

Office of Federal Contract Compliance Programs

Directive (DIR) 2010-01

Renumbered on 9/16/2013 as DIR 2010-01.



TRANSMITTAL U.S. DEPARTMENT OF LABOR Office of Federal Contract Compliance Programs Washington, D.C. 20210

Number: 290 Date: ADM Notice/Other

1. **SUBJECT:** Verification Procedures Under Executive Order 13496, Notification of Employee Rights under Federal Labor Laws, and the Department of Labor's implementing regulations at 29 C.F.R. Part 471.
2. **PURPOSE:** To provide instructions for conducting compliance verification under E.O. 13496 and 29 C.F.R. Part 471 during the onsite phase of a compliance evaluation, or in response to a written complaint of noncompliance.
3. **FILING INSTRUCTIONS:**

Holders of ADM and LEG Binders only: File this Notice with the attachment behind the "Other" tab in your Administrative Practices Binder. Remove OFCCP Order No. 269, ADM Notice/Other (June 8, 2005) (Executive Order 13201 "Beck" Directive).

District and Area Office Staff only: File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder. Remove OFCCP Order No. 269, ADM Notice/Other (June 8, 2005) (Executive Order 13201 "Beck" Directive).
4. **OBSOLETE DATA:** OFCCP Order No. 269, ADM Notice/Other (June 8, 2005) (Executive Order 13201 "Beck" Directive).
5. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only).
6. **EXPIRATION DATE:** This directive remains in effect until superseded or rescinded.
7. **ATTACHMENTS:**
 1. Notice of Receipt of E.O. 13496 Complaint
 2. Closure Letter – Complaint (No Findings)
 3. Notice of Referral to OLMS - Complaint
 4. E.O. 13496 Technical Assistance Letter
 5. Text of Executive Order 13496.

/s/

PATRICIA A. SHIU

Director

Office of Federal Contract Compliance Programs

**U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
WASHINGTON D.C. 20210**

1. **SUBJECT:** Verification Procedures Under Executive Order 13496, Notification of Employee Rights under Federal Labor Laws, and the Department of Labor's implementing regulations at 29 C.F.R. Part 471 (Part 471).
2. **PURPOSE:** To provide instructions for conducting compliance verification with E.O. 13496 and 29 C.F.R. Part 471 during the onsite phase of a compliance evaluation, or in response to a written complaint of noncompliance.
3. **ORIGINATOR:** Division of Policy, Planning and Program Development
4. **BACKGROUND:** Executive Order 13496 (E.O. 13496 or Order) was signed by President Obama on January 30, 2009. 74 FR 6407 (February 4, 2009). The Order requires that notice of employee rights under the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.*, be provided to employees of federal contractors and subcontractors, and in Federal contracts, subcontracts and purchase orders. Executive Order 13496 revokes Executive Order 13201, commonly referred to as the "Beck Order.

Final regulations implementing Executive Order 13496 were published in the Federal Register at 75 FR 28368 (May 20, 2010), and will be located in the Code of Federal Regulations at 29 C.F.R. Part 471. The regulations are also available online at <https://www.dol.gov/agencies/olms/poster/labor-rights-federal-contractors>. Effective June 21, 2010, the regulations require Federal departments and agencies to include in their contracts specific provisions requiring contractors, and the subcontractors with whom they do business, to post work place notices informing their employees of their organizing and collective bargaining rights under the NLRA. The text of the required employee notice is provided in Appendix A to the regulations.

OFCCP shares responsibility with the Office of Labor-Management Standards (OLMS), the primary enforcement agency, for ensuring contractor compliance with E.O. 13496 and Part 471. OFCCP's role is to physically inspect contractor establishments (both supply and service, and construction) where NLRA-covered employees engage in activities relating to performance of the contract, including plants, offices, and work sites, and/or to examine contracts for compliance with the Order's posting and contract clause requirements. OFCCP will also investigate a contractor's compliance with E.O. 13496 in response to a written complaint of the contractor's noncompliance with the Order.

5. **POLICY:** Executive Order 13496 compliance verifications. Such verifications will be conducted by OFCCP compliance officers (COs) as part of the onsite phase of compliance evaluations (including, as appropriate, as part of focused reviews) conducted under Executive Order 11246, Section 503, or VEVRAA.

