

CLIENT ALERT

Interim Rule Requires Federal Contractors to Report Executive Compensation and First-Tier Subcontract Awards

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On July 8, 2010, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council, which have responsibility for the development and maintenance of the Federal Acquisition Regulations ("FAR") System, issued an interim rule requiring that covered federal contractors disclose information about the compensation paid to their five most highly compensated executives, and to the highest paid executives of their first-tier subcontractors. The interim rule, effective July 8, 2010, also requires covered federal contractors to report information about certain first-tier subcontracts. The information that such contractors must disclose in accordance with the interim rule will be available on a free, public website maintained by the Office of Management and Budget ("OMB"). Additional details regarding the interim rule may be found in the bullet analysis: [Reporting Requirements For Executive Compensation And First-Tier Subcontract Awards](#).

The stated objective of the interim rule is to "empower the American taxpayer with information that may be used to demand greater fiscal discipline from both the executive and legislative branches of Government." Covered government contractors will be required to report, via the Central Contractor Registration website, the names and total compensation for their five most highly compensated executives. This requirement applies to covered federal contracts expected to be \$25,000 or more, with certain exceptions, held by companies that satisfy specified levels of federal government contracting, grant, loan or cooperative agreement activity. Contractors must also report such compensation information for their first-tier subcontractors satisfying this threshold. The impact of this aspect of the interim rule on private companies and, perhaps (depending upon the interpretation of certain language), wholly-owned subsidiaries of publicly held parent companies is significant, since such entities are not currently required to make such disclosures unless they are recipients of Recovery Act money.

Contractors must also report information related to first-tier subcontracts of \$25,000 or more, as well as modifications to such subcontracts that change the previously reported data, subject to exceptions applicable to contractors and first-tier subcontractors with gross income under \$300,000 in the previous tax year. The report must include, among other things, the name of the subcontractor, the amount of the subcontract and a description of the products or services being provided thereunder. Until September 30, 2010, any newly awarded first-tier subcontract must be reported if the prime contract award amount was \$20,000,000 or more. The prime contract award threshold for reporting is decreased to \$550,000 as of October 1, 2010 and, starting March 1, 2011, to \$25,000. Such subcontractor reporting is likely to increase the scope of affirmative action compliance activities of the U.S. Department of Labor, Office of Federal Contract Compliance Programs.

Federal contracting officers are directed to "exercise appropriate contractual remedies" if contractors fail to comply with these requirements, and to make the failure a part of the contractor's performance information. Written comments to the interim rule, to be considered in the formation of a final rule, are due by September 7, 2010.

If you have any questions about this Alert or about any other labor and employment matter, please contact the attorneys listed below or your usual Crowell & Moring contact.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Kris D. Meade

Partner – Washington, D.C.
Phone: +1 202.624.2854
Email: kmeade@crowell.com

Rebecca L. Springer

Partner – Washington, D.C.
Phone: +1 202.624.2569
Email: rspringer@crowell.com

Peter Eyre

Partner – Washington, D.C.
Phone: +1 202.624.2807
Email: peyre@crowell.com

Ira M. Saxe

Partner – New York
Phone: +1 212.895.4230
Email: isaxe@crowell.com