



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG - 4 2014

Department of the Interior Acquisition Policy Release (DIAPR) 2014-02

Subject: **Class Deviation—Implementation of Executive Order 13658, Establishing a Minimum Wage for Contractors**

References: Civilian Agency Acquisition Letter 2014-03, June 25, 2014;
Office of Management and Budget Memorandum M-14-09, June 12, 2014
Executive Order 13658, Establishing a Minimum Wage for Contractors,
February 12, 2014; and Federal Acquisition Regulation (FAR) 1.404

1. Purpose: This DIAPR issues a class deviation, in accordance with FAR 1.404, for contracting officers to use the attached clause, 52.222-99, Establishing a Minimum Wage for Contractors, to require payment of an hourly wage of at least \$10.10 to contractor employees beginning January 1, 2015.

2. Effective Date: Upon signature.

3. Expiration Date: This DIAPR will remain in effect until the FAR is amended to provide for inclusion of a contract clause in solicitations and contracts or is otherwise rescinded.

4. Background and Explanation:

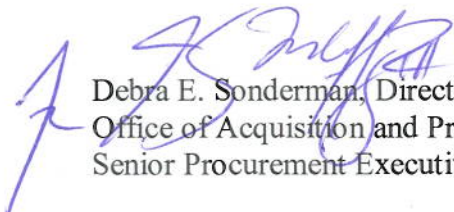
Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, requires agencies, to the extent permitted by law, to include a clause in new solicitations and resultant contracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, in the performance of the contract or any subcontract thereunder, shall be at least \$10.10 per hour beginning January 1, 2015. The Department of Labor is required to issue regulations to implement the Executive Order and the FAR Council is required to amend the FAR to provide inclusion of the contract clause in solicitations and contracts subject to the Executive Order. The Office of Management and Budget (OMB) Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014, required the FAR Council to provide standard wording for a clause to be used pending issuance of Department of Labor and FAR regulations. This deviation implements Executive Order 13658 and OMB Memorandum M-14-09.

5. Action Required:

Contracting officers shall use the attached clause to require payment, beginning January 1, 2015, of an hourly wage of at least \$10.10 to contractor employees. Accordingly, for solicitations and resultant contracts that include the FAR clause 52.222-6 or 52.222-41, and will be performed, in whole or in part, in the United States (the 50 States and the District of Columbia), contracting officers shall insert the attached clause in solicitations issued on or after the date this deviation is signed and resultant contracts.

6. Additional Information:

Questions may be directed to Scott Curit, Senior Procurement Analyst, Office of Acquisition and Property Management, at (202) 513-0719 or by e-mail at Scott_Curit@ios.doi.gov.



Debra E. Sonderman, Director
Office of Acquisition and Property Management and
Senior Procurement Executive

Attachment

**52.222-99, Establishing a Minimum Wage for Contractors
(DEVIATION)**

The contracting officer shall insert the following clause in solicitations and resultant contracts that include the FAR clause 52.222-6 and/or 52.222-41, and work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

**ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS
(DEVIATION) (JUL 2014)**

This clause implements Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and OMB Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014.

(a) Each service employee, laborer, or mechanic employed in the United States (the 50 states and the District of Columbia) in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and service employee, laborer, or mechanic, shall be paid not less than the applicable minimum wage under Executive Order 13658. The minimum wage required to be paid to each service employee, laborer, or mechanic performing work on this contract between January 1, 2015, and December 31, 2015, shall be \$10.10 per hour.

(b) The Contractor shall adjust the minimum wage paid under this contract each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all service employees, laborers, or mechanics subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(c) The Contracting Officer will adjust the contract price or contract unit price under this clause only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Contracting Officer shall consider documentation as to the specific costs and workers impacted in determining the amount of the adjustment.

(d) The Contractor Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (c) of this clause, and will not provide price adjustments under this clause that result in duplicate price adjustments with the respective clause of this contract implementing the Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act).

(e) The Contractor shall include the substance of this clause, including this paragraph (e) in all subcontracts.

