



Homeland
Security

JUL 16 2014

MEMORANDUM FOR: Department of Homeland Security
Head of the Contracting Activities

FROM: Daniel L. Clever
Acting Chief Procurement Officer

SUBJECT: Federal Acquisition Regulation Class Deviation (Number 14-03)
Implementation of Executive Order 13658, Establishing a
Minimum Wage for Contractors

Purpose: This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to implement provisions of Executive Order 13658, dated February 12, 2014, and Office of Management and Budget Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014.

Effective Date: Immediately

Background: Executive Order 13658 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. Section 8(c) 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.

The Chair of the Civilian Agency Acquisition Council issued a memorandum dated June 25, 2014 (<https://acquisition.gov/comp/caac/caacletters/CAAC%20letter%202014-03.pdf>) encouraging each agency to issue a class deviation with standard wording for a clause to be used pending changes to the FAR.

Action: 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.

Expiration Date: This class deviation will remain in effect until it is incorporated into the FAR or is otherwise rescinded.

Attachments: Attachment 1, clause 52.222-99, *Establishing a Minimum Wage for Contractors (DHS FAR Deviation 14-03) (July 2014)*

Additional Information: The enterprise-wide Purchase Request Information System (PRISM) instance will be updated by the Office of the Chief Procurement Officer-Acquisition Systems Branch to include the Attachment 1 clause. Department of Homeland Security Component contracting activities not utilizing the enterprise-wide PRISM instance should coordinate with appropriate personnel to update their contract writing systems with the Attachment 1 clause.

Questions or comments about this class deviation may be directed to David Duda at (202) 447-5415, or by email at David.Duda@hq.dhs.gov.

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
(DHS FAR CLASS DEVIATION 14-03) (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 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)