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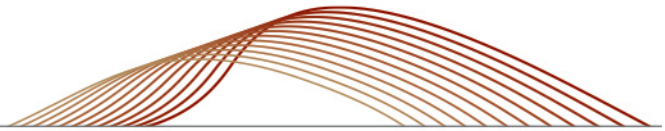
Proposed Amendments to the Federal Acquisition Regulations Pose Substantial New Burdens and Risks for Federal Contractors

By The Federal Contractor Compliance Practice Group

On May 27, 2015, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration issued a notice of proposed rulemaking (the "NPRM") to implement Executive Order 13673, entitled Fair Pay and Safe Workplaces (the "Executive Order") by amending the Federal Acquisition Regulations ("FARs"). 80 Fed. Reg. 30,548 (May 28, 2015) (*Proposed Rulemaking*), available here. On the same day, the Department of Labor (the "DOL") issued proposed guidance (the "Proposed Guidance") to assist federal agencies in implementing the Executive Order. 80 Fed. Reg. 30,574 (May 28, 2015)(*Guidance*), available here. Last August, we reported on the Executive Order, which imposed new obligations on federal contractors in three distinct areas: (1) required disclosures of certain labor and employment law violations occurring prior to or during the term of a contract; (2) required disclosures to employees and independent contractors of their work hours and other pay-related information; and (3) prohibited contractors from using pre-dispute arbitration agreements for certain employment-related disputes.

The NPRM and the Proposed Guidance, together, provide the contractor community with some greater clarity regarding the impact of the Executive Order on the contracting process, as well as the added burdens and risks facing contractors as a result. The remainder of this Alert outlines key aspects of the proposed regulations and Proposed Guidance and offers suggestions regarding issues to be addressed during the notice and comment period. Three items are especially noteworthy:

- The required disclosures of labor law violations include reasonable cause findings by the EEOC that have not yet been subject to resolution during good faith conciliation;
- Contractors must provide independent contractors with written notice of their independent contractor status, separate from any contract between the contractor and independent contractor. Upon the regulations becoming final contractors must provide the required notice to each independent contractor then engaged to perform work under a covered contractor and a separate notice must be provided each time an independent contractor is engaged to perform work under a covered contract; and
- The prohibition on pre-dispute arbitrations agreements does not apply to employees or independent contractors who entered into a valid pre-dispute arbitration agreement before



the contractor bid on a government contract covered by the Executive Order, *unless* the contractor is permitted to change the terms of the arbitration agreement, or the agreement is later renegotiated or replaced. Contractors with existing arbitration programs should evaluate them now to determine whether they will survive the implementation of the Executive Order.

A. The DOL Defines What Contractors Must Disclose When Bidding on Covered Contracts

One of the stated objectives of the Executive Order is to promote "economy and efficiency in procurement by contracting with *responsible sources*[1] who comply with labor laws."[2] Accordingly, section 2 of the Executive Order requires companies seeking contracts of $500,000 or more ("prospective contractors") to disclose any "administrative merits determination, arbitral award or decision, or civil judgment" against the prospective contractor within the preceding three years involving violations of specified federal labor laws and state-law equivalents (referred to as the "Labor Laws"). This information will be used by contracting officers in their "responsibility" determinations. The Executive Order directed the DOL to issue guidance on these disclosure requirements. In its Proposed Guidance, the DOL defined these key terms and announced that it will issue in the Federal Register another set of guidance on the state-law equivalents at a later date. In a surprising move, the DOL seeks comments on the Proposed Guidance (which otherwise would not be subject to notice-and-comment) by July 27, 2015.

