational Safety and Health Act of 1970;

(C) the Migrant and Seasonal Agricultural Worker Protection Act;

(D) the National Labor Relations Act;

(E) 40 U.S.C. chapter 31, subchapter IV, also known as the Davis-Bacon Act;

(F) 41 U.S.C. chapter 67, also known as the Service Contract Act;

(G) Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity);

(H) section 503 of the Rehabilitation Act of 1973;

(I) 38 U.S.C. 3696, 3698, 3699, 4214, 4301-4306, also known as the Vietnam Era Veterans' Readjustment Assistance Act of 1974;

(J) the Family and Medical Leave Act;

(K) title VII of the Civil Rights Act of 1964;

(L) the Americans with Disabilities Act of 1990;

(M) the Age Discrimination in Employment Act of 1967;

(N) Executive Order 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors); or

(O) equivalent State laws, as defined in guidance issued by the Department of Labor.

(ii) A contracting officer, prior to making an award, shall, as part of the responsibility determination, provide an offeror with a disclosure pursuant to section 2(a)(i) of this order an opportunity to disclose any steps taken to correct the violations of or improve compliance with the labor laws listed in paragraph (i) of this subsection, including any agreements entered into with an enforcement agency. The agency's Labor Compliance Advisor, as defined in section 3 of this order, in consultation with relevant enforcement agencies, shall advise the contracting officer whether agreements are in place or are otherwise needed to address appropriate remedial measures, compliance assistance, steps to resolve issues to avoid further violations, or other related matters.

(iii) In consultation with the agency's Labor Compliance Advisor, contracting officers shall consider the information provided pursuant to paragraphs (i) and (ii) of this subsection in determining whether an offeror is a responsible source that has a satisfactory record of integrity and business ethics, after reviewing the guidelines set forth by the Department of Labor and consistent with any final rules issued by the Federal Acquisition Regulatory (FAR) Council pursuant to section 4 of this order.

(iv) For any subcontract where the estimated value of the supplies acquired and services required exceeds \$500,000 and that is not for commercially available off-the-shelf items, a contracting officer shall require that, at the time of execution of the contract, a contractor represents to the contracting agency that the contractor:

(A) will require each subcontractor to disclose to the entity designated by a final rule amending the Federal Acquisition Regulation under subsection 4(a) any administrative merits determination, arbitral award or decision, or civil judgment rendered against the subcontractor within the preceding 3-year period for violations of any of the requirements of the labor laws listed in paragraph (i) of this subsection, and update the information every 6 months; and

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(B) before awarding a subcontract, will consider ~~the information submitted by the subcontractor pursuant to subparagraph (A) of this paragraph~~ the advice provided by the entity designated by a final rule amending the Federal Acquisition Regulation under subsection 4(a), or the information submitted to that entity in determining whether a subcontractor is a responsible source that has a satisfactory record of

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integrity and business ethics, except for subcontracts that are awarded or become effective within 5 days of contract execution, in which case the information may be reviewed within 30 days of subcontract award.

(v) A contracting officer shall require that a contractor incorporate into subcontracts covered by paragraph (iv) of this subsection a requirement that the subcontractor disclose ~~to the contractor~~ to an entity designated by a final rule amending the Federal Acquisition Regulation under subsection 4(a) any administrative merits determination, arbitral award or decision, or civil judgment rendered against the subcontractor within the preceding 3-year period for violations of any of the requirements of the labor laws listed in paragraph (i) of this subsection.

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(vi) A contracting officer, Labor Compliance Advisor, and the Department of Labor (or other relevant enforcement agency) shall be available, as appropriate, for consultation with a contractor to assist in evaluating the information on labor compliance submitted by a subcontractor pursuant to paragraph (v) of this subsection.

(vii) As appropriate, contracting officers in consultation with the Labor Compliance Advisor shall refer matters related to information provided pursuant to paragraphs (i) and (iv) of this subsection to the agency suspending and debarring official in accordance with agency procedures.