To meet its responsibilities under the Order and facilitate coordination with OLMS, OFCCP has established procedures for conducting compliance verifications, conciliating compliance problems, and reporting its findings to OLMS. Section A of this directive provides details about the posting and contract clause requirements for non-exempt federal contractors. The directive also provides OFCCP procedures for conducting compliance verifications (Section B), for investigating complaints of contractor noncompliance (Section C), and for providing compliance assistance (Section D). OLMS is responsible for taking any necessary administrative enforcement action and/or imposing any penalties and remedies for noncompliance with E.O. 13496.

A. Executive Order 13496 Requirements

1. Notice Posting Requirement

The notice required by the Order and its implementing regulations contains a description of employee rights under the NLRA, the primary law governing relations between unions and employers in the private sector. The NLRA guarantees the right of employees to organize and to bargain collectively with their employers, to engage in other protected concerted activity with or without a union, or to refrain from all such activity. Generally, the

employee notice required by the Order lists employees' rights under the NLRA to form, join and assist a union, and to bargain collectively with their employers. The notice also provides examples of unlawful employer and union conduct that would interfere with these rights. In addition, it indicates how employees can contact the National Labor Relations Board (NLRB), the federal agency that enforces these rights, with questions about the rights, or to file complaints alleging NLRA violations.

Employers exempt from the NLRA, and therefore not subject to the Order, are: the United States or any wholly owned Government corporation; any Federal Reserve Bank; any State or political subdivision thereof; any person subject to the Railway Labor Act; any labor organization (other than when acting as an employer); or anyone acting in the capacity of officer or agent of such labor organization.

Specific types of contracts are also excepted from coverage under the Order. They are: federal-sector collective bargaining agreements; prime contracts that involve purchases below the simplified acquisition threshold, which, as of June 2010, is set at \$100,000; contracts resulting from solicitations issued prior to the June 21, 2010, effective date of the regulations; subcontracts below \$10,000; contracts for work performed exclusively outside the territorial United States; and any contract subject to an exemption granted by the Director of OLMS. See 29 C.F.R. 471.3.

Non-exempt contractors are required by the Order and regulations to physically post the employee notice. The Department's regulations establish the notice's size, form, and content. The notice must be posted in conspicuous places in and about the contractors' facilities, work sites and offices so that the notice is prominent and readily seen by employees, including, but not limited to, all places where the contractor posts notices to employees regarding the terms and conditions of their employment. The poster must be located to ensure that contract employees covered by the NLRA are able to view the notice. This includes all employees directly involved in working the contract, and those not directly involved but whose activities are contract-related, *i.e.*, the duties of the employee's position include work that contributes to or furthers the performance of the contract, or work whose omission would impede the contract's performance *e.g.*, maintenance, personnel, repair, etc.). Therefore, a contractor may have to post the notice at more than one of its facilities and in multiple areas of work and activity within individual facilities.

A contractor that customarily posts employee notices about the terms and conditions of employment electronically must also post the required E.O. 13496 notice electronically. Electronic posting requires contractors to post a link to OLMS's website containing the notice where they customarily place other electronic notices to employees about the terms and conditions of employment. The link must be no less prominent than that of other employee notices and must read "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers." The electronic posting cannot be used as a substitute for physical posting.

Where a significant portion of a contractor's workforce is not proficient in English, contractors and subcontractors must provide the employee notice in the language(s) spoken by employees. OLMS will provide translations of the employee notice and the link to the Department's website that can be used to comply with the physical and electronic posting requirements. See 29 C.F.R. 471.2(d), (e) and (f).

2. Inclusion of Employee Notice Clause in Contracts and Purchase Orders

All non-exempt federal contracts, subcontracts, and purchase orders resulting from solicitations issued on or after June 21, 2010, must include a clause that sets out the text of the employee notice, and outlines the contractor's posting obligation. It is the responsibility of the contracting agency to ensure that all non-exempt federal contracts contain the employee notice clause. It is the responsibility of the contractor, unless exempted, to include the employee notice clause in every contract, subcontract and purchase order entered into in connection with its federal contract. The requirements contained in the contract clause are binding on each subcontractor. The employee notice clause does not have to be quoted word for word in every contract and purchase order, and may, instead, be incorporated by reference. To include the clause by reference, the contract or purchase order must cite to "29 CFR Part 471, Appendix A to Subpart A."

