

Caught in the Federal Procurement Fish Bowl

26th Annual Ounce of Prevention Seminar

crowell**moring**



Government Contracts Labor: Working Hard for the Money

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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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