(b) Post-award Actions. (i) During the performance of the contract, each agency shall require that every 6 months contractors subject to this order update the information provided pursuant to subsection (a)(i) of this section and obtain the information required pursuant to subsection (a)(v) of this section for covered subcontracts.

(ii) If information regarding violations of labor laws is brought to the attention of a contracting officer pursuant to paragraph (i) of this subsection, or similar information is obtained through other sources, a contracting officer shall consider whether action is necessary in consultation with the agency's Labor Compliance Advisor. Such action may include agreements requiring appropriate remedial measures, compliance assistance, and resolving issues to avoid further violations, as well as remedies such as decisions not

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to exercise an option on a contract, contract termination, or referral to the agency suspending and debarring official.

(iii) A contracting officer shall require that if information regarding violations of labor laws by a contractor's subcontractor is brought to the attention of the contractor pursuant to subsections (a)(iv), (v) or (b)(i) of this section or similar information is obtained through other sources, then the contractor shall consider whether action is necessary. A contracting officer, Labor Compliance Advisor, and the Department of Labor shall be available for consultation with a contractor regarding appropriate steps it should consider. Such action may include appropriate remedial measures, compliance assistance, and resolving issues to avoid further violations.

(iv) The Department of Labor shall, as appropriate, inform contracting agencies of its investigations of contractors and subcontractors on current Federal contracts so that the agency can help the contractor determine the best means to address any issues, including compliance assistance and resolving issues to avoid or prevent violations.

(v) As appropriate, contracting officers in consultation with the Labor Compliance Advisor shall send information provided pursuant to paragraphs (i)-(iii) of this subsection to the agency suspending and debarring official in accordance with agency procedures.

Sec. 3. Labor Compliance Advisors. Each agency shall designate a senior agency official to be a Labor Compliance Advisor, who shall:

(a) meet quarterly with the Deputy Secretary, Deputy Administrator, or equivalent agency official with regard to matters covered by this order;

(b) work with the acquisition workforce, agency officials, and agency contractors to promote greater awareness and understanding of labor law requirements, including recordkeeping, reporting, and notice requirements, as well as best practices for obtaining compliance with these requirements;

(c) coordinate assistance for agency contractors seeking help in addressing and

preventing labor violations;

(d) in consultation with the Department of Labor or other relevant enforcement agencies, and pursuant to section 4(b)(ii) of this order as necessary, provide assistance to contracting officers regarding appropriate actions to be taken in response to violations identified prior to or after contracts are awarded, and address complaints in a timely manner, by:

(i) providing assistance to contracting officers and other agency officials in reviewing the information provided pursuant to sections 2(a)(i), (ii), and (v) and 2(b)(i), (ii), and (iii) of this order, or other information indicating a violation of a labor law, so as to assess the serious, repeated, willful, or pervasive nature of any violation and evaluate steps contractors have taken to correct violations or improve compliance with relevant requirements;

(ii) helping agency officials determine the appropriate response to address violations of the requirements of the labor laws listed in section 2(a)(i) of this order or other information indicating such a labor violation (particularly serious, repeated, willful, or pervasive violations), including agreements requiring appropriate remedial measures, decisions not to award a contract or exercise an option on a contract, contract termination, or referral to the agency suspending and debarring official;

(iii) providing assistance to appropriate agency officials in receiving and responding to, or making referrals of, complaints alleging violations by agency contractors and subcontractors of the requirements of the labor laws listed in section 2(a)(i) of this order; and

(iv) supporting contracting officers, suspending and debarring officials, and other agency officials in the coordination of actions taken pursuant to this subsection to ensure agency-wide consistency, to the extent practicable;

(e) as appropriate, send information to agency suspending and debarring officials in accordance with agency procedures;

(f) consult with the agency's Chief Acquisition Officer and Senior Procurement Executive, and the Department of Labor as necessary, in the development of

regulations, policies, and guidance addressing labor law compliance by contractors and subcontractors;

(g) make recommendations to the agency to strengthen agency management of contractor compliance with labor laws;

(h) publicly report, on an annual basis, a summary of agency actions taken to promote greater labor compliance, including the agency's response pursuant to this order to serious, repeated, willful, or pervasive violations of the requirements of the labor laws listed in section 2(a)(i) of this order; and

(i) participate in the interagency meetings regularly convened by the Secretary of Labor pursuant to section 4(b)(iv) of this order.