(End of clause)



June 12, 2014



M-14-09

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Beth Cobert
Deputy Director for Management
Office of Management and Budget

Christopher Lu
Deputy Secretary
U.S. Department of Labor

SUBJECT: Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors

On February 12, 2014, the President issued Executive Order 13658 (the Order), "Establishing a Minimum Wage for Contractors." The Order requires that a minimum wage for workers of \$10.10 be included in agency solicitations for covered Federal contracts or contract-like instruments. The Order explains that "[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs . . . [which] will lead to improved economy and efficiency in Government procurement." See § 1.

By its terms, the Order applies to contracts or contract-like instruments where the solicitation has been issued on or after January 1, 2015. See § 8(a). The Order also provides that, for all new contracts negotiated before January 1, 2015, agencies are "strongly encouraged to take all steps that are reasonable and legally permissible to ensure that individuals working pursuant to those contracts and contract-like instruments are paid an hourly wage of at least \$10.10." See § 8(c).

This memorandum provides guidance to agencies on how to implement the requirements of the Order prior to January 1, 2015, and prior to the issuance of final regulations by the Department of Labor (DOL).

Ongoing Implementation Efforts.

DOL is actively working on rules to implement the Order. Within 60 days of the Secretary issuing final regulations, the Federal Acquisition Regulatory Council (FAR Council)

will amend the Federal Acquisition Regulation (FAR) to provide for inclusion of a contract clause in Federal procurement solicitations and contracts subject to the Order.

Pursuant to § 4(b), agencies with responsibility for contracts described in § 7(d)(i)(C) and (D) (e.g., a contract or contract-like instrument for concessions, or one entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public) are required to take steps, to the extent permitted by law, to exercise any applicable authority to ensure these contracts comply with the requirements of the Order. DOL has been conducting outreach to discuss these provisions with agencies.

If your agency has questions about its responsibilities under § 4(b) or the steps necessary to implement it, please contact DOL, as described below.

Steps Agencies Should Begin Taking Immediately.

For agency solicitations issued before DOL finalizes its regulations, DOL advises that agencies should assume – in accordance with the plain language of the Order – that contracts and contract-like instruments, such as concessions contracts, that are currently subject to the Service Contract Act or Davis-Bacon Act will be covered by its regulations. DOL's regulations will also cover concessions contracts principally for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public, as well as leases of Federal property and licenses to use such property entered into for the purpose of offering services to the Federal Government, its personnel, or the general public (to the extent that such contracts are not otherwise covered by the Service Contract Act or Davis-Bacon Act). DOL will provide further information on covered contracts and contract-like instruments in its regulations. Prompt application of the Order will help to maximize the beneficial impact of a higher minimum wage. Therefore, please take all reasonable and legally permissible steps to begin implementing the Order now for your contract and contract-like instruments, particularly those subject to the Service Contract Act or Davis-Bacon Act.

To assist in this effort, at the request of DOL, OMB is requesting that the FAR Council provide standard wording for a clause that would be included in the agency's procurement contracts subject to the FAR (the inclusion of this clause would be pursuant to a deviation from the FAR), pending issuance of the FAR rule implementing DOL's rule.

Questions regarding this Order may be directed to Jon Rees at DOL at 202-693-5558 or Rees.Jonathan@dol.gov or to Julia Wise at OMB at 202-395-7561 or Julia_Wise@omb.eop.gov.



GSA Office of Governmentwide Acquisition Policy
CAAC LETTER 2014-03

June 25, 2014

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: WILLIAM F. CLARK 
ACTING CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR)
to Implement Executive Order 13658, Establishing a Minimum
Wage for Contractors

Executive Order 13658, Establishing a Minimum Wage for Contractors, signed February 12, 2014, seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to \$10.10 the hourly minimum wage paid by those contractors. The Executive Order requires agencies, to the extent permitted by law, to include a clause in new solicitations and resultant contracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, in the performance of the contract or any subcontract there under, shall be at least \$10.10 per hour beginning January 1, 2015. The Department of Labor is required to issue regulations to implement the Executive Order and the FAR Council is required to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to the Executive Order.

