



## **PROCUREMENT MEMORANDUM 2024-03**

### **ACTION**

**MEMORANDUM FOR:** Senior Bureau Procurement Officials

**FROM:** Olivia J. Bradley  
Senior Procurement Executive and  
Director for Acquisition Management

**SUBJECT:** Federal Acquisition Regulation (FAR) Class Deviation:  
Regarding Legal Challenges to Executive Order 14026, Increasing  
the Minimum Wage for Federal Contractors

### **Background**

On April 27, 2021, President Biden signed Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors. See 86 FR 22835 (Apr. 30, 2021). This E.O. directed federal agencies to enter into or renew covered contracts only with entities paying their employees at or above a specified minimum wage. On January 1, 2023, that wage was increased from \$15 to \$16.20 through an inflation adjustment. See 87 FR 59464 (Sept. 30, 2022).

On November 24, 2021, the Department of Labor (DOL) Wage and Hour Division published a final rule implementing E.O. 14026, which added a new 29 CFR part 23. See 86 FR 67126 (Nov. 24, 2021).

On January 26, 2022, DoD, GSA, and NASA published an interim rule amending the Federal Acquisition Regulation (FAR) to implement E.O. 14026 and the DOL implementing regulations through FAR clause 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026. See 87 FR 4117 (Jan. 26, 2022).

On September 26, 2023, the U.S. District Court for the Southern District of Texas enjoined President Biden and the DOL from enforcing E. O. 14026 or the DOL Final Rule against the States of Texas, Louisiana, and Mississippi and their agencies. The injunction does not apply geographically to all contractors or contracts within those three states; rather, it applies only to these three states and their agencies as parties to federal contracts, regardless of the place of performance. The injunction became effective on October 4, 2023.

### **Purpose**

This class deviation is issued in accordance with FAR 1.404 and pursuant to Civilian Agency Acquisition Council (CAAC) Letter 2024-01 to revise FAR clause 52.222-55 to include an exemption for "contracts or subcontracts to which the States of Texas, Louisiana, and Mississippi, including their agencies, are a part."

## **Required Actions**

Based on the order issued by the U.S. District Court for the Southern District of Texas on September 26, 2023, contracting officers shall not enforce the requirements of E.O. 14026 or the DOL Final Rule as implemented in FAR clause 52.222-55 (Jan 2022) for federal contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Accordingly, contracting officers shall perform the following actions:

For new contracts:

- For solicitations not yet issued, while the injunction is in effect, insert the deviated clause 52.222-55 (Oct 2023) found in Attachment A in solicitations and contracts that include the clause at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States.
- For solicitations that have been issued but where an award has not been made, while the injunction is in effect, the solicitation must be amended to replace FAR clause 52.222-55 (Jan 2022) with the deviated FAR clause 52.222-55 (Oct 2023).

For existing contracts:

- When extending, renewing, or exercising an option while the injunction is in effect, replace FAR clause 52.222-55 (Jan 2022) with the deviated clause FAR 52.222-55 (Oct 2023) through bilateral modifications. In such a circumstance, if the contracting officer is unable to incorporate the deviated clause in an existing contract through bilateral modification, then the contracting officer shall not enforce the requirements of FAR clause 52.222-55 (Jan 2022) for federal contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party.
- For all other existing contracts, the contracting officer shall not enforce the requirements of FAR clause 52.222-55 (Jan 2022) while the injunction is in effect for federal contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party.

When the E.O. 14026 minimum wage does not apply to contracts, the requirements of FAR 52.222-6, Construction Wage Rate Requirements, and FAR 52.222-41, Service Contract Labor Standards, must be adhered to, as applicable.

## **Effective Date**

This deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

## **Questions**

Please direct any questions regarding this Procurement Memorandum to OAM\_Mailbox@doc.gov.

Attachment A – Deviation to FAR Text