



← Home ← Insights ← Industries ← Government Contracting

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The BDO Gov Con Week Ahead - October 2023

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New Federal Contractor Minimum Wage Rates To Go Into Effect January 1, 2024

The hourly minimum wage for certain federal contractor workers on contracts covered by [Executive Order 14026](#) will increase to \$17.20 (from \$16.20 for 2023), under a [Notice](#) issued by the Wage and Hour Division of the United States Department of Labor published in the Federal Register on September 28, 2023. The new rate generally will apply to any covered contract entered into, renewed, or extended on or after January 30, 2022, though contractors should check their contract clauses to determine if Executive Order 14026 is a contract requirement. For contracts covered by the older Executive Order 13658 (applies to certain federal contracts issued or after January 1, 2015) the minimum hourly rate will increase from the current rate of \$12.15, to \$12.90.

The new increases take effect on **January 1, 2024** and apply to any worker (including part-time or temporary employees and independent contractors) performing work “on or in connection with” the following federal contracts:

- ▶ Procurement contracts for construction covered by the Davis-Bacon Act (but not contracts covered by the Davis-Bacon Related Acts)
- ▶ Service contracts covered by the Service Contract Act (SCA)
- ▶ Concessions contracts, including those that may be excluded from SCA coverage
- ▶ Federal property or lands contracts related to offering services for federal employees, their dependents, or the general public

Workers who do not work directly on a covered contract, but spend time performing work in support of a covered contract or contracts, are covered under the “in connection with” provision if they spend 20% or more time in a workweek performing such work. As a reminder, the federal contractor minimum wage rate supersedes any job classification rates listed on SCA or DBA wage determinations, or in collective bargaining agreements, if those rates are lower than the published minimum wage rate.

Contractors and subcontractors should prepare for the increase by:

- ▶ Checking contracts/flow-downs for Executive Order 14026/ Executive Order 13658
- ▶ Reviewing current rates for covered workers, including those who work “in connection with” covered contracts, to determine any required wage increases starting January 1, 2024
- ▶ Preparing requests for price adjustments based on actual increased wages to meet the new required hourly rate and certain accompanying labor costs

The Executive Order 14026 wage increase applies to all such federal contracts and subcontracts except those in Texas, Louisiana, and Mississippi to which the states of Texas, Louisiana, or Mississippi, respectively, are a party. On September 26, 2023, a U.S. District Court Judge in the [Southern District of Texas](#) enjoined the minimum wage requirements of the final rule implementing Executive Order 14026 in those states, but only for contracts in which the state, or its agencies, are a contracting party. The court determined that President Biden exceeded his constitutional authority in issuing the Executive Order and that the Federal Property and

Administrative Services Act failed to provide the President the authority necessary to execute the order. This ruling likely will be appealed.

October 23, 2023

Revised DCAA Audit Guidance on the Cost Impact Calculation for a Unilateral Cost Accounting Practice Change

On October 3, 2023, the Defense Contract Audit Agency (“DCAA”) issued a Memorandum for Regional Directors (“MRD”) describing revised audit guidance for calculating the impact of a single unilateral cost accounting practice change (“CAP”). The change in guidance reflects certain Armed Services Board of Contract Appeals (ASBCA) decisions and how they are applied to the range of unilateral contractor CAP change scenarios. The new guidance is also intended to help DCAA auditors better understand the nature of unilateral CAP changes and how they affect future costs on government contracts/subcontracts. The new guidance only applies to a single unilateral CAP change. The cost impact methodology for required and desirable CAP changes and Cost Accounting Standards (CAS) noncompliances has not changed.

Background

A contractor may choose to implement a unilateral CAP change; however it is important to understand the impact of the change on affected CAS-covered contracts/subcontracts, as the government will not pay increased cost because of the CAP change (FAR 30.603-2 and 48 CFR 9903.201-4). That estimated impact to the government is calculated by comparing 1.) the estimate to complete (ETC) on affected CAS-covered contracts/subcontracts using the new cost accounting practice to 2.) the ETC using the old cost accounting practice. Increased costs in the aggregate represent the total amount owed to the government resulting from the CAP change.

A unilateral CAP change affects fixed-price and flexibly priced contracts differently. On a flexibly priced contract, actual costs incurred are allocated to the contract, and the government pays for or receives the benefit from the CAP change. However, the price of a fixed-price contract does not change as a result of CAP change. Historically, the government has argued that in cases where a unilateral CAP change results in an increase to the ETC for flexibly priced contracts and a decrease for fixed-price contracts, the sum of the increase for flexibly priced and the decrease in

fixed-price contract costs equaled the increased cost to the government. Contractors have argued that this approach may result in double-counting of the same costs, as the CAP change may shift those same costs from the affected fixed-price contracts/subcontracts to the affected flexibly priced contracts/subcontracts. This would inflate the impact to the government.

New Guidance

The MRD directs auditors to only count those same costs as increased costs once to eliminate the potential for double-counting (noted above) and includes several scenarios as examples using different contract/subcontract type groups. The MRD includes specific guidance to DCAA auditors on three important points that contractors should be aware of:

- ▶ When calculating the increased cost to the Government “in the aggregate” for a unilateral cost accounting practice (CAP) change, auditors should not automatically combine impacts of fixed-price and flexibly priced contract and subcontract groups.
- ▶ Special consideration is needed when a unilateral CAP change results in increased cost to both the flexibly priced and/or fixed-price contract/subcontract groups to ensure the estimated increased cost to the government “in the aggregate” is equitable.
- ▶ DCAA will no longer recommend settlement alternatives. It is the Cognizant Federal Agency Official’s (CFAO) responsibility to administer the resolution of cost impacts.

We do recommend that contractors explicitly make these “same” costs that are shifting between contract/subcontract type groups clear in their proposal, as it is unclear how DCAA would identify them in audit.

The MRD further directs DCAA audit teams to “evaluate the unilateral CAP change to understand the type of CAP change, ... the universe of all affected CAS-covered contracts/subcontracts, the movement of cost among contract/subcontract groups and customers, and all business units impacted by the unilateral CAP change. The contractor’s basis for the ETC amounts for the new cost accounting practice and the old cost accounting practice must be applied prospectively from the effective date of the change through the end of contract/subcontract performance.” The DCAA Contract Audit Manual (CAM) Section 8-503 Guidance on Evaluation of Cost Impact Proposals and the Cost Impact Statement (Price Adjustment) audit program have been updated to reflect the change in guidance.

The changes are effective as of the date of the memorandum (October 3). Any ongoing CAS cost

impact audits would be subject to the new guidance.

How BDO Can Help

Cost accounting practice changes can be complex. It is important for contractors to understand how those changes impact their contracting portfolio to minimize any negative impacts to contract cost recovery and/or profitability. Our skilled team of government contracts professionals can assist contractors in navigating those complexities.