

Date: September 9, 2014

From: Associate Deputy Assistant Secretary for Procurement Policy, Systems, and Oversight (003A2) and Deputy Senior Procurement Executive

Subj: Class Deviation – Implementation of Executive Order 13658, Establishing a Minimum Wage for Contractors (VAIQ 7486549)

To: Head of the Contracting Activities (HCAs)

1. **Purpose:** This deviation implements Executive Order 13658, dated February 12, 2014, and OMB Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014.

2. **Effective Date:** Immediately.

3. **Expiration Date:** Effective until incorporated in the FAR, VAAR, or is otherwise rescinded.

4. **Background:**

Civilian Agency Acquisition Council (CAAC) Guidance:

On June 25, 2014, the CAAC issued a memorandum regarding a class Deviation to implement Executive Order 13658, Establishing a Minimum Wage for Contractors. Executive Order 13658, signed February 12, 2014, seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to \$10.10 the hourly minimum wage paid by those contractors. The Executive Order requires agencies, to the extent permitted by law, to include a clause in new solicitations and resultant contracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, in the performance of the contract or any subcontract there under, shall be at least \$10.10 per hour beginning January 1, 2015.

Section 8(c) of Executive Order 13658 further provides that, for all new solicitations and resultant contracts negotiated on or after the date of the Executive Order, but before the effective date of the implementing regulations by the Federal Acquisition Regulatory Council, agencies are strongly encouraged to take all steps that are reasonable and legally permissible to ensure that individuals working pursuant to those contracts are paid an hourly wage of at least \$10.10 per hour beginning January 1, 2015.

5. FAR Parts Impacted: FAR part 22, Application of Labor Laws to Government Acquisitions and FAR part 52, Solicitation Provisions and Contract Clauses.

A. Current Policy:

The FAR currently does not contain the language, provisions, or clauses necessary to implement Executive Order 13658, Establishing a Minimum Wage for Contractors.

B. Need for Deviation:

The deviation is required to implement Executive Order 13658, Establishing a Minimum Wage for Contractors.

C. New Policy:

The contracting officer shall insert the clause, 52.222-99, Establishing a Minimum Wage for Contractors (DEVIATION), in solicitations and resultant contracts that include the FAR clause(s) 52.222-6 and/or 52.222-41, and work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

D. Action Required:

Effective immediately, contracting officers shall use the attached clause to require payment, beginning January 1, 2015, of an hourly wage of at least \$10.10 to contractor employees. Accordingly, for solicitations and resultant contracts that include FAR clause(s) 52.222-6 and/or 52.222-41, and will be performed, in whole or in part, in the United States (the 50 States and the District of Columbia), contracting officers shall insert the clause at Attachment 1 in:

- 1) solicitations issued on or after the date this deviation is signed; and
- 2) to the maximum extent practicable, solicitations issued on or after the date of the Executive Order and before the date of this deviation, if the solicitations is otherwise being amended

6. Attachment:

FAR Class Deviation, 52.222-99, Establishing a Minimum Wage for Contractors (DEVIATION) (July 2014)

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7. **Additional Information:** Questions or comments regarding this class deviation may be directed to Procurement Policy Service, at (202) 632-5288 or VA.Procurement.Policy@va.gov.

/s/

C. Ford Heard III

Class Deviation - Implementation of Executive Order 13658, Establishing a Minimum Wage for Contractors

Findings

On June 25, 2014, the CAAC issued a memorandum regarding a Class Deviation to implement Executive Order 13658, Establishing a Minimum Wage for Contractors. Executive Order 13658, signed February 12, 2014, seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to \$10.10 the hourly minimum wage paid by those contractors. The Executive Order requires agencies, to the extent permitted by law, to include a clause in new solicitations and resultant contracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, in the performance of the contract or any subcontract there under, shall be at least \$10.10 per hour beginning January 1, 2015.

Section 8(c) of Executive Order 13658 further provides that, for all new solicitations and resultant contracts negotiated on or after the date of the Executive Order, but before the effective date of the implementing regulations by the Federal Acquisition Regulatory Council, agencies are strongly encouraged to take all steps that are reasonable and legally permissible to ensure that individuals working pursuant to those contracts are paid an hourly wage of at least \$10.10 per hour beginning January 1, 2015.

This deviation implements Executive Order 13658, dated February 12, 2014, and OMB Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014. The OMB Memorandum requested the FAR Council to provide standard wording for a clause to be used pending issuance of Department of Labor and FAR regulations.

Determination

In accordance with FAR 1.404 and VA Acquisition Regulation (VAAR) 801.404, I hereby issue a class deviation to implement Executive Order 13658, Establishing a Minimum Wage for Contractors, and authorize contracting officers to use clause FAR 52.222-99, Establishing a Minimum Wage for Contractors (DEVIATION) (July 2014)

/s/
C. Ford Heard III
Deputy Senior Procurement Executive

9/10/2014
Date

Attachment

Class Deviation

52.222-99, Establishing a Minimum Wage for Contractors (DEVIATION) (July 2014)

The contracting officer shall insert the following clause in solicitations and resultant contracts that include the FAR clause(s) 52.222-6 and/or 52.222-41, and work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS (DEVIATION) (July 2014)

This clause implements Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and OMB Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014.

(a) Each service employee, laborer, or mechanic employed in the United States (the 50 states and the District of Columbia) in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and service employee, laborer, or mechanic, shall be paid not less than the applicable minimum wage under Executive Order 13658. The minimum wage required to be paid to each service employee, laborer, or mechanic performing work on this contract between January 1, 2015, and December 31, 2015, shall be \$10.10 per hour.

(b) The Contractor shall adjust the minimum wage paid under this contract each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all service employees, laborers, or mechanics subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(c) The Contracting Officer will adjust the contract price or contract unit price under this clause only for the increase in labor costs resulting from the annual inflation

increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Contracting Officer shall consider documentation as to the specific costs and workers impacted in determining the amount of the adjustment.

(d) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (c) of this clause, and will not provide price adjustments under this clause that result in duplicate price adjustments with the respective clause of this contract implementing the Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act).

(e) The Contractor shall include the substance of this clause, including this paragraph (e) in all subcontracts.

(End of clause)