B. Compliance Verification Procedures

Executive Order 13496 compliance verification will be conducted as a routine part of the onsite phase of compliance evaluations (including, where appropriate, focused reviews). Provided below are the steps that the CO will take to conduct compliance verification.

1. Contractor Notice of Onsite Evaluation

When an establishment has been scheduled for review and it is determined that an onsite evaluation will be conducted, the CO will notify the contractor that, in addition to other onsite activities, the CO will verify the contractor's compliance with the regulations implementing the Order. During pre-onsite discussions with the contractor (or contractor's representative), the CO will explain that a physical inspection will be conducted and that a sample of contracts/purchase orders will be reviewed. Since written confirmation of an onsite visit is routinely provided to a contractor, the CO will include in this written confirmation his/her discussion with the contractor regarding E.O. 13496 compliance verification.

Prior to the onsite evaluation, the CO will request that the contractor provide for inspection, at a minimum, the last three contracts, subcontracts and/or purchase orders resulting from solicitations issued on or after the Order's June 21, 2010, effective date (*i.e.*, the most recent items subject to the Order). This means, for example, that if a solicitation was issued by an agency on June 1, 2010, the resulting contract (even if executed after June 21, 2010) would not be subject to the Order's requirements. On the other hand, if the solicitation is issued on or after June 21, 2010, any resulting contract is subject to the Order and may be reviewed.

Review of a greater number of contracts and/or purchase orders may be necessary to ensure compliance. The CO should explain to the contractor that additional contracts/purchase orders should be readily available for review upon the CO's request. The CO will select an appropriate sample, as needed. If the documents are not physically maintained at the establishment under review, the CO should make arrangements with the contractor to obtain access to the documents for inspection during the onsite evaluation.

2. Onsite Evaluation

During the onsite evaluation, the CO will determine if the contractor has complied with the posting requirement. The notice must be posted in conspicuous places in and about the contractor establishment(s), (*e.g.*, facilities, work sites, plants and offices) where NLRA-covered employees engage in activities relating to the performance of the contract. The CO will conduct a physical inspection of the establishment to determine whether the posted notices are in conspicuous places so that the notice is prominent and readily seen by employees. This will include observation of common work areas, break rooms, personnel offices, etc. If there are specific locations where employee notices are commonly posted, (*e.g.*, employee bulletin boards) the required E.O. 13496 notice must, at a minimum, be posted in these locations. Additionally, during the onsite, the CO will inspect the identified sampling of contracts/purchase orders to determine whether they include the required E.O. 13496 contract clause (*i.e.*, contracts and purchase orders resulting from solicitations entered into on or after June 21, 2010).

Where a contractor customarily posts employee notices about the terms and conditions of employment electronically, the CO will also view the electronic posting, and ensure that its website prominently states, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers," and that there is a link to OLMS's website.

Where a significant portion of a contractor's workforce is not proficient in English, the CO will check to ensure that the poster is provided in the appropriate language.

3. Conciliation

If it is determined that the contractor is not in compliance with the posting requirement or has refused/failed to include the required contract clause in its contracts and purchase orders, the CO will attempt to correct the violation during the onsite evaluation (*e.g.*, OFCCP will provide the posters, and guidance on proper posting and the amendment of contracts/purchase orders to include the required contract clause). OFCCP will make reasonable efforts to obtain compliance through conciliation. If the contractor does not comply with the requirements, the matter should be referred to OLMS for possible enforcement action (see below).

4. Report of Findings

The CO will document the results of his/her findings regarding the contractor's compliance or noncompliance with the Order, as appropriate, on the Standard Compliance Evaluation Report (SCER). Additionally, if there is a finding of noncompliance and conciliation efforts have not resulted in securing corrective action, the noncompliance finding should be noted on the SCER and submitted to the Regional Office. A finding of noncompliance with E.O. 13496 may also exist if a contractor refuses to cooperate or provide access to information needed to verify compliance with the Order, or refuses to allow the necessary physical inspection to be conducted. Such denial of access may warrant enforcement action by OLMS.