The DOL proposes to define "administrative merits determination, arbitral award or decision, and civil judgment" as follows:

> "**Administrative Merits Determination**" – Any notice or finding, "whether final or subject to appeal or further review[,] issued by an enforcement agency following an investigation that indicates that the [prospective] contractor or subcontractor violated any provision of the Labor Laws."[3]
>
> "Enforcement agency" is "any agency that administers the federal Labor Laws[4], such as the Department [of Labor] and its agencies, the Occupational Safety and Health Review Commission, the Equal Employment Opportunity Commission ["EEOC"], and the National Labor Relations Board ["NLRB"]."[5] The DOL excluded from coverage federal agencies that, in their capacity as contracting agencies, investigate violations of federal Labor Laws relating to contracts that they administer.[6]

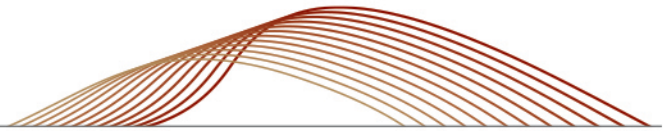
The Proposed Guidance identifies seven categories of "administrative merits determinations," five of which come from specific federal agencies.

1. Certain documents issued by the DOL's Wage and Hour Division, including "Summary of Unpaid Wages" WH-56 forms, as well as an any letters, notices, or other documents assessing civil monetary penalties or violations of certain sections of the Fair Labor Standards Act, Family Medical Leave Act, Service Contract Act, Davis-Bacon Act, or Executive Order 13658 (Establishing a Minimum Wage for Contractors).[7]

2. Certain documents issued by the Occupational Safety and Health Administration ("OSHA") or state agency that administers an OSHA-approved state plan, including citations, imminent danger notices, and notices of failure to abate.[8]

3. Show cause notices issued by the Office of Federal Contract Compliance Programs.[9]

4. Reasonable cause letters issued by or civil actions filed by the EEOC.[10]



5. Complaints issued by a Regional Director of the NLRB.[11]

6. Complaints filed by or on behalf of an enforcement agency with a federal or state court, or an administrative law judge alleging that the prospective contractor or subcontractor violated any provision of the Labor Laws.[12]

7. Any orders or findings from an administrative law judge, the DOL's Administrative Review Board, the Occupational Safety and Health Review Commission or state equivalent, or the NLRB that the prospective contractor or subcontractor violated any provision of the Labor Laws.[13]

"**Arbitral Award or Decision**" – "Any award or order by an arbitrator or arbitral panel in which the arbitrator or arbitral panel determined that the [prospective] contractor or subcontractor violated any provision of the Labor Laws, or enjoined or restrained the contractor or subcontractor from violating any provision of the Labor Laws."[14] The definition encompasses any award or decision that is not final or is subject to being confirmed, modified, or vacated by a court, as well as any award or decision resulting from private or confidential proceedings.

"**Civil Judgment**" – "Any judgment or order entered by any federal or state court in which the court determined that the [prospective] contractor or subcontractor violated any provision of the Labor Laws, or enjoined or restrained the contractor or subcontractor from violating any provision of the Labor Laws."[15] The definition includes judgments resulting from jury trials, bench trials, or dispositive motions, as well as judgments or orders that are not final or are subject to appeal. The Proposed Guidance clarifies that private settlements where the lawsuit is dismissed without any judgment would not qualify as a "civil judgment."

Under the Proposed Guidance, prospective contractors will have to disclose any administrative merits determination, arbitral award or decision, or civil judgment if rendered within the three-year period before the prospective contractor's bid or proposal (even if the underlying conduct at issue in the suit was from an earlier time period or if the prospective contractor was not a contractor during that three-year time period).[16] However, no reporting is required if the determination, award, or civil judgment has been reversed or vacated in its entirety.

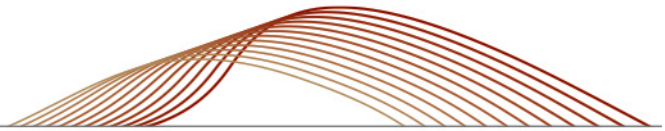
The Proposed Guidance does not explain an apparent inconsistency in the definition of an Administrative Merits Determination. For example, both the EEOC and the OFCCP are obligated by law to engage in good faith conciliation after an investigation results in a finding of a violation; in the case of EEOC, a reasonable cause determination, and in the case of OFCCP, a Notice of Violation. Under the Proposed Guidance, however, a reasonable cause determination by the EEOC constitutes an Administrative Merits Determination, but a Notice to Show Cause by the OFCCP does not. If the objective is to promote settlement, the final Guidance should exclude a reasonable cause determination by the EEOC from the definition of an Administrative Merits Determination.

