



**Independent Electrical  
Contractors**

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Ms. Hada Flowers  
General Services Administration  
Regulatory Secretariat (MVCB)  
1800 F Street NW, 2<sup>nd</sup> Floor  
Washington, DC 20405

Ms. Tiffany Jones  
U.S. Department of Labor  
Room 2-2312  
200 Constitution Ave., NW  
Washington, DC 20210

Re: Proposed Federal Acquisition Regulation: Fair Pay and Safe Workplaces, (FAR Case 2014-025); and Department of Labor "Guidance for Executive Order 13673: Fair Pay and Safe Workplaces" (ZRIN 1290-AZ02) Comments of the Independent Electrical Contractors, Inc.

Dear Ms. Flowers and Ms. Jones:

Thank you for the opportunity comment on the Federal Acquisition Regulation (FAR) Proposed Rule (Proposed Rule) and the Department of Labor (DOL) Proposed Guidance (Guidance) implementing the "Fair Pay and Safe Workplaces" Executive Order (EO 13673).

Established in 1957, IEC is a trade association representing 3,000 members with 53 chapters nationwide. Headquartered in Alexandria, Va., IEC is the nation's premier trade association representing America's independent electrical and systems contractors. IEC National aggressively works with the industry to establish a competitive environment for the merit shop – a philosophy that promotes the concept of free enterprise, open competition and economic opportunity for all. Our member companies often bid on government contracts as a prime contractor or participate as a subcontractor.

IEC has serious concerns with the Proposed Rule released in accordance with the Fair Pay and Safe Workplace Executive Order. The Proposed Rule is onerous, costly, and duplicative and will deprive contractors of due process. The fact sheet that accompanied the Executive Order even acknowledges that "the vast majority of federal contractors play by the rules." If the government truly believes that to be the case, there's no reason to implement a new bureaucratic compliance reporting system in an effort to find the small number of businesses that don't play fair. IEC urges DOL to withdraw the Proposed Rule from consideration since such requirements will likely reduce competition for government contracts and ultimately increase the cost to the tax payer.

#### **Current Law Sufficient**

Before implementing the Proposed Rule, IEC believes DOL should consider the fact that there's already a system in place to address companies with unsatisfactory labor records bidding on government

contracts. Each agency currently has Suspension Debarment Officials that can make a determination whether a company has an unsatisfactory labor record. A contractor facing debarment can then go through a fair and impartial process to address the government's assertions before being formally debarred from bidding on government contracts. With these officials and processes in place, the government is already equipped to address the matter of unscrupulous contractors.

### **Depriving Due Process**

The Proposed Rule also provides newly implemented "Labor Compliance Advisors" (LCA) and the contracting officers a very short period of time to assess a contractor's labor and employment record. This could result in any number of short-cuts, to include scrutinizing only certain contractors or simply adopting the opinion of another agency's LCA without fully vetting the contractor themselves. Furthermore, by instituting an extraordinarily broad definition of "violation" coupled with a brief timeline for assessing a contractor's labor compliance record, the proposed rule increases the amount of subjectivity involved in determining if a contractor is "responsible" and should be awarded a contract. Lastly, the system is constructed in such a way that a contractor has very little time to defend its record and alleged violations, depriving it of due process. Many of the "administrative merits determinations," such as Equal Employment Opportunity Commissions (EEOC) reasonable cause determinations, and Occupational Safety and Health Administration (OSHA) citations are all considered "violations" even though they are all simply preliminary assessments. For example, it's not uncommon for a contractor to receive a citation by an inspector only to later have it completely overturned by their supervisor. The Proposed Rule also invites competing interests to file frivolous claims that may trigger investigations, which also have to be reported, and could lead to a contractor losing a contract. As drafted, the Proposed Rule would violate the constitutional rights of contractors and subcontractors by denying them contracts because of mere allegations, depriving them due process of the law.

### **Burdensome Reporting Requirements**

Under the Proposed Rule, contractors will be required to report violations on a wide array of labor and employment laws and "state equivalent" laws taking place in the past three years for contracts exceeding \$500,000. Once awarded the contract, a company must continue to update this information every six months for the life of the contract. Subcontractors, whose value of the contract exceeds \$500,000, must also report similar violations, but through the prime contractor. Such a requirement is fraught with complications. It's completely unreasonable to mandate a prime contractor collect such sensitive information from its subcontractors as most electrical contractors, large or small, are not equipped to take on the role of an enforcement officer and gather this information from the multitude of subcontractors with which it's doing business on a given contract. A prime contractor could also gain a competitive advantage over a subcontractor in future business dealings by having obtained such sensitive information. Under no circumstances should contractors be required to share this sensitive information with possible competitors. In addition, it's unreasonable, if not impossible, to expect a prime contractor to estimate just how reputable a subcontractor may be in the eyes of the government and have knowledge of its possible "violations" and whether they are being properly documented and reported.

### **Increased Cost Considerations**

The collection and reporting mandates by the Proposed Rule will also add tremendous costs to any contractor looking to bid on a government project. While IEC members do everything in their power to comply with all relevant federal and state laws, they are not equipped with staff specifically tasked with gathering and reporting all possible "violations" or that of their subcontractors. For a multi-million dollar contract, it's possible for there to be upwards of 30 or more subcontractors, making collection of

labor and employment compliance records from all subcontractors on such a project a daunting task. It's unrealistic to think that collection of this information will only take roughly 6.26 hours per year, as the FAR Council estimates. Even a modest contract would require more time and manpower than the Proposed Rule estimates. In order to comply with these new rules, a contractor would, at a minimum, have to add additional responsibilities to current staff or, more than likely, hire extra staff or consultants for the sole purpose of gathering and tracking data as required by the Proposed Rule. This would all but eliminate the participation of the small electrical contractor from participating as a prime contractor on a government project and would more than likely reduce the number of government contracts a larger firm may bid on in a given year. One IEC member estimates that it would reduce the number of contracts it bids on each year by one-third. Lastly, this increased time and expense resulting from the Proposed Rule will likely mean only large electrical contractors will be able to bid on projects and even then, only on the largest of contracts, since spending significant time and money satisfying this new bureaucratic compliance requirement on smaller contracts may not make much business sense. Therefore it's easy to see just how the Proposed Rule would reduce competition and increase cost to the government and tax payers.

#### **Disruptions Due to Mid-Contract "Debarments"**

The Proposed Rule requires contractors and subcontractors to update their violation disclosures every six months once they are awarded a government contract. Should a contractor disclose a "violation" that a contracting officer deem to be "serious," "willful," and/or "pervasive," the Proposed Rule provides them the ability to suspend or cancel the contract for the contractor in question altogether. To suddenly deem a contractor not "responsible" in mid-contract would completely disrupt all aspects of a given project by inserting a tremendous amount of unnecessary uncertainty. Undoubtedly, this would increase costs to the tax payer and add a significant amount of delay to any government project where either a prime contractor or a subcontractor is suddenly considered not "responsible" to continue on with the project. In addition, suspending a contractor or cancelling a contract mid-contract could lead to an untold number of breach of contract and failure-to-perform lawsuits between contractors and federal agencies.

In conclusion, IEC has significant concerns with the Proposed Rule. From our perspective, these new regulatory reporting requirements are burdensome, costly, and unnecessary and will deprive contractors bidding on government contracts of due process. For these reasons, IEC requests that the Proposed Rule be withdrawn in its entirety from consideration.

Respectfully submitted,

Jason E. Todd  
Vice President, Government Affairs  
Independent Electrical Contractors, Inc.