



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D. C. 20503

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M-21-08

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Derek Kan  
Deputy Director

A handwritten signature in blue ink, appearing to read "Derek Kan", written over the printed name and title.

SUBJECT: Review of Federal Contracting and Hiring Practices Under Executive Order 13940

On August 3, 2020, President Trump issued Executive Order 13940, *Aligning Federal Contracting and Hiring Practices With the Interests of American Workers* (the Executive Order) to create opportunities for United States workers to compete for jobs, including jobs created through Federal contracts. This Executive Order further bolsters a series of executive actions taken to strengthen the Administration's policy to buy American and hire American. These actions are especially critical to the Nation as we work to boost economic activity.

Section 2(a) and (b) of the Order require agencies to review their federal contractors' use of temporary foreign labor or offshoring practices, where contract work is moved from domestic to foreign performance. Section 2(c) of the Order requires agencies to review whether their federal hiring practices are compliant with U.S. citizenship requirements. Finally, Section 2(d) requires agencies to submit a report to the Office of Management and Budget (OMB), summarizing the results of these reviews and discussing any planned follow-up actions and recommendations for executive or other action. This memorandum provides guidance for conducting reviews and developing reports.

I. Contractor hiring practices

The Federal Government is the largest buyer in the world – spending more than a half trillion dollars for products and services. As explained in Memorandum M-20-28, *Buying for America*, smart buying using the modernized, frictionless practices promoted in the President's Management Agenda will help to strengthen our Nation's economic recovery from the effects of the Novel Coronavirus (COVID-19) pandemic. However, as the Executive Order explains, federal contractors' use of temporary foreign labor or offshoring the performance of a contract may take work away from American workers and impact national security. The Executive Order requires a review of contracts performed in FY 2018 and 2019 to determine whether any such contractor actions are having any of the negative consequences described above.

To enable a timely understanding of this impact, which may require agencies to conduct outreach with their contractors, agencies should prioritize reviewing the practices of contractors on which they rely the most. Accordingly, agencies should evaluate, at a minimum, service contracts from the 25 contractors with which they have made the most obligations during FYs 18 and 19, or such number of contractors to cover at least 10 percent of the agency's obligations for services during this period, whichever is less, for work performed in the United States.

The Department of Labor (DOL) has received approval under the Paperwork Reduction Act (PRA) to collect the necessary information from contractors under this memorandum and Executive Order 13940. This approval has been established as a common form (via OMB control number [1291-0012](#)), which allows multiple agencies to collect the same information for the same purpose. Agencies intending to request information from their contractors should consult their PRA clearance officers to use DOL's new common form (these are simple requests that can be quickly approved by OMB once received).

In cases where a contractor is unable to obtain the information requested from the contractor, the agency's report required under Section C should describe the steps the agency is taking to facilitate or encourage disclosure of that information now or in the future.

*A. Reviewing use of temporary foreign labor*

1. For each covered service contractor in the review pool, determine if the contractor has policies in place to recruit U.S. or permanent residents before hiring temporary foreign labor.
2. For any contract performed by the contractors in the agency's review pool that involved any temporary foreign labor (i.e., labor performed by a non-U.S. citizen authorized to work pursuant to a temporary work visa), the agency should seek to document the following:
  - a. The contract number under which temporary foreign labor was used;
  - b. A brief description of the scope of the contract;
  - c. For work performed by foreign labor:
    - i. A brief description of the tasks performed (e.g., software engineering, information technology help desk support), which may be described using the most appropriate Product Service Code (PSC) or the first two digits of the PSC category;
    - ii. The type of work visa under which the work was performed (e.g., H-1B visa);
    - iii. Whether opportunities for United States workers were affected by such hirings; and
    - iv. Any potential effects on the national security caused by such hiring.

3. The agency should work with each contractor, to the extent feasible prior to the reporting deadline, to document the information outlined in paragraphs 1 and 2 above for any first tier subcontractors.

*B. Reviewing offshoring activities*

For each covered service contractor in the review pool, determine if the contractor engaged in “offshoring” in the performance of any service contract (1) it received, (2) was performing during Fiscal Years 2018 and 2019, or (3) announced plans during this period to offshore work prior to the completion of the contract. For purposes of this review, offshoring refers to the reassignment of any work activities (directly supporting performance of the contract or overhead activities) previously performed at a company’s U.S. operations to a location outside the United States.

If the agency identifies any offshoring activities, it should document the following:

1. The contract number identifying the contract where offshoring occurred or was planned;
2. A brief description of the scope of the contract;
3. A brief description of the work activities (tasks) that were offshored, which may be described using the most appropriate PSC or the first two digits of the PSC category;
4. Whether the identified offshoring impacted or otherwise reduced U.S. citizen job opportunities;
5. Whether the identified offshoring affected United States workers eligible for assistance under the Trade Adjustment Assistance program which arose out of the Trade Act of 1974; and
6. What, if any, impacts there may have been on national security as a result of the identified offshoring.

*C. Report on contractor hiring practices*

The agency report should summarize the results of the reviews performed above, and identify any actions planned in response. Reports should also include recommendations, as appropriate and consistent with applicable law, to improve the economy and efficiency of Federal procurement and protect national security. For example, an agency might make recommendations that could be considered by the Federal Acquisition Regulatory Council regarding standard provisions that require, support, or incentivize contractors’ disclosure of information on their employment of foreign nationals, to the extent appropriate and permitted by applicable law. As an additional example, recommendations could be made for consideration by the Departments of Labor or Homeland Security for possible improvements to relevant information systems managed by those Departments that could be leveraged by agencies in performing the types of analyses required by the Executive Order in the

future. Particular consideration should be given to recommendations that address any negative impact of temporary foreign labor hiring practices or offshoring practices.

## II. Federal Hiring Practices

Section 2(c) of the Executive Order requires each agency, in coordination with the Office of Personnel Management, to review the employment policies of the agency to assess the agency's compliance with EO 11935, Citizenship Requirements for Federal Employment, and section 704 of the Consolidated Appropriations Act, 2020, Public Law 116-93. Agencies have flexibility in how such reviews are conducted.

## III. Agency report submission

Agency reports addressing contractor and federal hiring practices should be submitted to OMB at [MBX.OMB.OFPPv2@OMB.eop.gov](mailto:MBX.OMB.OFPPv2@OMB.eop.gov) by December 31, 2020. Agencies that need additional time to complete their reports should confer with OMB. Agency questions regarding this memorandum or requests for extensions should be submitted to this mailbox. E-mails should cite to EO 13940 in the subject line.