

Obama Administration Enacts “Fair Pay and Safe Workplaces” Executive Order

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On July 31, 2014, President Obama issued the Fair Pay and Safe Workplaces Executive Order which is intended to ensure that all federal contractors and subcontractors are “responsible sources who comply with labor laws.” In his Executive Order, President Obama emphasized that “labor laws are designed to promote safe, healthy, fair and effective workplaces” and directed all federal department and agencies to “identify and work with contractors with track records of compliance.” The Executive Order will apply to any future federal contracts where the value of supplies or services exceeds \$500,000.

For those future federal contracts in excess of \$500,000, the bid package submitted by the contractor must disclose all violations of 14 different federal statutes within the three years prior to the bid. The federal statutes include the Fair Labor Standards Act, Occupational Safety and Health Administration, the National Labor Relations Act, Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act and Family and Medical Leave Act. Additionally, the contractor will be required to disclose any cited violations of comparable state law pertaining to wage and hour, safety and health, collective bargaining, family and medical leave or other civil rights protections.

A finding of a violation that must be disclosed in the bid proposal can include an administrative decision, an arbitration decision or a civil court judgment. If the business is awarded the contract, the Executive Order would require the contractor to update its disclosure every six months.

While mandating that every contractor disclose all violations within the last three years, the Executive Order does not provide any standards governing how many violations will result in a disqualification of the bidder as a responsible party. While suggesting that a single violation “may not necessarily give rise to a determination of lack of responsibility,” the Executive Order nevertheless reiterated that the agency should take into account the nature of the violation. The Secretary of Labor is tasked with the responsibility to develop written guidance to assist agencies in determining whether or not any merit determination was serious, repeated, willful or pervasive.

Finally, while only the general contractor submitting the bid is required to provide the necessary disclosures, the Executive Order will mandate that each general contractor must in turn require each subcontractor to disclose any violations during the same three year period for the same federal and state laws. Unless the Executive Order is enjoined by the courts or is rescinded by any future president, a federal contractor must not only ensure that its labor and employment practices are free of any adverse finding of violation by either an agency, a judge or a jury, it must also ensure that it is always subcontracting with employers that are similarly free of any such violations.

By Tom Berry