



June 25, 2014

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: WILLIAM F. CLARK 
ACTING CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR)
to Implement Executive Order 13658, Establishing a Minimum
Wage for Contractors

Executive Order 13658, Establishing a Minimum Wage for Contractors, 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. The Department of Labor is required to issue regulations to implement the Executive Order and the FAR Council is required to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to the Executive Order.

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

To that end, if reasonable and legally permissible, a class deviation may be approved and take immediate effect, in accordance with FAR 1.404, and contracting officers may use the attached clause to require payment, beginning January 1, 2015, of an hourly wage of at least \$10.10 per hour to contractor employees. Agencies are requested to provide the CAAC Chair with the status of any class deviation by July 15, 2014.

This CAAC letter constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1) when the agency uses the attached clause. If an agency plans to modify the attached clause, the agency shall consult with the CAAC Chair, so that any agency modified clause can be coordinated with OMB to ensure consistency with Policy Memorandum M-14-09. Any class deviation issued with a modified clause following consultation with the CAAC Chair shall be emailed to Edward Loeb at edward.loeb@gsa.gov, with a copy to william.clark@gsa.gov.

A sample transmittal is also attached, which agencies may use at their discretion to explain the deviation to the acquisition workforce. Agencies need not notify the CAAC if they modify the language in the sample transmittal. If you have questions or require additional information, please contact Edward Loeb at (202) 501-0650, or by email.

Attachments

SAMPLE TRANSMITTAL TEMPLATE

MEMORANDUM FOR *[Insert addressees]*

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

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 the 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-

- solicitations issued on or after the date this deviation is signed; and
- 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 solicitation is otherwise being amended.

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.

This deviation remains in effect until it is incorporated into the FAR or [Agency FAR Supplement] or is otherwise rescinded. My point of contact is Mr./Ms. *[insert name]*, who may be reached at xxx-xx-xxxx, or *somebody@xx.xxx*.

[Insert name]
[Insert title]

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

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 2014-OXXXX) (Month 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)