1. Different Information Must be Disclosed Depending On The Stage Of The Contracting Process

Initial Representation

When a prospective contractor bids on a solicitation of a covered contract, the contractor will have to represent to the best of its knowledge and belief, whether it has had any Labor Law violations within the preceding three years. No further information will be requested at this stage.

Pre-Award Reporting



At this stage, the contracting agency must make a "responsibility determination" concerning the prospective contractor.[17] The NPRM and the Proposed Guidance make an assessment of the contractor's "ethics" and "integrity" a part of that determination. Thus, a prospective contractor that reported Labor Law violations at the initial representation stage will be asked to provide the following information for each administrative merits determination, civil judgment, or arbitral award or decision:

- The Labor Law violated;
- The unique identification number for the case, inspection, charge, or docket;
- The date of the determination, judgment, award, or decision; and
- The name of the court, arbitrator(s), agency, board, or commission that rendered it.

In addition to the above, contracting agencies may seek additional information as necessary to determine if the prospective contractor has a "satisfactory record of integrity and business ethics."[18] The Proposed Guidance offers no clear indication of how broad such additional information requests might be.

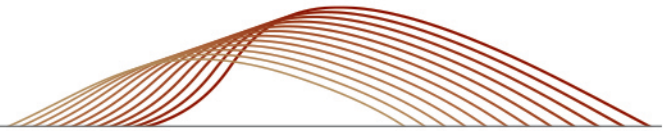
A prospective contractor may also provide additional information to demonstrate it is a responsible business, including information concerning mitigating factors and remedial measures taken to achieve compliance with the Labor Laws, such as workplace policies.[19] The DOL identifies the "most important mitigating factor" to be the prospective contractor's remediation of the violation, which consists of (1) correcting the violation, including providing make-whole relief to affected employees; and (2) preventing the reoccurrence of similar violations.[20]

A prospective contractor can address other mitigating factors, such as:

- The number of violations (a single violation will likely not give rise to a determination of lack of responsibility);
- The number of violations in comparison to the size of the prospective contractor;
- If the prospective contractor has implemented a safety and health management program, a collectively-bargained grievance procedure, or other compliance program;
- If there was a recent legal or regulatory change;
- If the findings of the enforcement agency, court, or arbitrator(s) demonstrate that the prospective contractor acted in good faith and had reasonable grounds for believing that it was not violating the law; and
- If the prospective contractor has maintained a long period of compliance following any violations.[21]

Post-Award Reporting

Traditionally, "responsibility" determinations were made at the time of award and at any extension or renewal. Contractors renew their representations, including those concerning responsibility, when they renew their federal contractor registration, which is typically done annually. Semi-annual updates were not previously required. Under the NPRM and the Proposed Guidance, during the performance of



the contract, covered contractors must provide semi-annual updated disclosures to contracting agencies. These updates should include "any new administrative merits determinations, civil judgments, and arbitral awards or decisions rendered since the last report and updates to previously reported or provided information."[22] Covered contractors will have to report new determinations, judgments, and awards or decisions, even if they arise from a violation of a Labor Law that the contractor previously reported. As with the pre-award reporting, contractors can provide information on mitigating factors or other relevant information that may be helpful to assess the violation at issue.

2. *Contracting Agencies Will Use the Reported Information to Determine If the Labor Law Violations Are "Serious, Repeated, Willful, or Pervasive"*

As mentioned above, contracting agencies will use the Proposed Guidance to identify whether the administrative merits determinations, arbitral awards or decisions, or civil judgments were issued for "serious, repeated, willful, or pervasive violations." The Proposed Guidance defines these key terms as follows:

"**Serious**" – The DOL identifies nine exhaustive categories of a "serious" violation.

