



Office of the Procurement Executive

Acquisition Alert 24-02

TO: All Domestic Contracting Activities

FROM: Michael W. Derrios Acting
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SUBJECT: **Class Deviation – FAR clause 52.222-55 *Minimum Wages for Contractor Workers Under Executive Order 14026***

1. Introduction: The purpose of this Acquisition Alert is to provide a Class Deviation from the Federal Acquisition Regulation (FAR) clause 52.222-55 *Minimum Wages for Contractor Workers Under Executive Order 14026* as shown in Attachment A to this Alert.

2. Background:

- a. **Court Order:** On September 26, 2023, the U.S. District Court for the Southern District of Texas enjoined President Biden and the Department of Labor (DOL) from enforcing Executive Order 14026 *Increasing the Minimum Wage for Federal Contractors* and DOL Final Rule (86 FR 67126), and therefore FAR clause 52.222-55 (Jan 2022), against the States of Texas, Louisiana, and Mississippi and their agencies (Civil Action No. 6:22-CV-0004). **Note:** The injunction does not apply to all contractors or contracts within these three states; rather, it only applies to these three states when the states themselves and/or their agencies are parties to federal contracts, regardless of the place of performance.
- b. **Deviation Authority:** This class deviation is issued under the authority of [FAR 1.404](#) and [DOSAR 601.404](#). This class deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) (CAAC Letter 24-01) in accordance with [FAR 1.404\(a\)](#).

3. Acquisition Impact: Based on the above referenced Court Order, until further notice, Contracting Officers must not enforce the requirements of E.O. 14026 or the DOL Final Rule as implemented in FAR clause 52.222-55 (Jan 2022) for federal

contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party. The Attachment to this Acquisition Alert provides the deviated language for FAR clause 52.222-55, *Minimum Wages for Contractor Workers Under Executive Order 14026* (Oct 2023), which includes an exemption for "Contracts or subcontracts to which the States of Texas, Louisiana, and Mississippi, including their agencies, are a party."

4. Action Required: While the Court injunction is in effect, and when FAR clause 52.222-55 is required by [FAR 22.1906](#), Contracting Officers must use the FAR deviation included in the Attachment to this Acquisition Alert and must adhere to the following:

a. For solicitations:

- (1) For solicitations not yet issued, insert the deviated FAR clause 52.222-55 (Oct 2023) in solicitations and contracts where FAR clause 52.222-55 would otherwise be required.
- (2) For solicitations that have been issued but where an award has not been made, the solicitation must be amended to replace FAR clause 52.222-55 (Jan 2022) with the deviated FAR clause 52.222-55 (Oct 2023).

b. For existing contracts or agreements:

- (1) When extending, renewing, or exercising an option while the injunction is in effect, replace FAR clause 52.222-55 (Jan 2022) with the deviated clause FAR 52.222-55 (Oct 2023) through a bilateral modification. In such a circumstance, if the Contracting Officer is unable to incorporate the deviated clause in an existing contract through bilateral modification, then the Contracting Officer must not enforce the requirements of FAR clause 52.222-55 (Jan 2022) for federal contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party.
- (2) For all other existing contracts or agreements, the Contracting Officer must not enforce the requirements of FAR clause 52.222-55 (Jan 2022)

while the injunction is in effect for federal contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party.

5. Effective Date: This Acquisition Alert is effective upon issuance.

6. Expiration Date: This Acquisition Alert expires once the requirements are incorporated into the FAR, DOSAR, or Department of State Acquisition Manual (DOSAM), or are rescinded, whichever occurs first.

7. Additional Information: Questions regarding this Acquisition Alert may be directed to AcquisitionPolicy@state.gov.

8. Attachments:

- FAR Deviation (*included below*)

9. Referenced Documents, Checklists, Guides and Templates: None.

ATTACHMENT

FAR DEVIATION

Baseline is accurate through FAC 2023-06, published October 5, 2023. Changes to baseline shown as **[bolded, bracketed additions]** and ~~struckthrough deletions~~. FAR text unchanged shown as asterisks.

FAR part 52 - Solicitation Provisions and Contract Clauses

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52.222-55 Minimum Wages for Contractor Workers Under Executive Order 14026. **[DEVIATION (OCT 2023)]**

As prescribed in FAR 22.1906, insert the following clause:

Minimum Wages for Contractor Workers Under Executive Order 14026
[DEVIATION (OCT 2023)] ~~(JAN 2022)~~

(a) * * *

(b) * * *

(c)(1) * * *

(2) This clause does not apply to—

- [(i) Contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party;**
- (ii)]** Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.* those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;
- [(iii)](ii)-**Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards

statute, or the Wage Rate Requirements (Construction) statute.

These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

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(End of clause)