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Acquisition Letter MV-21-08

MEMORANDUM FOR THE GSA ACQUISITION WORKFORCE

DocuSigned by:

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FROM: JEFFREY A. KOSES, SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: Adjusting Wages to Address Wage Compression Caused by the Federal Minimum Wage Increase

1. Purpose.

As GSA contractors raise wages to comply with the increased minimum wage under Executive Order (E.O.) 14026,¹ some of them might ask for a price increase in order to raise wage rates for additional labor categories not covered in the E.O. This Acquisition Letter (AL) provides guidance on reviewing such requests.

2. Background.

On April 27, 2021, E.O. 14026 *Increasing the Minimum Wage for Contractors* was signed. The E.O. increased the minimum wages for certain workers performing tasks on or in connection with covered Federal contracts to \$15.00 per hour. The increase in minimum wage was to begin on January 30, 2022; and January 1, 2023, and annually thereafter, to an amount determined by the Secretary of Labor.

On January 26, 2022, FAR Case 2021-014, *Increasing the Minimum Wage for Contractors*, was published as an Interim Rule. The FAR case made changes to the Federal Acquisition Regulation (FAR) to implement E.O. 14026.

Under the previous minimum wage, E.O. 13658, a \$10.10 minimum wage was established or \$3 increase to the hourly wage and included an escalation process to address inflation which resulted in small increases in the minimum wage rate and had little effect on workers not covered by the E.O.

Under the new minimum wage, E.O. 14026, the minimum hourly wage was increased to \$15 and DOL will establish a new minimum wage annually. This large increase to the hourly wage has the potential to result in wage compression² for employees whose

¹ [Executive Order 14026: Increasing the Minimum Wage for Federal Contractors](#)

² Wage compression occurs when: 1) the pay of one or more employees is very close to the pay of more experienced employees in the same job; 2) employees in lower-level jobs are paid almost as much as their colleagues in higher-level jobs, including managerial positions; or 3) there's little difference in pay between employees regardless of differences in their respective knowledge, skills, experience or abilities.

existing wage rates are close to or just over \$15.00 per hour, such as certain supervisors or lead workers.

Contractors are entitled to an adjustment to ensure *covered employees* are paid the \$15.00 per hour minimum wage. This AL does not address that issue.

This AL focuses on wage compression only, for contractor employees *not* covered by the E.O. It establishes parameters contracting officers can use in the decision making process, standard justification language, and pricing data for consideration when negotiating equitable adjustments to address wage compression.

3. Effective Date.

This AL is effective immediately and remains in effect until rescinded or incorporated into the FAR or GSAM.

4. **Cancellation.** Not applicable.

5. **Authority.** This AL is issued under the authority of GSAM 501.370.

6. Applicability.

Acquisition Alert AA-2020-03 *Adjusting Contract Prices for Fixed Price Service Contracts Due to Minimum Wage or Wage Determination Increases* provides basic guidance on how to consider price increases on a fixed price service contract when there is an increase in the minimum wage rate.

This AL builds on AA-2020-03 by addressing the situation where the contractor requests an equitable adjustment to cover its cost as a result of wage compression *for non-covered employees* when implementing the increased Federal minimum wage rate.

7. Guidance.

Establishment of a new minimum wage nearly 40% higher than the previous minimum wage is fundamentally different from annual escalation of the minimum wage rate. Contracting officers may receive requests for an equitable adjustment, to minimize wage compression, from some GSA contractors.

Because wage compression has the potential to negatively impact contract performance, contracting officers should consider and evaluate a contractor request for an equitable adjustment as a result of having to implement the new minimum wage.

If funding is available and if the contractor provides a sound justification, contracting officers have the authority, but are not required, to permit such equitable adjustments.

Contracting Officer Responsibility: Contracting officers should **not** invite contractors to submit a request for an equitable adjustment. It is up to the contractor to initiate such a request with a clear justification and with an appropriate authority cited.

Upon receipt of such a request, consider if the proposal is justified and such adjustment would be in the best interest of the Government. Take the following steps:

Step 1: Do nothing until and unless the contractor submits a request for an equitable adjustment citing the need to increase hourly wages for employees due to wage compression resulting from the new minimum wage requirement.

