



Homeland  
Security

MEMORANDUM FOR: Heads of the Contracting Activities  
PAUL R  
FROM: Paul Courtney COURTNEY  
Chief Procurement Officer  
SUBJECT: Federal Acquisition Regulation Class Deviation (Number 24-02)  
– Minimum Wages for Contractor Workers Under E.O. 14026

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R COURTNEY  
Date: 2023.11.14  
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**Purpose:** This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404. On October 10, 2023, Civilian Agency Acquisition Council (CAAC) Letter 2024-01 authorized agencies to issue a class deviation regarding a September 26, 2023 court order in litigation challenging Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors.

**Effective Date:** This deviation is effective on the date of signature.

**Background:** On April 27, 2021, President Biden signed E.O. 14026, Increasing the Minimum Wage for Federal Contractors (86 FR 22835). This E.O. directed federal agencies to enter into or renew covered contracts only with entities paying their employees at or above a specified minimum wage. On November 24, 2021, the Department of Labor (DOL) published a final rule implementing E.O. 14026 (86 FR 67126). On January 26, 2022, the FAR Council published an interim rule to implement E.O. 14026 and the DOL regulations (87 FR 4117).

On September 26, 2023, the U.S. District Court for the Southern District of Texas enjoined President Biden and the DOL from enforcing E.O. 14026 or the DOL Final Rule against the States of Texas, Louisiana, and Mississippi and their agencies. The injunction does not apply geographically to all contractors or contracts within those three states; rather, it applies only to these three states and their agencies as parties to federal contracts, regardless of the place of performance. The injunction became effective on October 4, 2023.

**Requirement:** Until further notice, contracting officers shall 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.

**Applicability:** Contracting officers should only use the clause 52.222-55 (OCT 2023) (Deviation 24-02) while the injunction is in effect and as set forth below for new contracts and existing contracts. The deviated clause includes an exemption for contracts or subcontracts to which the States of Texas, Louisiana, and Mississippi, including their agencies, are a party. The deviated clause will automatically address subcontracts through the flow down of paragraph (c)(2) in accordance with requirements in paragraph (k).

For new contracts:

- For solicitations not yet issued, while the injunction is in effect, insert the clause 52.222-55 (OCT 2023) (Deviation 24-02) in solicitations and contracts that include the clause at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States.
- For solicitations that have been issued but where an award has not been made, while the injunction is in effect, the solicitation must be amended to replace FAR clause 52.222-55 (JAN 2022) with the FAR clause 52.222-55 (OCT 2023) (Deviation 24-02).

For existing contracts:

- When extending, renewing, or exercising an option while the injunction is in effect, replace FAR clause 52.222-55 (JAN 2022) with the FAR clause 52.222-55 (OCT 2023) (Deviation 24-02) through bilateral modifications. 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 shall 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.
- For all other existing contracts, the contracting officer shall 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.

**Expiration:** This class deviation will remain in effect until rescinded.

**Attachments:**

- Attachment 1 – 52.222-55 Minimum Wages for Contractor Workers Under Executive Order 14026 (OCT 2023) (Deviation 24-02)
- Attachment 2 – CAAC Letter 2024-01: CAAC Consultation to Issue a Class Deviation From the Federal Acquisition Regulation (FAR) Regarding Legal Challenges to Executive Order 14026, Increasing the Minimum Wage for Federal Contractors

**Additional Information:** DHS Components should update their contract writing systems to include the attached clause 52.222-55 Minimum Wages for Contractor Workers Under Executive Order 14026 (OCT 2023) (Deviation 24-02).

Questions or comments about this class deviation may be directed to [David.Duda@hq.dhs.gov](mailto:David.Duda@hq.dhs.gov) or [Ben.Shih@hq.dhs.gov](mailto:Ben.Shih@hq.dhs.gov)

**Attachment 1 - 52.222-55 Minimum Wages for Contractor Workers Under Executive Order 14026 (OCT 2023) (Deviation 24-02)**

Use deviated clause 52.222-55 instead of the current FAR clause equivalent.

**52.222-55 Minimum Wages for Contractor Workers Under Executive Order 14026 (OCT 2023) (Deviation 24-02).**

As prescribed in 22.1906, insert the following clause:

**MINIMUM WAGES FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026 (OCT 2023) (Deviation 24-02)**

(a) Definitions. As used in this clause—

*United States* means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

*Worker* –

(1)(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and—

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV);

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c)

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection* with a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

(b) Executive Order Minimum wage rate. (1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$15.00 per hour beginning January 30, 2022.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2023, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on <https://www.sam.gov> (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3)(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause *may* not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor *may* make deductions that reduce a

worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 23.230, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026 minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 23.240(b) and 23.280 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)(1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(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) 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).

(d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at [www.dol.gov/agencies/whd/government-contracts](http://www.dol.gov/agencies/whd/government-contracts), in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records. (1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

- (i) Name, address, and social security number;
- (ii) The worker's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid;
- (iv) The number of daily and weekly hours worked by each worker;
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 23.260 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 23.510, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 23. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)