5. Closing the Compliance Verification

If compliance verification is conducted as part of a broader compliance evaluation, any findings must be included in the compliance evaluation closure letter. The closure letter must specify that E.O. 13496 compliance verification was conducted. See FCCM Chapter 3 (for supply and service no-violation letters), Chapter 4 (for construction no-violation letters) and Chapter 8 (for violation letters).

If there is not a finding of violation regarding E.O. 13496, or any such finding is corrected prior to the completion of the compliance evaluation, the closure letter will indicate this. A courtesy copy of the closure letter will be sent to OLMS at the following address:

U.S. Department of Labor Office of Labor-Management Standards Division of Interpretation and Standards Room N-5609 200 Constitution Ave NW Washington, DC, 20210

6. Non-Compliance and Referral to OLMS

If there is a finding of violation of E.O. 13496 that is not corrected, the SCER containing the report of findings will be submitted to the Regional Office. The Regional Office will review the findings of noncompliance, including denial of access findings, and forward the findings to the Director of the Division of Program Operations (DPO), Washington, DC. The Director of OFCCP, or his/her designee, will refer the matter to the Director of OLMS, who may take enforcement action, as appropriate, under 29 C.F.R. 471.13. A letter will be sent to the contractor indicating that OFCCP's findings have been referred to OLMS for possible administrative enforcement action. See Attachment 3 – Notice of Referral to OLMS.

C. **Executive Order 13496 Investigation in Response to a Complaint of Noncompliance**

OFCCP will conduct a complaint investigation in response to an allegation that the posting and/or contract clause requirement has been violated by a non-exempt contractor. The complaint may be filed directly with OFCCP or transferred to OFCCP from OLMS.

1. Receipt of a Complaint

A written complaint alleging noncompliance with Executive Order 13496 may be filed by an employee with OLMS or OFCCP at 200 Constitution Avenue, NW, Washington, DC 20210, or with any OLMS or OFCCP field office. The date that a complaint is received by any OFCCP or OLMS office will be considered the official receipt date for purposes of complaint processing. Any such complaint received by an OFCCP field office should be immediately forwarded to the appropriate Regional Office (*i.e.*, the office with jurisdiction over the geographic area in which the establishment is located) for processing. NOTE: There is no time frame for when a complaint must be filed.

The Regional Office will record receipt of the complaint as an Executive Order 13496 complaint in OFCCP's Case Management System (CMS). The Regional Office is responsible for conducting the initial review of the complaint to determine its completeness, whether it contains other (non-E.O. 13496) allegations and, if so, how these

allegations will be addressed. If the complaint contains allegations over which OFCCP does not have jurisdiction, or which are more appropriately addressed by another agency, the Regional Office will follow established complaint processing procedures with regard to these allegations.

Complaints alleging only noncompliance with Executive Order 13496 will be assigned to a field office for investigation. With respect to a “mixed” complaint, (*i.e.*, containing an allegation of noncompliance with E.O. 13496 and other allegations over which OFCCP has jurisdiction), the Regional Office will assign the complaint to a field office to conduct a compliance investigation under E.O. 13496, and an investigation of the remaining allegations (over which OFCCP has jurisdiction) in accordance with established complaint processing guidelines. (See Federal Contractor Compliance Manual (FCCM) Chapter 6 - Complaint Processing)

2. Notice of Receipt of a Complaint

The Regional Office will provide written notice to the contractor within 10 calendar days of the official receipt date of the complaint. The written notice will specify the allegation(s) of noncompliance with the Order and indicate that an E.O. 13496 complaint investigation will be conducted. The written notice will also indicate that the contractor will be contacted by the field office, and that a copy of the company’s employee roster will be requested. The name of the complainant should not be provided in the notice, and must remain confidential throughout the complaint process. If the complaint is “mixed,” OFCCP will determine whether the identity of the complainant must be released in order for the investigation to properly proceed.

