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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

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SUBJECT: Implementation of the President's Executive Order on Fair Pay and Safe Workplaces

On July 31, 2014, the President signed Executive Order 13673, Fair Pay and Safe Workplaces (the Order). This Order is intended to improve contractor compliance with Federal labor laws and, in particular, to help those contractors with serious, willful, repeated, or pervasive violations come into compliance. As the Order explains, "[c]ontractors that consistently adhere to labor laws are more likely to have workplace practices that enhance productivity and increase the likelihood of timely, predictable, and satisfactory delivery of goods and services to the Federal Government."

Executive Order 13673 directs each agency to designate a senior agency official to serve as a labor compliance advisor. Labor compliance advisors (LCAs) will be primarily responsible for implementation of the Order within the agency, as well as have responsibilities assisting contracting officers in implementing Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts.

LCAs will play a key new role in agencies, promoting awareness of and respect for the importance of labor law compliance through their interactions with senior agency officials, contracting officers, and contractors, while also meeting regularly with the Department of Labor (DOL) and LCAs from other executive departments and agencies to formulate effective and consistent practices government-wide.

This memorandum provides guidance to agencies on the designation of LCAs, as well as some additional background on the Order.

Background

Building on existing acquisition practices and principles, the Order provides Federal agencies with greater transparency into contractor's compliance records by requiring prospective Federal contractors responding to solicitations estimated at more than \$500,000 to disclose whether, within the past three years, there have been any administrative merits determinations, arbitral awards or decisions, or civil judgments, as defined in guidance to be issued by DOL, for violations of certain labor laws and Executive Orders. The Order further requires Federal agencies to consider violations that are serious, willful, repeated, or pervasive in determining whether the contractor is a responsible source with a satisfactory record of integrity before awarding a contract. It also requires subcontractors to make similar disclosures to prime contractors. The covered laws (which involve both Federal statutes and equivalent state laws) include those addressing wage and hour, safety and health, collective bargaining, family and medical leave, and civil rights protections.

LCAs. To support agency contracting officers and other officials in carrying out their responsibilities under the Order, the Order requires each agency to designate or hire a senior agency official to serve as an LCA. The LCA should be a career civil servant with sufficient authority to bring issues to the Deputy Secretary, Deputy Administrator, or equivalent official; the General Counsel; and other appropriate agency leadership as needed. Agencies may designate an existing labor advisor if that individual is qualified and capable of meeting the responsibilities of an LCA. Agencies, particularly small agencies, that wish to build the LCA capacities through a shared services arrangement may work with DOL and OMB on the best way to do so. As explained in section 3 of the Order, the LCA has a broad range of responsibilities, which include:

- working with the acquisition workforce, agency officials, and agency contractors to promote greater awareness and understanding of labor law requirements, including recordkeeping, reporting, and notice requirements, as well as best practices for obtaining compliance with these requirements;
- coordinating assistance for agency contractors seeking help in addressing and preventing labor violations;
- in consultation with DOL or other relevant enforcement agency, providing assistance to contracting officers regarding appropriate actions to be taken in response to identified violations, and providing them assistance in addressing complaints alleging violations by agency contractors in a timely manner;
- sending any relevant information to agency suspending and debarring officials in accordance with agency procedures;
- meeting quarterly with the Deputy Secretary, Deputy Administrator, or equivalent agency official with regard to matters covered by this Order;
- consulting with the agency's Chief Acquisition Officer and Senior Procurement Executive, and DOL in the development of regulations, policies, and guidance;

- making recommendations to strengthen agency management of contractor compliance with labor laws;
- annually reporting a summary of agency actions taken to promote greater compliance with labor laws and regulations; and
- participating in interagency meetings regularly convened by the Secretary of Labor.

Guidance and rules. To facilitate government-wide consistency, the Order directs DOL, in consultation with other enforcement agencies, to develop guidance explaining when violations should be considered serious, willful, repeated, or pervasive. The Order further directs the Federal Acquisition Regulatory Council (FAR Council), in consultation with DOL, to develop regulations that identify considerations for determining whether the serious, repeated, willful, or pervasive nature of the violations demonstrate a lack of responsibility. Both the DOL guidance and FAR Council regulatory action will be published for notice and comment in order to give the public a full opportunity to provide feedback before the guidance and rules take effect. In addition, the Office of Management and Budget (OMB) and DOL expect to implement the new guidance and rules in stages to ensure all stakeholders have adequate time to acclimate themselves to the requirements of the Order.