1. An OSH Act or OSHA-approved state plan citation was designated as serious, there was a notice of failure to abate an OSH Act violation, or an imminent danger notice issued under the OSH Act or OSHA-approved state plan.

2. The affected workers comprised 25% or more of the workforce at the worksite. (The DOL specifically seeks comment on this category.)

3. Fines and penalties of at least $5,000 or back wages of at least $10,000, or injunctive relief imposed by an enforcement agency or court.

4. The prospective contractor's conduct violated the Migrant and Seasonal Agricultural Worker Protection Act or the child labor provisions of the Fair Labor Standards Act, and caused or contributed to the death or serious injury of at least one worker.

5. Employment of a minor who was too young to be legally employed or in violation of a Hazardous Occupation Order.

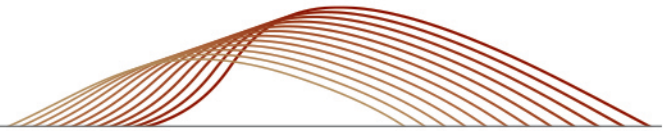
6. The prospective contractor engaged in an adverse employment action (including discharge, refusal to hire, suspension, demotion, or threat) or is responsible for unlawful harassment against one or more workers for exercising any right protected by any of the Labor Laws.

7. The findings of the relevant enforcement agency, court, or arbitrator(s) support a conclusion that the prospective contractor engaged in a pattern or practice of discrimination or systemic discrimination.

8. The findings of the relevant enforcement agency, court, or arbitrator(s) support a conclusion that the prospective contractor interfered with the enforcement agency's investigation.

9. The prospective contractor breached the material terms of any agreement or settlement entered into with an enforcement agency, or violated any court order, any administrative order by an enforcement agency, or any arbitral award.[23]

"**Repeated**" – The DOL defines a "repeated" violation as "the same as or substantially similar to one or more other violations of the Labor Laws" by the prospective contractor.[24] A "substantially similar" violation is one that has "essential elements in common" with the other violation.[25]



The same or substantially similar violation must be found in a civil judgment, arbitral award or decision, or adjudicated or uncontested administrative merits determination within the last three years.

"**Willful**" – The DOL identifies five categories of a "willful" violation.

1. For purposes of a citation issued pursuant to the OSH Act or an OSHA-approved state plan, the citation at issue was designated as willful or any equivalent state designation (*i.e.*, "knowing"), and the designation was not subsequently vacated.

2. For purposes of the Fair Labor Standards Act (including the Equal Pay Act), the administrative merits determination sought or assessed back wages for greater than two years or sought or assessed civil monetary penalties for a willful violation, or there was a civil judgment or arbitral award or decision finding the prospective contractor liable for back wages for greater than two years or affirming the assessment of civil monetary penalties for a willful violation.

3. For purposes of the Age Discrimination in Employment Act, the enforcement agency, court, or arbitrator(s) assessed or awarded liquidated damages.

4. For purposes of Title VII or the Americans with Disabilities Act, the enforcement agency, court, or arbitrator(s) assessed or awarded punitive damages for a violation where the prospective contractor engaged in a discriminatory practice with malice or reckless indifference to the federally protected rights of an aggrieved individual.

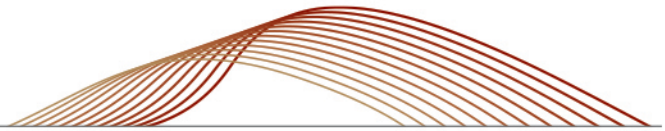
5. For purposes of any of the other Labor Laws, the findings of the relevant enforcement agency, court, or arbitrator(s) support a conclusion that the prospective contractor knew that its conduct was prohibited by any of the Labor Laws or showed reckless disregard for, or acted with plain indifference to, whether its conduct was prohibited by one or more of requirements of the Labor Laws.[26]

"**Pervasive**" – The DOL defines a "pervasive" violation as "a basic disregard by the [prospective] contractor . . . for the Labor Laws as demonstrated by a pattern of serious or willful violations, continuing violations, or numerous violations."[27] The violations do not need to be the same or similar underlying violation of the Labor Laws to be "pervasive." Rather, this category of violations is to identify prospective contractors that view sanctions for their violations as merely the "cost of doing business," and thus do not have the requisite level of responsibility.[28] The DOL specifically seeks comments on how best to assess a threshold number of violations in light of a prospective contractor's size.