3. Time Frame for Completing Complaint Processing

The complaint (whether or not it is “mixed”) must be processed and a report of findings rendered within 60 calendar days of the date the field office receives the complaint from the Regional Office. This time frame includes conducting compliance verification and, if applicable, completing the conciliation process. Extension of this time frame may be granted to the investigating field office for good cause shown by the Regional Director.

4. Conducting the Complaint Investigation

If the complaint alleges a failure of the contractor to include the contract clause in specific contracts/purchase orders, or in specific types of contracts/purchase orders, the CO should be sure to include a review of the identified contracts/purchase orders. Similarly, if the complaint alleges a failure to post the required notice in specific break rooms or facilities, or a failure to meet the electronic posting requirements, the CO should include the identified places in his/her establishment inspection and/or inspect the contractor’s internal website, as appropriate. The CO assigned to investigate the E.O. 13496 complaint will also conduct compliance verification in accordance with this Directive. See subsections B.1, B.2, and B.3 above.

5. Report of Complaint Findings

a. *E.O. 13496 Complaint Only*

The SCER should be used to record the CO’s investigation findings when the complaint only alleges noncompliance with E.O. 13496. The CO should use the findings section of the SCER, and any other relevant SCER sections, to record the CO’s findings regarding the contractor’s compliance or noncompliance with the requirements of E.O. 13496, a description of conciliation efforts made, corrective action taken, and/or enforcement recommended. The SCER must reflect that the compliance and verification was conducted in response to the receipt of a complaint. The CO will include the complaint (and any attachments) with the SCER as a part of the report of findings.

b. *“Mixed” Complaints*

With “mixed” complaints, the specific findings regarding the E.O. 13496 allegation(s) should be included in the report of findings addressing the other allegations over which OFCCP has jurisdiction. This report will be compiled in accordance with established complaint processing procedures (See FCCM Chapters 6 and 8). Whether there is a finding of compliance or noncompliance with regard to E.O. 13496 must be specifically stated in the report of findings, along with a description of conciliation efforts made,

corrective action taken, and/or enforcement recommended. If there is a finding of noncompliance with E.O. 13496 and conciliation efforts do not cure the problem, the findings will be submitted to DPO (by the Regional Office) for referral of the matter to OLMS in accordance with subsection B.6 above.

6. Closing the Complaint Investigation

a. *E.O. 13496 Complaint Only*

If there is a finding of compliance, or a finding of noncompliance that has been corrected prior to the completion of the investigation, the CO will issue a closure letter indicating that an E.O. 13496 investigation has been completed, and either that no violation was found, or that appropriate corrective action has been taken. A courtesy copy of the closure letter will be sent to OLMS. See Attachment 2 – Closure Letter (No Findings).

If there is a finding of noncompliance that remains uncorrected after conciliation efforts have been made, the report of findings (SCER) will be submitted to DPO (by the Region) for referral to OLMS. A letter will be mailed to the contractor indicating that OFCCP's findings regarding the allegation have been referred to OLMS for possible administrative enforcement action. See Attachment 3 – Notice of Referral to OLMS.

b. *“Mixed” Complaints*

If the complaint allegations are “mixed,” the report of findings and complaint file (case file) must specifically state the E.O. 13496 findings, and the basis for the findings. In this instance, the E.O. 13496 findings will continue to be processed with any other findings in accordance with established complaint processing procedures. If there is a violation of E.O. 13496 and conciliation efforts are not successful, the E.O. 13496 findings will be submitted to DPO (by the Regional Office) for referral to OLMS for possible administrative enforcement action. A copy of the letters referring the matter to OLMS and informing the contractor of the referral should be retained in the case file.

D. **Compliance Assistance**

During compliance assistance activities, federal contractors should be informed of their E.O. 13496 obligations. OFCCP field offices are responsible for answering inquiries regarding the Order, with assistance from SOL and/or OLMS staff, as appropriate. OFCCP will also distribute E.O. 13496 posters during compliance evaluations, compliance assistance events, and as requested. Information regarding the Order, including the required poster, is available online at <https://www.dol.gov/olms/regs/compliance/EO13496.htm> and may be downloaded for use by contractors.