Contractor assistance. Consistent with the Order's focus on helping contractors and subcontractors improve their compliance with labor laws, companies with labor violations will be offered the opportunity to receive early guidance from DOL and other enforcement agencies on whether those violations are potentially problematic, as well as the opportunity to remedy any problems. Agencies will be required to give appropriate consideration to any information offerors choose to provide regarding remedial measures or mitigating factors, including any agreements by contractors or other corrective action taken to address violations.

Contractor reporting. To reduce reporting burdens on contractors, the Order directs the General Services Administration (GSA), in consultation with other relevant agencies, to develop a single website for Federal contractors to use for Federal contract reporting requirements related to labor laws, as well as other reporting requirements as practicable. This step is one of many to streamline contracting practices, where possible, to reduce transaction costs for contractors and make the Federal marketplace more attractive and accessible to the best businesses, including small businesses.

Additional information on the Order may be found at <http://www.whitehouse.gov/the-press-office/2014/07/31/fact-sheet-fair-pay-and-safe-workplaces-executive-order>.

Appointment of LCAs

In light of the pivotal role that LCAs will play in the implementation of the Order, agencies should designate a senior agency official to serve as an LCA as soon as practicable, but no later than 90 days after issuance of this memorandum. The following steps should be taken in connection with the search, appointment, and support of LCAs:

1. Review the attached sample description of responsibilities and skills. The attached sample is intended to help agencies in their development of an appropriate position description to support the selection of an LCA – it itself does not constitute a position description.¹ Agencies are strongly encouraged to ensure that the selected candidate has demonstrated knowledge and understanding of Federal labor laws and regulations. Some examples of ways to demonstrate knowledge and understanding of Federal labor laws and regulations would be: prior employment with a labor law enforcement agency; experience representing parties in labor law matters covered by the Order; and experience in helping companies come into compliance with workplace protections. A general understanding of the Federal acquisition process would be helpful but is not required. Agencies are expected to ensure that successful applicants receive training, as necessary, on the Federal acquisition process.
2. Establish regular meetings between the LCA and senior management. The Order requires that the LCA meet quarterly with the Deputy Secretary, Deputy Administrator, or equivalent agency official. Such regular meetings can help to ensure that any agency management issues associated with the Order or its implementation are identified and addressed in a timely manner.
3. Ensure the LCA participates regularly in interagency meetings convened by the Secretary of Labor. DOL will regularly convene LCAs to share and promote best practices for improving labor law compliance. Communication between agency LCAs and enforcement agencies will be critical for promoting understanding and consistency in the implementation of the Order.
4. Ensure the LCA assists in developing processes to ensure consideration of other agency actions. Prior to the Order taking effect in 2016, LCAs will work closely with DOL and other enforcement agencies to assist in establishing processes for consultation and giving appropriate consideration to determinations and agreements made by DOL and other agencies so that contractors are not subjected to multiple and potentially inconsistent actions that waste Federal resources.

Once the appointment of an LCA is made, the name and contact information for the LCA should be sent to laborcomplianceadvisors@dol.gov.

Related Labor Compliance Efforts

As part of a series of government-wide commitments to combat trafficking in persons, the President signed Executive Order (E.O.) 13627 in September 2012. Shortly thereafter, Congress passed Title XVII of the Fiscal Year 2013 National Defense Authorization Act, Ending Trafficking in Government Contracting, which includes many of the same protections present in E.O. 13627. The FAR Council published a final rule implementing the E.O. on January 29, 2015.² The new rule will require contractors and subcontractors who perform under contracts with more than \$500,000 of work performed or supplies acquired overseas to develop and

¹ DOL will share, upon request, the position description that it has developed.

² The final rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-01-29/pdf/2015-01524.pdf>.

maintain compliance plans for combatting trafficking, appropriate for the size and complexity of the contract and the nature and scope of its activities. OMB and DOL are working with the Department of State on steps to assist agencies and contractors in the implementation of the E.O. and will coordinate these efforts, including the role of the LCA in reviewing compliance plans, with other agencies through the interagency Procurement and Supply Chains Committee of the Senior Policy Operating Group.

