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## Government Contracts

### **Prepare Now for Final Rule on Fair Pay, Safe Workplaces Order, Attorneys Say**

**C**ontractors should take steps now to prepare for rules due this spring from the Labor Department (DOL) that will require disclosure of violations of labor and employment laws, contracting attorneys told Bloomberg BNA Feb. 12.

Preparing now could give contractors a competitive edge, soothe relations with subcontractors who also must disclose information on labor violations, and possibly fend off suspension and debarment for noncompliance, the attorneys said. Executive Order 13,373, issued by the president in 2014 (102 FCR 162, 8/5/14 requires DOL to propose rules by May 27 (103 FCR 589, 6/9/15).

The rules will require contractors to disclose to agency contracting officers any violations of various federal and state labor and employment laws during the prior three years to bid for contracts exceeding \$500,000.

**Big Burdens Ahead?** The most important step contractors can take is to get the firm's contracting team talking with its human resources and legal department on what labor violations have occurred, Miles and Stockbridge PC Counsel Eric Crusius told Bloomberg BNA Feb. 12.

To comply with the rules, bidders will be required to check a box stating whether they have any labor or workplace issues that fall under the executive order, Crusius said. "Proponents of the rule say checking the box is easy, but it takes a lot of background work, especially for larger companies," he said. Therefore, communication is critical, he said.

Contractors that are awardees will be required to disclose details of past violations — sometimes a lot of details, Crusius said, which take time and effort to compile, he said. Each contract requires reporting every six months, so if a firm has 12 contracts, they will issue 24 reports a year, creating "near constant reporting requirements," he said.

"It will be extremely burdensome," he said. "I heard anecdotally that some contractors will not want to play in the government space because of it."

Compliance requirements also could have a "perverse effect" on how a company litigates, Crusius added. Contractors will be required to report judgments of labor or workplace violations, he said. A company may not want to settle a judgment that is on appeal because it will still need to report the judgment from the lower court, he said. Settlements in the absence of a

judgment, however, would not need to be reported, so contractors have an incentive to settle instead of fighting a claim, he said.

**Proactive Prevention of Debarment?** Contractors should ensure their business systems tabulate alleged violations of labor law and workplace safety laws, Dentons US LLC Partner Mark Meagher told Bloomberg BNA Feb. 12. "This is a major distinction between existing reporting systems," he said. Contractors currently don't have to capture allegations of noncompliance, such as a notice from an agency that they face a compliance issue, he said.

Contractors could face suspension and debarment for failing to comply with the executive order, so proactively meeting with a suspension and debarment official from the agency they do a large amount of business with is a good idea, Meagher said. Building relationships by meeting and discussing the compliance system shows a good-faith effort, he added.

Compliance also would require subcontractors to disclose their violations so prime contractors could determine whether they are responsible firms for the purposes of federal contracting, Meagher said. Companies should prepare by planning how they will assert this to their supply chain, he said. "That, for industry, is a significant burden," he said. It will likely create friction in the supply chain because subcontractors will have to provide information on violations to a prime contractor that might compete with it on future projects, he said. "Companies will really have to think through how they can most effectively manage this compliance obligation for supply chain," he said.

**Be Ready on Day One.** Companies need to prepare now so they comply as soon as the final rule goes into effect, Crowell & Moring Partner Stephen McBrady told Bloomberg BNA Feb. 12.

"If you don't have a compliance plan in place for day one, you are going into the storm without a raincoat," he said.

The first step for companies to take is identifying the point person for compliance — someone from the human resources, procurement or legal department, for example.

Helping the point person conduct compliance reviews is the next step, he said. Firms that are able to disclose their labor and workplace law compliance in the past three years will have a competitive advantage over rivals, he said.

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