In addition, technical assistance regarding the Order should be initiated if a field office receives information that a contractor may not be complying with its E.O. 13496 obligations. The field office should send a technical assistance letter to the head of the contractor establishment and/or its designated representative that outlines the Order's coverage and requirements. The letter should also provide the name and phone number of an OFCCP staff member who can provide additional information regarding the Order to the contractor. See Attachment 4 – E.O. 13496 Technical Assistance Letter.

6. **OBSOLETE DATA:** OFCCP Order No. 269, ADM Notice/Other (June 8, 2005) (Executive Order 13201 “Beck” Directive).

7. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only)

8. **EXPIRATION DATE:** This directive remains in effect until superseded or rescinded.

9. **ATTACHMENTS:**

1. Notice of Receipt of E.O. 13496 Complaint
2. Closure Letter – Complaint (No Findings)
3. Notice of Referral to OLMS - Complaint
4. E.O. 13496 Technical Assistance Letter
5. Text of Executive Order 13496

/s/

PATRICIA A. SHIU
Director
Office of Federal Contract Compliance Programs

Date

06/15/10

ATTACHMENT 1: NOTICE OF RECEIPT OF E.O. 13496 COMPLAINT

(Name of CEO) [Complaint Number]

(Title of CEO)

(Company Name)

(Street Address)

(City, State, Zip Code)

Dear (Name of CEO):

On [date], the Office of Federal Contract Compliance Programs (OFCCP) received a complaint filed under Executive Order 13496 (E.O. 13496) alleging that (Name and Location of the Establishment) is in noncompliance with the Order. The complaint alleges:

- o failure to post the required employee notice
- o failure to comply with electronic posting requirements
- o failure to include the required contract clause in its contract and/or
- o other (specify)

An investigation of the named establishment will be conducted under E.O. 13496 and the Department of Labor's implementing regulations at 29 C.F.R. Part 471 (Part 471), which require non-exempt federal contractors to provide notice of employee rights under the National Labor Relations Act.

The [District/Area Office] will contact the establishment within 5 business days to set a date for the investigation and to request a copy of the company's employee roster to verify the complainant's employment status.

Sincerely,

(Regional Director or designee)

cc: Head of Establishment and/or

Designated Representative

ATTACHMENT 2: CLOSURE LETTER FORMAT FOR EXECUTIVE ORDER 13496

COMPLAINT: NO VIOLATION, OR CORRECTED VIOLATION

(Name of CEO) [Complaint Number]

(Title of CEO)

(Company Name)

(Street Address)

(City, State, Zip Code)

Dear (Name of CEO):

Our recent investigation of your compliance with Executive Order 13496 at (Name and Location of the Establishment reviewed) has been completed. The investigation was conducted [in response to a complaint of noncompliance received on (date)]. Under Executive Order 13496 and the Department of Labor's implementing regulations at 29 C.F.R. Part 471 (Part 471), non-exempt federal contractors are required to provide notice of employee rights under the National Labor Relations Act (NLRA). [Select either Paragraph 2 or Paragraph 3]

(2) During the investigation, we found no apparent violations of Executive Order 13496 or its implementing regulations. This determination may be modified by the Regional Director, or by the Director of the Office of Federal Compliance Programs (OFCCP), within 45 calendar days of the issuance of this letter. You will be informed if such a modification is made.

[OR]

(3) During the investigation, we identified and resolved the following violation(s): [identify the specific violation(s) resolved during the investigation/compliance verification]. It is understood that this/these problem(s) will not recur. This determination may be modified by the Regional Director, or by the Director of the Office of Federal Contract Compliance Programs (OFCCP), within 45 calendar days of the issuance of this letter. You will be informed if such a modification is made.

[Optional] OFCCP sincerely appreciates the cooperation and courtesies extended by you and your staff during the conduct of the complaint investigation.

Sincerely,

(District Director/Assistant District Director)

cc: Head of Establishment and/or

Designated Representative

OLMS

**ATTACHMENT 3: FORMAT FOR NOTICE OF REFERRAL TO OLMS
EXECUTIVE ORDER 13496**

Certified Mail, Return Receipt Requested

(Name of CEO) [Complaint Number]

(Title of CEO)

(Company Name)

(Street Address)

(City, State, Zip Code)

Dear (Name of CEO):

A recent investigation at (name and location of the establishment reviewed) was conducted and a finding of noncompliance was made. This letter is to inform you that the Office of Federal Contract Compliance Programs (OFCCP) is referring its report of findings to the OLMS for possible administrative enforcement action.

