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## BLOGS

# Proposed Guidance Should Bring more Clarity (and Burden) for Government Contractors

Government contractors continue to be the target of increased regulation. As part of implementing President Barack Obama's Fair Pay and Safe Workplaces Executive Order (E.O. 13673), the U.S. Department of Labor has issued proposed guidance and the Federal Acquisition Regulatory Council has issued proposed regulations. The President's Executive Order, issued last summer, requires federal contractors to disclose adverse judgments in lawsuits, administrative/agency proceedings, and arbitration to the contracting agency under fourteen federal employment and labor-related statutes and executive orders. The Order has been referred to as a blacklisting executive order designed to bar companies with serious or repeated employment and labor law violations from receiving federal contracts. You can check out our previous post on the [Order](#) if you are interested in more background information. In addition, the Order contained paycheck transparency requirements and arbitration agreement restrictions.

As for the current activity on the Order, the recently [proposed guidance and regulations](#) would require federal contractors and subcontractors, prior to being awarded a federal contract, to report any administrative merits decision, arbitral award or decision, or civil judgments occurring within the preceding three years. In addition, they must report on an ongoing basis thereafter at six-month intervals for the duration of the federal contract. Further, under the proposed guidance and rules, the contracting officer and a designated Labor Compliance Officer may disqualify potential contractors and cancel a federal contract or require a contractor to enter into a compliance agreement where violations are deemed serious, repeated, willful, or pervasive. The 106-page DOL guidance seeks to define a violation and what types of circumstances would make a violation serious, repeated, willful, or pervasive. It also explains how federal contracting agencies should analyze violations and any information the contractor submits to determine whether to award or deny contracts. The DOL guidance explains that [u]ltimately, each contractor's disclosed violations of Labor Laws will be assessed on a case-by-case basis in light of the totality of the circumstances, including the severity of the violation or violations, the size of the contractor, and any mitigating factors. The DOL guidance also notes that, in most cases, a single violation will not disqualify a potential contractor. The appendices to the guidance provides numerous helpful examples of serious, willful, repeated, and willful violations, violations of particular concern, and mitigating factors.

The proposed regulations and guidance were published in the Federal Register on May 28, 2015. There is a 60-day public comment period, closing on July 27, 2015.