

OVERVIEW

The Obama administration has attempted to impose increased burdens on federal government contractors via executive actions that needlessly restrain competition, increase taxpayer costs, stifle job creation, and delay the delivery of goods and services to the government and its customers.

ABC SUPPORTS

- Congress, the administration, federal procurement officers and stakeholders working together to develop a balanced approach to creating and implementing any reforms to the federal contracting market.
- Safeguards for fair competition and protections against subjectivity and corruption in federal contracting.
- Policies and regulations for federal contractors that are consistent with the federal government's longstanding differentiation of the construction industry from other industries in regard to affirmative action and nondiscrimination requirements.

ABC OPPOSES

- Any executive order, legislation or regulation that would deny federal contractors due process and permit or encourage discrimination in federal contracting based on arbitrary criteria, false and/or anonymous accusations, or a contractor's labor affiliation.
- Any executive order, legislation or regulation that could delay federal construction projects by adding new levels of costly and time-consuming bureaucratic red tape to the federal contracting process.
- The Office of Federal Contract Compliance Programs' (OFCCP) forthcoming proposed rule to expand affirmative action plans for construction contractors.

BACKGROUND

The most pervasive policies affecting contractors providing construction services to the federal government are the administration's efforts to require the use of project labor agreements (PLAs) on large-scale federal contracts and expand the application and enforcement of prevailing wage requirements via the Davis-Bacon Act. These issues are addressed in more detail in separate issue briefs.

In addition, the merit shop contracting community is monitoring—and has pushed back on—a number of Obama administration executive actions that will change the federal contracting market.

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On April 8, 2014, President Obama issued Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information and a presidential memorandum to the Secretary of Labor, Advancing Pay Equality Through Compensation Data Collection. On February 20, 2014, President Obama issued Executive Order 13658, Minimum Wage for Contractors. After they undergo a federal rulemaking process, all three executive actions will impact how federal contractors compensate their employees.

In September 2013, OFCCP issued two final rules, effective March 24, that drastically alter federal contractors' existing affirmative action and nondiscrimination obligations with respect to veterans and individuals with disabilities. Of most concern to construction contractors are provisions included in both final rules requiring written documentation and tracking of workforce statistics to determine whether the percentage of protected employees meets affirmative action requirements for federal projects. Such paperwork and reporting provisions are completely new to the construction industry. While ABC supports nondiscriminatory practices on federal projects, concerns remain regarding the agency's tactics, as there has been no evidence that contractors aren't meeting the requirements.

Numerous protections currently exist that ensure federal contractors meet their statutory obligations. Well-established processes are in place to prequalify responsible firms and screen out poorly performing or unscrupulous contractors. The Obama administration's additional requirements only serve to delay federal construction projects by adding new levels of costly and time-consuming bureaucratic red tape to the federal contracting process.

Finally, the merit shop contracting community is poised to fight efforts to revive the Clinton administration's rescinded federal contractor blacklisting regulations, as well as high road contracting policies proposed by the White House Middle Class Task Force in 2010.