

MINIMUM WAGE INCREASES

Who is Affected? Who Benefits? Who Pays?

EXECUTIVE ORDER

In February 2014, President Obama signed an Executive Order entitled “[Establishing a Minimum Wage for Contractors](#).” This order **increased the minimum wage** for workers employed by contractors on Federal Government contracts to \$10.10 per hour. The increase is effective as of January 1, 2015, or earlier as determined by the GSA and the FAR Council.

WAGE INCREASE FOR “NEW CONTRACTS”

This wage increase is to be included in any “new contract” as defined in the regulations. The term “**new contract**” means **contracts entered into on or after January 1, 2015**, and includes renewals and long-term extensions of previous contracts, modified contracts where the modification is outside the scope of the contract (such as providing an entirely new service), or replacements to expiring contracts. (NOTE: this Order does not apply to pre-existing options to renew an existing contract by the Federal Government).

Additionally, this wage increase may be included in “new contracts” solicited after June 25, 2014 but before January 1, 2015, at the discretion of the contracting officer. See GSA Memo, attachment A: [52.222-99](#), *Establishing a Minimum Wage for Contractors (DEVIATION)*. Therefore, contractors who entered into a “new contract” after June 25th of last year should review their contract to see if this clause was included.

(NOTE: This “temporary” clause gives effect to the Executive Order until the FAR Council implements a new clause regarding the same).

PRICE ADJUSTMENTS

As a result of this wage increase, **some contractors may be entitled to price adjustments**. Generally, contractors are entitled to a price adjustment when they are impacted by a new wage determination or by a minimum wage increase. *See, e.g.*, Federal Acquisition Regulation (“FAR”) § 52.222-43 & -44. Thus, if the new wage determination is added to a contract when an option is exercised, the contractor is entitled to money.

The DOL issued a final rule, setting forth certain obligations that contractors and subcontractors must fulfill in order to comply with the Executive Order. See [DOL Fact Sheet](#). For example, contractors and subcontractors **must include in any contract or covered subcontracts**, the new minimum wage clause found in the new regulations. Additionally, the contractor must require, as

a condition of payment, that the subcontractor include the minimum wage clause in any lower-tier subcontracts.

CONCLUSION

An initial reaction to this Executive Order resultant regulations may be to assume that this will result in **higher wages**, **higher costs** being paid by Government contractors, and **higher prices** under Government contracts. However, a closer look reveals that such may not be the case.

The Executive Order only applies to people working for Government contractors on Government contracts. **Most of those employees already are paid more than \$10.10 an hour.** For example, the Service Contract Act wage determination for Buffalo County, South Dakota, deemed the poorest county in the United States, lists wages for more than 340 jobs – less than 20 of which are lower than \$10.10. Certain Davis-Bacon laborers in some of the poorer parts of the country also may earn less than that rate.

The net effect, then, is that not much has changed. But contractors should stay tuned and make sure that they do not miss out on exercising their rights.

Finally, contractors should be aware of these regulations in their new contracts, and the price adjustments to which they may be entitled. Federal contractors should assess the contracts they intend to enter into in 2015 in order to prepare for the minimum wage increases mandated by the Executive Order and the regulations and to maintain their relevant payroll and other records.

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