Caught in the Federal Procurement Fish Bowl
26th Annual Ounce of Prevention Seminar

Government Contracts
Labor: Working Hard for the Money

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Washington, DC

OOPS 2010
Crowell & Moring LLP
High Road Contracting

• What is it?
  – Aimed at addressing perceived problems with government contractors:
    • Low Wages
    • Poor Benefits
    • Poor Working Conditions
  – High Road Contracting Would Penalize or Even Bar Contractors for Perceived Poor Records in these Areas
High Road Contracting

• How Will It Work?
  – Possible Blacklisting/Prescreening
  – Possible Advantages in Procurement for High Road Companies

• Imposed Through Legislation or Regulation?
  – Executive Order
  – Due Process Concerns
High Road Contracting

- Impacts?
  - Wages
  - Benefits
  - Competition

- Judicial Challenges?
Franken Amendment

- Part of FY 2010 DoD Authorizations Bill
- Prohibitions
  - Executing/enforcing mandatory arbitration clauses in agreements with employees or independent contractors
    - Claims under Title VII of the Civil Rights Act of 1964
    - Torts related to sexual assault or harassment
  - Does not apply to CBAs
Franken Amendment

• Coverage
  – Those receiving federal contracts or subcontracts greater than $1M in 2010 Defense Appropriations Act funds

• Class Deviation - DFARS 252.222-7999
  – Flow down to subcontractors
  – Excludes commercial item subcontracts and subcontracts for COTS items
NLRA Rights Postings

- E.O. 13496 – January 2009
- OLMS Final Rule – May 20, 2010
  - Notice of NLRA Rights
  - Examples of Illegal Employer and Union Activity, but . . .
  - Replaces “Beck” Posting Obligation
  - Flow down Obligation
- Effective Date – June 21, 2010
E-Verify Update

• E-Verify went into effect on September 8, 2009
• FAR 52.222-54 Employment Eligibility Verification
• Challenges?
  – Subcontracting
  – Security
Service Contract Act Issues

- Mandatory Hiring of Predecessor Employees
  - Proposed Rule:
    - Right of first refusal
    - No requirement on number of employees
    - Not applicable to managerial and supervisory employees
    - Penalties range from back pay to debarment
Questions?

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