The investigation was conducted [in response to a complaint of noncompliance received on (date)] under Executive Order 13496 and the Department of Labor's implementing regulations at 29 C.F.R. Part 471, which requires that non-exempt federal contractors provide notice of employee rights under the National Labor-Relations Act (NLRA). During the investigation, the following violations were found [list Executive Order 13496 violation(s) or denial of access]. This determination may be modified by the Regional Director, or by the Director of the OFCCP, within 45 calendar days of the issuance of this letter. You will be informed if such a modification is made.

If you have any questions regarding this letter, please contact me at [contact number] or [compliance officer's name].

Sincerely,

(District Director/Assistant District Director)

cc: Head of Establishment and/or

Designated Representative

ATTACHMENT 4: E.O. 13496 TECHNICAL ASSISTANCE LETTER

(Name of CEO)

(Title of CEO)

(Establishment Name)

(Street Address)

(City, State, Zip Code)

Dear (Name of Establishment Head/Manager):

It has been brought to the attention of the U.S. Department of Labor's Office of Federal Contractor Compliance Programs (OFCCP) that your establishment located at [address of establishment] may not be aware of certain obligations it may have under federal law. Specifically, Executive Order 13496 (E.O. 13496 or the Order), and the Department of Labor's implementing regulations, 29 C.F.R. Part 471, require that non-exempt federal contractors provide notice to their employees of their rights under the National Labor Relations Act (NLRA) and include contract provisions in all non-exempt subcontracts and purchase orders that require subcontractors to post the same notice to employees.

OFCCP and the Department's Office of Labor-Management Standards (OLMS) are responsible for enforcing the Order and the regulations, with OLMS being the primary enforcement agency. Providing technical assistance to federal contractors regarding the Order is one method we use to ensure contractor compliance. This letter is intended to provide you with such technical assistance and does not constitute a determination of compliance/noncompliance.

E.O. 13496 and its implementing regulations, 29 C.F.R. Part 471, require that non-exempt supply and service and/or construction contractors:

- Physically post the required employee notice in conspicuous places in and about the contractors' facilities, work sites and offices, including where the contractor posts other notices to employees regarding the terms and conditions of their employment
- In addition to physically posting the notice, if a contractor customarily posts employee notices about the terms and conditions of employment electronically, the contractor must post a link to the OLMS website containing the notice
- If a significant portion of a contractor's workforce is not proficient in English, the contractor must provide the employee notice in the language(s) spoken by employees
- All non-exempt federal contracts, subcontracts, and purchase orders must include a prescribed clause that sets out the text of the employee notice, and outlines the contractor's posting obligation. The prescribed contract clause does not have to be quoted verbatim and instead, may be incorporated by reference by citing to "29 CFR Part 471, Appendix A to Subpart A."

If you are unsure whether your company is subject to Executive Order 13496, please be aware that the Order excepts the following employers from coverage: the United States or any wholly owned Government corporation; any Federal Reserve Bank; any State or political subdivision thereof; any person subject to the Railway Labor Act; any labor organization (other than when acting as an employer); or anyone acting in the capacity of officer or agent of such labor organization.

If the company is not an exempt employer, and holds a prime federal contract resulting from a solicitation issued on or after June 21, 2010 that is valued at \$100,000 or more, or holds a subcontract as defined in 29 C.F.R. Section 471.1 that is necessary to the performance of a federal contract or subcontract and is valued at \$10,000 or more, the establishment may be covered under the Order and its implementing regulations. If your establishment is subject to the Order, it is obligated to comply with its requirements, and may be subject to sanctions and penalties for failure to do so. See 29 C.F.R. Section 471.14 for additional details.

Additional information regarding the Order, including the required poster and implementing regulations, is available online at <https://www.dol.gov/olms/regs/compliance/EO13496.htm>. The poster may be downloaded for your use free of charge. You may also contact [District/Area Office contact person and number] with any questions or concerns that you may have.