We appreciate your attention to these important matters. Questions regarding this memorandum may be sent to laborcomplianceadvisors@dol.gov.

**Labor Compliance Advisor:
Responsibilities, Skills, and Knowledge**

I. INTRODUCTION

The Labor Compliance Advisor (LCA) is a senior agency official who serves as the primary official responsible for the agency's implementation of Executive Order 13673, Fair Pay and Safe Workplaces (the Order). The LCA will also assist contracting officers in implementing Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, and the implementing FAR rule, which is expected to be finalized in early 2015.

II. PRIMARY RESPONSIBILITIES

The LCA is responsible for:

1. serving as the agency expert in the requirements of the Order, implementing guidance issued by the Department of Labor, and meeting quarterly with senior agency officials to address matters covered by the order and steps the agency can take to strengthen management of contractor compliance with labor laws;
2. evaluating, in consultation with the relevant enforcement agency, the serious, repeated, willful, or pervasive nature of a labor law violation disclosed by, or identified in connection with, an agency contractor or prospective contractor and the steps such contractors have taken to correct violations or improve compliance with the labor laws enumerated in the Order;
3. advising and assisting contracting officers and other agency officials regarding recommended actions to be taken in response to labor law violations disclosed by or identified in connection with Federal contractors, including the need to enter into agreements requiring appropriate remedial measures, decisions not to award a contract or exercise an option on a contract, contract termination, or referral to the agency suspending and debaring official;
4. providing assistance to appropriate agency officials in receiving and making timely response to, or making referrals of, complaints alleging violations by agency contractors and subcontractors of the requirements of the labor laws listed in the Order;

5. supporting contracting officers, suspending and debarring officials, and other agency officials in coordination of actions taken pursuant to this subsection to ensure agency-wide consistency, to the extent practicable;
6. as appropriate, sending information to agency suspending and debarring officials in accordance with agency procedures;
7. consulting with agency senior officials such as the agency's Chief Acquisitions Officer, Senior Procurement Executive, General Counsel, and other appropriate officials in the development of regulations, policies, and guidance addressing labor law compliance by agency contractors and subcontractors;
8. coordinating assistance for agency contractors seeking help in addressing and preventing labor violations;
9. collaborating with senior leadership of the agency, particularly the Chief Human Capital Officer, the Chief Information Officer, and the Chief Acquisition Officer, in developing tools and information that will be used by agency requiring officials, project managers, contracting officer representatives, source selection officials, and contracting professionals to increase awareness of labor law and recordkeeping requirements as well as best practices for facilitating contractor compliance with these requirements;
10. participating regularly in interagency meetings of labor compliance advisors as well as in the agency's senior leadership meetings to report on the agency's efforts with respect to the Order and labor law compliance; and
11. preparing annual summary reports on the agency actions taken to promote greater labor compliance, including the agency's response pursuant to the Order to serious, repeated, willful, or pervasive violations of the applicable labor laws.

III. SKILLS AND KNOWLEDGE

The successful candidate should be able to demonstrate the following:

1. demonstrated knowledge and understanding of Federal labor laws and regulations as enumerated in the Order; a general understanding of Federal acquisition regulations and policies would be helpful but is not required;
2. knowledge of analytical and investigative techniques and ability to effectively research unusually complex contract labor standards and labor compliance issues, and develop, analyze, and evaluate facts relative to conditions or trends;

3. the ability to summarize complex information concisely and prepare and document reports and findings;
4. the ability to plan and prioritize competing workload requirements, accurately record significant facts and events for immediate analysis and future reference, meet deadlines, and track developments over extended periods of time;
5. the ability to accurately analyze and interpret statutes, regulations, case rulings, and executive orders and extend principles to new or unusually difficult situations;
6. strong oral and written communication skills in order to be able to accurately describe complex issues, furnish clear advice, document facts and findings, and present and explain complex labor requirements to top agency officials, officials at other Federal agencies, and employees and representatives of corporations and small businesses; and
7. organizational skills to coordinate required activities across the agency to support the agency's acquisition workforce.