Sec. 4. Ensuring Government-wide Consistency. In order to facilitate Government-wide consistency in implementing the requirements of this order:

(a) to the extent permitted by law, the FAR Council shall, in consultation with the Department of Labor, the Office of Management and Budget, relevant enforcement agencies, and contracting agencies, propose to amend the Federal Acquisition Regulation to identify considerations for determining whether serious, repeated, willful, or pervasive violations of the labor laws listed in section 2(a)(i) of this order demonstrate a lack of integrity or business ethics. Such considerations shall apply to the integrity and business ethics determinations made by both contracting officers and contractors pursuant to this order. In addition, such proposed regulations shall:

(i) provide that, subject to the determination of the agency, in most cases a single violation of law may not necessarily give rise to a determination of lack of responsibility, depending on the nature of the violation;

(ii) ensure appropriate consideration is given to any remedial measures or mitigating factors, including any agreements by contractors or other corrective action taken to address violations; and

(iii) ensure that contracting officers and Labor Compliance Advisors send information, as appropriate, to the agency suspending and debaring official, in accordance with agency procedures.

(b) the Secretary of Labor shall:

(i) develop guidance, in consultation with the agencies responsible for enforcing the requirements of the labor laws listed in section 2(a)(i) of this order, to assist agencies in determining whether administrative merits determinations, arbitral awards or decisions, or civil judgments were issued for serious, repeated, willful, or pervasive violations of these requirements for purposes of implementation of any final rule issued by the FAR Council pursuant to this order. Such guidance shall:

(A) where available, incorporate existing statutory standards for assessing whether a violation is serious, repeated, or willful; and

(B) where no statutory standards exist, develop standards that take into account:

(1) for determining whether a violation is "serious" in nature, the number of employees affected, the degree of risk posed or actual harm done by the violation to the health, safety, or well-being of a worker, the amount of damages incurred or fines or penalties assessed with regard to the violation, and other considerations as the Secretary finds appropriate;

(2) for determining whether a violation is "repeated" in nature, whether the entity has had one or more additional violations of the same or a substantially similar requirement in the past 3 years;

(3) for determining whether a violation is "willful" in nature, whether the entity knew of, showed reckless disregard for, or acted with plain indifference to the matter of whether its conduct was prohibited by the requirements of the labor laws listed in section 2(a)(i) of this order; and

(4) for determining whether a violation is "pervasive" in nature, the number of violations of a requirement or the aggregate number of violations of requirements in relation to the size of the entity;

(ii) develop processes:

(A) for Labor Compliance Advisors to consult with the Department of Labor in carrying out their responsibilities under section 3(d) of

this order;

(B) by which contracting officers and Labor Compliance Advisors may give appropriate consideration to determinations and agreements made by the Department of Labor and other agencies; and

(C) by which contractors may enter into agreements with the Department of Labor or other enforcement agency prior to being considered for contracts.

(iii) review data collection requirements and processes, and work with the Director of the Office of Management and Budget, the Administrator for General Services, and other agency heads to improve those processes and existing data collection systems, as necessary, to reduce the burden on contractors and increase the amount of information available to agencies;

(iv) regularly convene interagency meetings of Labor Compliance Advisors to share and promote best practices for improving labor law compliance; and

(v) designate an appropriate contact for agencies seeking to consult with the Department of Labor pursuant to this order;

(c) the Director of the Office of Management and Budget shall:

(i) work with the Administrator of General Services to include in the Federal Awardee Performance and Integrity Information System information provided by contractors pursuant to sections 2(a)(i) ~~and (ii)~~ and 2(b)(i) of this order, and data on the resolution of any issues related to such information; and

(ii) designate an appropriate contact for agencies seeking to consult with the Office of Management and Budget pursuant to this order;

