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This AAPD is archived. The clause in this AAPD was replaced by FAR clause 52.222-55



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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: July 23, 2014

AAPD 14-02

FAR Class Deviation:

**FAR CLAUSE 52.222-99, ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS
(Deviation OAA-DEV-14-01c) (July 2014)**

Subject Category: Acquisition Management
Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends CIB/AAPD

Applicable to: Existing awards; Modification required

No later than

As noted in guidance below*

RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC

Other

Precedes change to:

AIDAR Part(s) Appendix

USAID Automated Directives System (ADS) Chapter

Code of Federal Regulations

Federal Acquisition Regulations

No change to regulations

New Provision/Clause Provided Herein: If checked, scheduled update to GLAAS:

/s/

Aman S. Djahanbani

Purpose:

The purpose of this AAPD is to issue a new FAR clause 52.222-99 titled “*Establishing a Minimum Wage for Contractors*” (Deviation OAA-DEV-14-01c) (July 2014)” and direct Contracting Officers to begin using this clause as discussed below. This AAPD 14-02 implements Executive Order 13658, *Establishing a Minimum Wage for Contractors*, signed February 12, 2014. This AAPD does not impact awards performed overseas.

Required Actions

(a) New Solicitations and Resultant Contracts

- Effective immediately, Contracting Officers must use the attached clause to require payment, beginning January 1, 2015, of an hourly wage of at least \$10.10 to affected contractor employees in the U.S. under contracts performed in whole or in part, in the U.S. Accordingly, for solicitations and resultant contracts **that include** the FAR clause **52.222-6* (Davis Bacon Act) and/or 52.222-41* (Service Contract Act)**, **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 of this AAPD; and
 - To the maximum extent practicable, solicitations issued on or after the February 12, 2014 date of the Executive Order and before the date of this AAPD, if the solicitation is otherwise being amended.

(b) Special Note:

- If the FAR does not require the inclusion of FAR clause 52.222-6 and/or 52.222-41 in the contract, then this APPD does **not** apply.
- The prescription for FAR clause 52.222-6 only requires its usage for construction contracts performed within the United States.
- Also note that the Service Contract Act FAR clause 52.222-41 is only required for services within the United States and only applies to “service employees”, laborers or mechanics. FAR 52.222-41 defines service employees as being “any person engaged in the performance of this contract **other than any person employed in a bona fide executive, administrative or professional capacity**”, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised.” (emphasis added). (See FAR 52.222-41 and FAR 22.10 for more detailed information.)

This AAPD does not apply to Personal Services Contracts.

Background:

On February 12, 2014, [Executive Order 13658 “Establishing a Minimum Wage for Contractors”](#) was signed. The E.O. 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 E.O. requires agencies, to the extent permitted by law, to include a clause in contracts and solicitations, specifying, as a condition of payment, that the minimum wage to be paid to affected workers, in the performance of the contract or any subcontract thereunder, shall be at least \$10.10/hour, beginning January 1, 2015.

The Department of Labor is currently in the process of issuing regulations implementing the E.O. Once DoL has issued final regulations, the FAR will be formally revised to provide for inclusion of a contract clause in solicitations and contracts subject to the E.O.

On June 12, 2014, OMB issued OMB Policy Memorandum M-14-09, [“Implementation of the President’s Executive Order Establishing a Minimum wage for Contractors”](#). The OMB Memorandum requires the FAR Council to provide standard wording for a clause to be used pending issuance of DoL and FAR regulations. The CAAC Chair has provided all CAAC agencies with the standard clause, which can be used during this interim period. (Attachment 1.)

Since the FAR currently does not contain language that would require contractors to increase the hourly minimum wage for affected employees to \$10.10/hour, the M/OAA Director approved a FAR class deviation in accordance with FAR 1.4 and AIDAR 701.601(a) (2) (ii) to allow Contracting Officers to use the attached new clause.

Unless otherwise rescinded by M/OAA, the requirements under this AAPD shall remain in effect until such time as the FAR is revised to implement E.O. 13658 and a final clause is incorporated into the FAR.

4. POINT OF CONTACT:

USAID Contracting Officers may direct their questions about this AAPD to Rosella Marshall, M/OAA/P, at (202) 567-4675 or email: romarshall@usaid.gov.

Attachment 1:

FAR clause 52.222-99 titled *“Establishing a Minimum Wage for Contractors”* (Deviation OAA-DEV-14-01c) (July 2014)

Attachment 1

FAR Clause 52.222-99, Establishing a Minimum Wage for Contractors (Deviation OAA-DEV-14-01c) (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 OAA-DEV-14-01c) (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.

(End of clause)