B. Increasing Pay Transparency

Contractors subject to section 2 of the Executive Order must also provide certain pay information to all individuals performing work under the contract who are subject to the wage records requirements of the FLSA, Davis-Bacon Act, Service Contract Act, or equivalent state laws identified in the DOL Guidance. According to the NPRM, the proposed regulation would also further the identification of "responsible" contractors by giving workers the information they need to notify their employer of unlawful practices, thereby facilitating a safer and more compliant workplace and the likelihood of being deemed "responsible."

Each non-exempt employee of covered contractors will be entitled to a wage statement listing the hours he or she worked, overtime hours, pay, and any additions made to or deductions from pay. Additions to pay include but are not limited to bonuses, awards, and shift differentials. Deductions include but are not limited to those required by law (*e.g.*, withholdings for taxes) and voluntary



deductions (*e.g.*, contributions to health insurance premiums or retirement accounts). The wage statement must be provided every pay period, and if the pay period is broader than the period for which overtime pay is calculated (usually weekly), it must include a breakdown of overtime hours by each overtime pay period.

Contractors subject to section 2 of the Executive Order are not required to provide a record of hours worked to exempt workers who are given written notice of their exempt status. Contractors who regularly provide documents to their workers electronically may provide the required wage statements electronically if the workers can access it through a computer, device, system, or network provided or made available by the contractor. For all individuals performing work under a contract who are treated as independent contractors, contractors must provide, before the commencement of work or at the time the contractor establishes a contract with the individuals, written notice of the individuals' independent contractor status. The written notice must be separate from any contract between the contractor and independent contractor. At the effective date of the Executive Order's independent contractor notice requirement, contractors must provide the required notice to each independent contractor then engaged to perform work under a covered contractor. A separate notice must be provided each time an independent contractor is engaged to perform work under a covered contract.

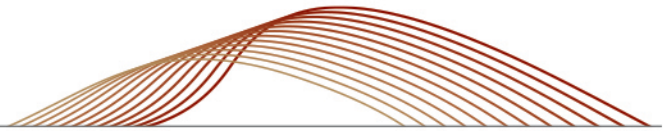
If a significant portion of the workforce is not fluent in English, contractors must provide the wage statements and independent contractor notices in English and in the language with which the workforce is more familiar. The Proposed Rule and DOL Guidance do not define what constitutes a "significant portion" of the workforce.

These paycheck transparency requirements are deemed fulfilled if the contractor is complying with state or local requirements that the Secretary of Labor has determined are "substantially similar" to those required under the Executive Order. The DOL is currently considering two methods for determining substantial similarity. Under the first method, a requirement would be substantially similar where it requires wage statements to include the essential elements of overtime hours or overtime earnings, total hours, gross pay, and any additions or deductions. If the DOL applies this method, the following states would have substantially similar requirements: Alaska, California, Connecticut, the District of Columbia, Hawaii, New York, and Oregon.

Under the second method, a requirement would be substantially similar even where it allows wage statements to omit overtime earnings, so long as they instead include the "rate of pay" in addition to the other elements required by the order. This method would still allow workers to calculate whether the contractor included appropriate payment for overtime hours, but failures to pay overtime would not be identifiable on the face of the document. If the DOL applies this method, the following states would have substantially similar requirements to the Executive Order: Alaska, California, Connecticut, the District of Columbia, Hawaii, Massachusetts, Minnesota, New York, Oregon, Pennsylvania, Texas, Vermont, Washington, and Wisconsin. Which option to apply, and whether to consider another combination entirely, is an area for public comment.