(d) the Administrator of General Services, in consultation with other relevant agencies, shall develop a single website for Federal contractors to use for all Federal contract reporting requirements related to this order, as well as any other Federal contract

reporting requirements to the extent practicable;

(e) in developing the guidance pursuant to subsection (b) of this section and proposing to amend the Federal Acquisition Regulation pursuant to subsection (a) of this section, the Secretary of Labor and the FAR Council, respectively, shall minimize, to the extent practicable, the burden of complying with this order for Federal contractors and subcontractors and in particular small entities, including small businesses, as defined in section 3 of the Small Business Act (15 U.S.C. 632), and small nonprofit organizations; and

(f) agencies shall provide the Administrator of General Services with the necessary data to develop the website described in subsection (d) of this section.

Sec. 5. Paycheck Transparency. (a) Agencies shall ensure that, for contracts subject to section 2 of this order, provisions in solicitations and clauses in contracts shall provide that, in each pay period, contractors provide all individuals performing work under the contract for whom they are required to maintain wage records under the Fair Labor Standards

Act; 40 U.S.C. chapter 31, subchapter IV (also known as the Davis-Bacon Act); 41 U.S.C. chapter 67 (also known as the Service Contract Act); or equivalent State laws, with a document with information concerning that individual's hours worked, overtime hours, pay, and any additions made to or deductions made from pay. Agencies shall also require that contractors incorporate this same requirement into subcontracts covered by section 2 of this order. The document provided to individuals exempt from the overtime compensation requirements of the Fair Labor Standards Act need not include a record of hours worked if the contractor informs the individuals of their overtime exempt status. These requirements shall be deemed to be fulfilled if the contractor is complying with State or local requirements that the Secretary of Labor has determined are substantially similar to those required by this subsection.

(b) If the contractor is treating an individual performing work under a contract or subcontract subject to subsection (a) of this section as an independent contractor, and not an employee, the contractor must provide a document informing the individual of this status.

Sec. 6. Complaint and Dispute Transparency. (a) Agencies shall ensure that for all contracts where the estimated value of the supplies acquired and services required exceeds \$1 million, provisions in solicitations and clauses in contracts shall provide that contractors agree that the decision to arbitrate claims arising under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment may only be made with the voluntary consent of employees or independent contractors after such disputes arise. Agencies shall also require that contractors incorporate this same requirement into subcontracts where the estimated value of the supplies acquired and services required exceeds \$1 million.

(b) Subsection (a) of this section shall not apply to contracts or subcontracts for the acquisition of commercial items or commercially available off-the-shelf items.

(c) A contractor's or subcontractor's agreement under subsection (a) of this section to arbitrate certain claims only with the voluntary post-dispute consent of employees or independent contractors shall not apply with respect to:

(i) employees who are covered by any type of collective bargaining agreement negotiated between the contractor and a labor organization representing them; or

(ii) employees or independent contractors who entered into a valid contract to arbitrate prior to the contractor or subcontractor bidding on a contract covered by this order, except that a contractor's or subcontractor's agreement under subsection (a) of this section to arbitrate certain claims only with the voluntary post-dispute consent of employees or independent contractors shall apply if the contractor or subcontractor is permitted to change the terms of the contract with the employee or independent contractor, or when the contract is renegotiated or replaced.

Sec. 7. Implementing Regulations. In addition to proposing to amend the Federal Acquisition Regulation as required by section 4(a) of this order, the FAR Council shall propose such rules and regulations and issue such orders as are deemed necessary and appropriate to carry out this order, including sections 5 and 6, and shall issue final regulations in a timely fashion after considering all public comments, as appropriate.

Sec. 8. Severability. If any provision of this order, or applying such provision to any person or circumstance, is held to be invalid, the remainder of this order and the

application of the provisions of such to any person or circumstance shall not be affected thereby.

Sec. 9. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 10. Effective Date. This order shall become effective immediately and shall apply to all solicitations for contracts as set forth in any final rule issued by the FAR Council under sections 4(a) and 7 of this order.

BARACK OBAMA