Section 8(c) of Executive Order 13658 further provides that, for all new solicitations and resultant contracts negotiated on or after the date of the Executive Order, but before the effective date of the implementing regulations by the Federal Acquisition Regulatory Council, agencies are strongly encouraged to take all steps that are reasonable and legally permissible to ensure that individuals working pursuant to those contracts are paid an hourly wage of at least \$10.10 per hour beginning January 1, 2015. Pursuant to the Executive Order, OMB Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014, requested the FAR Council to provide standard wording for a clause to be used pending issuance of Department of Labor and FAR regulations.

To that end, if reasonable and legally permissible, a class deviation may be approved and take immediate effect, in accordance with FAR 1.404, and contracting officers may use the attached clause to require payment, beginning January 1, 2015, of an hourly wage of at least \$10.10 per hour to contractor employees. Agencies are requested to provide the CAAC Chair with the status of any class deviation by July 15, 2014.

This CAAC letter constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1) when the agency uses the attached clause. If an agency plans to modify the attached clause, the agency shall consult with the CAAC Chair, so that any agency modified clause can be coordinated with OMB to ensure consistency with Policy Memorandum M-14-09. Any class deviation issued with a modified clause following consultation with the CAAC Chair shall be emailed to Edward Loeb at edward.loeb@gsa.gov, with a copy to william.clark@gsa.gov.

A sample transmittal is also attached, which agencies may use at their discretion to explain the deviation to the acquisition workforce. Agencies need not notify the CAAC if they modify the language in the sample transmittal. If you have questions or require additional information, please contact Edward Loeb at (202) 501-0650, or by email.

Attachments

SAMPLE TRANSMITTAL TEMPLATE

MEMORANDUM FOR *[Insert addressees]*

SUBJECT: Class Deviation - Implementation of Executive Order 13658, Establishing a Minimum Wage for Contractors

Effective immediately, contracting officers shall use the attached clause to require payment, beginning January 1, 2015, of an hourly wage of at least \$10.10 to contractor employees. Accordingly, for solicitations and resultant contracts that include the FAR clause(s) 52.222-6 and/or 52.222-41, and will be performed, in whole or in part, in the United States (the 50 States and the District of Columbia), contracting officers shall insert the clause at Attachment 1 in-

- solicitations issued on or after the date this deviation is signed; and
- to the maximum extent practicable, solicitations issued on or after the date of the Executive Order and before the date of this deviation, if the solicitation is otherwise being amended.

This deviation implements Executive Order 13658, dated February 12, 2014, and OMB Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014. The OMB Memorandum requested the FAR Council to provide standard wording for a clause to be used pending issuance of Department of Labor and FAR regulations.

This deviation remains in effect until it is incorporated into the FAR or [Agency FAR Supplement] or is otherwise rescinded. My point of contact is Mr./Ms. *[insert name]*, who may be reached at xxx-xx-xxxx, or *somebody@xx.xxx*.

[Insert name]
[Insert title]

**52.222-99, Establishing a Minimum Wage for Contractors
(DEVIATION)**

The contracting officer shall insert the following clause in solicitations and resultant contracts that include the FAR clause(s) 52.222-6 and/or 52.222-41, and work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

**ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS
(DEVIATION 2014-OXXXX) (Month 2014)**

This clause implements Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and OMB Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014.

(a) Each service employee, laborer, or mechanic employed in the United States (the 50 states and the District of Columbia) in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and service employee, laborer, or mechanic, shall be paid not less than the applicable minimum wage under Executive Order 13658. The minimum wage required to be paid to each service employee, laborer, or mechanic performing work on this contract between January 1, 2015, and December 31, 2015, shall be \$10.10 per hour.

(b) The Contractor shall adjust the minimum wage paid under this contract each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all service employees, laborers, or mechanics subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

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(d) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (c) of this clause, and will not provide price adjustments under this clause that result in duplicate price adjustments with the respective clause of this contract implementing the Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act).

(e) The Contractor shall include the substance of this clause, including this paragraph (e) in all subcontracts.

(End of clause)