C. Arbitrability of Certain Employment Claims

Section 6 of the Executive Order limits contractors' ability to use pre-dispute arbitration agreements for 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. This prohibition is similar to the Franken Amendment that has for a number of years imposed the same requirement on contractors receiving funds under Department of Defense appropriations bills. Section 6 covers contractors with contracts exceeding $1 million in the



estimated value of supplies or services, other than those for commercial items. The proposed regulations indicate, however, that the arbitration limitations will apply only to new contracts that "contain [a] clause[] implementing Executive Order 13673."

There are, however, two exceptions to this prohibition. First, it does not to apply to employees covered by a collective bargaining agreement negotiated between the contractor and a labor organization representing the employees. Second, it does not apply to employees or independent contractors who entered into a valid pre-dispute arbitration agreement before the contractor bid on a government contract covered by the Executive Order, unless the contractor is permitted to change the terms of the arbitration agreement, or the agreement is later renegotiated or replaced. Therefore, contractors with existing arbitration programs should evaluate them now to determine whether they will survive the implementation of the Executive Order. It remains an open question, however, whether the President has the authority to prohibit contractors from entering into pre-dispute arbitration agreements with their employees when the Federal Arbitration Act specifically permits them to do so.[29] Therefore, it would not be surprising if there are legal challenges to this aspect of the Executive Order.

The Proposed Rule does not resolve open issues regarding section 6 of the Executive Order, such as when a contractor will be deemed to be permitted to change the terms of an existing pre-dispute arbitration agreement, the penalties for violating the section, and the interaction between Section 6 and the Federal Arbitration Act. The Executive Order did not direct the Secretary of Labor to address the prohibition on pre-dispute arbitration provision.

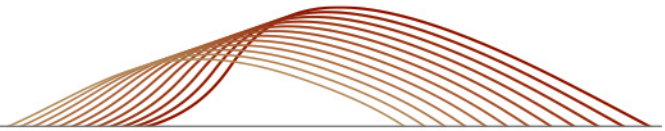
Contractors must incorporate the prohibition on pre-dispute arbitration of these claims in subcontracts that exceed $1 million in estimated value of supplies or services provided, except for subcontracts for the acquisition of commercial items.

D. "Flow-down" Language in Sub-contracts

Sections 2 and 6 of the Executive Order require that their obligations must be incorporated into covered subcontracts at all tiers through the incorporation of flow down language.[30] The flow-down requirements under Section 2 impose a unique oversight burden for all contractors using subcontractors. Unlike, for example, Executive Order 11246, which merely requires contractors to include "flow-down" language in subcontracts, Section 2 of the new Executive Order imposes on contractors a monitoring and enforcement obligation. Contractors must not only make "responsibility determinations" similar to those made by contracting officers, but they must also oversee subcontractor post-award reporting. These obligations raise significant questions, including how contractors are to handle circumstances in which a subcontractor reports "serious, repeated, willful or pervasive" violations during the term of a contract. One issue specifically identified in the NPRM for comment was whether the final regulations should instead require reporting by subcontractors directly to the agency contracting officers, instead of to the contractor.

E. Issues to Be Addressed During the Comment Period

As always, contractors should evaluate critically whether to participate in the comment period, either directly or through industry groups. In addition to issues for which the FAR Council and DOL have specifically requested comment (as discussed above), we believe the following issues are likely to be a major focus during the review and comment period:



- The burdens associated with compliance, including but not limited to the need for added headcount as well as systems development or enhancement to manage compliance (note that a contractor with operations in all 50 states may have to monitor its own compliance with almost 700 laws, as well as the compliance of subcontractors in each of those states).
- The potential disruption to the performance of federal contracts due to a need to terminate and replace a subcontractor, and the resulting increase in costs demanded by a replacement subcontractor, or the imposition of financial penalties for failing to meet a delivery schedule.
- Who will have access to the data base of contractors' disclosed labor law violations and whether it will be subject to FOIA requests by plaintiffs.
- If contractors will have an opportunity to contest a "lack of responsibility" determination, or any finding of "serious, repeated, willful, or pervasive violations."
- For compliance with Executive Order 11246 (and related statutes) should record keeping violations, in contrast to findings of discrimination, be excluded from the definition of Administrative Merits Determinations or, alternatively, be explicitly excluded from the category of "serious" violations.