Step 2: Review the contract to confirm each of the following points:

- Is there **funding** available? If there is no funding available, the proposal need not be **considered**.
- Ensure that contractor employees really were being paid less than the \$15.00 minimum wage. If all contractor employees, or even most, are already being paid an hourly wage at or above the minimum, the proposal need not be considered.
- Has the contractor explained why compensating the contractor for the increase will likely result in better contract performance? Unless the answer is “yes” the proposal need not be considered. To answer this question, consider whether the contract:
 - Provides essential services to the government?
 - Involves labor categories that could significantly impact contract performance without an adjustment?
 - Involves contract employees that possess more than one year of experience, specialized experience, certifications, and/or skills essential to successfully perform the contract?
 - Involves employees (e.g., supervisors) who make less than, equal, or lower differential salary to their subordinates or direct reports due to the implementation of the new minimum wage?

Step 3: If the contracting officer concludes that there is funding available and a basis for an adjustment, then verify that the contractor-cited authority is appropriate for the request. The following is a list of contract clauses that may be applicable to this situation, however each contracting officer should review the specific cited clause and consult with legal counsel as needed:

- *For AbilityOne contracts, the most likely clauses will be:*
 - FAR 52.243-1 Changes-Fixed-Price Alternate I (Deviation)
 - FAR 52.212-4 Contract Terms and Conditions - Commercial Products and Services
- *For MAS Schedule contracts, the most likely clauses will be:*
 - GSAR 552.216-70 Economic Price Adjustments-FSS Multiple Award Schedule Contracts

- I-FSS-969 Economic Price Adjustments- FSS Multiple Award Schedule
- *For PBS O&M service contracts, the most likely clauses will be:*
 - FAR 52.243-1 Changes-Fixed-Price Alternate I
 - FAR 52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services
- *For other GSA contracts, the most likely clauses will be:*
 - FAR 52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services
 - FAR 52.243-1 Changes-Fixed-Price
 - FAR 52.243-2 Changes-Cost-Reimbursement
 - FAR 52.243-3 Changes-Time-and-Materials or Labor-Hours
 - FAR 52.243-4 Changes
 - FAR 52.243-7 Notification of Changes
 - GSAR 552.270-14 Changes

Step 4: For guidance on how to negotiate new rates:

- Review Acquisition Alert [AA-2020-03 Adjusting Contract Prices for Fixed Price Service Contracts Due to Minimum Wage or Wage Determination Increases](#).
- Determine if the requested adjustment is fair and reasonable by looking at market rates using various tools such as the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) at <https://www.bls.gov/oes/home.htm>.

Step 5: Justify the new rates based on the terms or requirements of the applicable changes or equitable adjustment clause. Sample language is provided below, and should be included along with the CO's documentation of the basis of the acceptance of the request.

- *Employees with Experience/Specialized Skills/Certifications:*

“GSA contracting officer [name] is negotiating an equitable adjustment due to wage compression for [contract or contract-like agreement #] to existing employees with needed credentials for the achievement of successful contract performance who are experiencing an imbalance due to the implementation of E.O. 14026. This decision is based on the potential impact on contract performance, skills and experience of the employee and peers.”
- *Employees Performing Essential Functions:*

“GSA contracting officer [name] is negotiating an equitable adjustment due to wage compression for [contract or contract-like agreement #] base pay increases for essential worker employees who are experiencing an imbalance due to the implementation of E.O. 14026. This decision is based on the

nature of the services being provided on the contract, skills and experience of the employee and the potential impact on contractor performance, national security, or agency mission.”

- **Employees with Disparate Pay from Subordinates:**

“GSA contracting officer [name] is negotiating an equitable adjustment due to wage compression for [contract or contract-like agreement #] base pay increases for contract supervisory employees based on internal wage compression between supervisor and employee. The contracting officer will increase the pay for contract supervisory employees to increase the pay differential between supervisor and subordinate. This decision is based on performance, skills and experience of the supervisor and the potential impact on contractor performance due to low employee morale, probability of employee turnover, and continuity of services.”

8. Point of Contact. Any questions regarding this letter may be directed to Johnnie McDowell at GSARPolicy@gsa.gov.