We will continue to track these issues and provide an updated alert when the final regulations are published. In the meantime, if you have questions please contact any of the attorneys in our Federal Contractor Compliance Practice Group, listed below.

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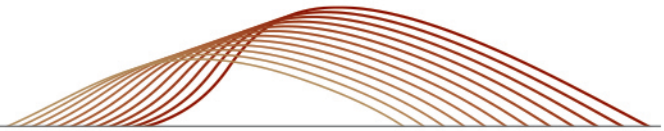

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1 "Responsible" is a term of art under the FARs. Contractors must be "responsive" (*i.e.*, meet the terms of the proposed contract and bid on those terms) and "responsible" (*i.e.*, meet the definition in FARS §9.104-1).

2 Executive Order 13673 – Fair Pay and Safe Workplaces, 79 Fed. Reg. 45,309, 45,309 (July 31, 2014) (emphasis added).

3 *Guidance*, 80 Fed. Reg. at 30,579.

4 The DOL defines "Labor Laws" as the 14 federal labor laws or executive orders identified in the Fair Pay and Safe Workplaces Executive Order, which are: (1) the Fair Labor Standards Act; (2) the Occupational Safety and Health Act of 1970; (3) the Migrant and Seasonal Agricultural Worker Protection Act; (4) the National Labor Relations Act; (5) the Davis-Bacon Act; (6) the Service Contract Act; (7) Executive Order 11246; (8) Section 503 of the Rehabilitation Act of 1973; (9) the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974; (10) the Family and Medical Leave Act; (11) Title VII of the Civil Rights Act of 1964; (12) the Americans with Disabilities Act of 1990; (13) the Age Discrimination in Employment Act of 1967; and (14) Executive Order 13658 (establishing a minimum wage for contractors).

5 *Guidance*, 80 Fed. Reg. at 30,579.

6 *Id*.

7 *Id*.

8 *Id*.

9 *Id*.

10 *Id*.

11 *Id*.

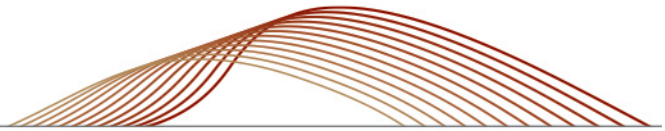
12 *Id*.

13 *Id*.

14 *Id*. at 30,580.

15 *Id*.

16 *Id*. at 30,578-79.



[17] The new Executive Order applies only to arrangements with an "executive agency" which the FAR defines as "an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101." *Id*. at 30,578. This definition is different than the definition of "contracting agency" under the Executive Order 11246 regulations. *See* 41 C.F.R. 60-1.3 ("any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, which enters into contracts"). It may be that contracts with some agencies that result in Executive Order 11246 jurisdiction will not be covered under the Fair Pay and Safe Workplaces Executive Order.

[18] *Guidance*, 80 Fed. Reg. at 30, 581 n. 18.

[19] *Id*. at 30,581-82.

[20] *Id.* at 30,590.

[21] *Id*.

[22] *Id*. at 30,581.

[23] *Id*. at 30,582-83.

[24] *Id*. at 30,587.

[25] *Id.*

[26] *Id*. at 30,585.

[27] *Id*. at 30,588-89.

[28] *Id*.

[29] *See e.g. Chamber of Commerce v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996) (invalidating in part President Clinton's Executive Order 12954, which barred the federal government from contracting with employers who hired permanent replacements during a lawful strike, as preempted by the National Labor Relations Act).

[30] *Proposed Rulemaking*, 80 Fed. Reg. at 30,567-68; *See also* 80 Fed. Reg. at 30,567-68 (52.222- BB(f), XX, YY for the substance of the language that will be incorporated into all subcontracts).