Sincerely,

(District/Area Director or designee)

cc: (Name of OLMS representative)

OLMS

ATTACHMENT 5: EXECUTIVE ORDER 13496

Federal Register / Vol. 74, No. 22 / Wednesday, February 4, 2009 / Presidential Documents 6107

Executive Order 13496 of January 30, 2009: Notification of Employee Rights Under Federal Labor Laws

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered that:

Section 1. Policy.

This order is designed to promote economy and efficiency in Government procurement. When the Federal Government contracts for goods or services, it has a proprietary interest in ensuring that those contracts will be performed by contractors whose work will not be interrupted by labor unrest. The attainment of industrial peace is most easily achieved and workers' productivity is

enhanced when workers are well informed of their rights under Federal labor laws, including the National Labor Relations Act (Act), 29 U.S.C. 151 et seq. As the Act recognizes, “encouraging the practice and procedure of collective bargaining and . . . protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection” will “eliminate the causes of certain substantial obstructions to the free flow of commerce” and “mitigate and eliminate these obstructions when they have occurred.” 29 U.S.C. 151. Relying on contractors whose employees are informed of such rights under Federal labor laws facilitates the efficient and economical completion of the Federal Government’s contracts.

Section 2. Contract Clause.

Except in contracts exempted in accordance with section 3 of this order, all Government contracting departments and agencies shall, to the extent consistent with law, include the following provisions in every Government contract, other than collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8) and purchases under the simplified acquisition threshold as defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403.

1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The notice shall include the information contained in the notice published by the Secretary of Labor in the Federal Register (Secretary’s Notice).
2. The contractor will comply with all provisions of the Secretary’s Notice, and related rules, regulations, and orders of the Secretary of Labor.
3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order [number as provided by the Federal Register] of [insert new date]. Such other sanctions or remedies may be imposed as are provided in Executive Order [number as provided by the Federal Register] of [insert new date], or by [6108 Federal Register / Vol. 74, No. 22 / Wednesday, February 4, 2009 / Presidential Documents] rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.
4. The contractor will include the provisions of paragraphs (1) through (3) above in every subcontract entered into in connection with this contract (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order [number as provided by the Federal Register] of [insert new date]) so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: Provided, however, that if the contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 3. Administration.

- a. The Secretary of Labor (Secretary) shall be responsible for the administration and enforcement of this order. The Secretary shall adopt such rules and regulations and issue such orders as are necessary and appropriate to achieve the purposes of this order.
- b. Within 120 days of the effective date of this order, the Secretary shall initiate a rulemaking to prescribe the size, form, and content of the notice to be posted by a contractor under paragraph 1 of the contract clause described in section 2 of this order. Such notice shall describe the rights of employees under Federal labor laws, consistent with the policy set forth in section 1 of this order.
- c. Whenever the Secretary finds that an act of Congress, clarification of existing law by the courts or the National Labor Relations Board, or other circumstances make modification of the contractual provisions set out in subsection (a) of this section necessary to achieve the purposes of this order, the Secretary promptly shall issue such rules, regulations, or orders as are needed to cause the substitution or addition of appropriate contractual provisions in Government contracts thereafter entered into.

Section 4. Exemptions.

- a. If the Secretary finds that the application of any of the requirements of this order would not serve the purposes of this order or would impair the ability of the Government to procure goods or services on an economical and efficient basis, the Secretary may exempt a contracting department or agency or group of departments or agencies from the requirements of any or all of the provisions of this order with respect to a particular contract or subcontract or any class of contracts or subcontracts.

- b. The Secretary may, if the Secretary finds that special circumstances require an exemption in order to serve the national interest, exempt a contracting department or agency from the requirements of any or all of the provisions of section 2 of this order with respect to a particular contract or subcontract or class of contracts or subcontracts.

Section 5. Investigation.

- a. The Secretary may investigate any Government contractor, subcontractor, or vendor to determine whether the contractual provisions required by section 2 of this order have been violated.

Such investigations shall be conducted in accordance with procedures established by the Secretary.

- b. The Secretary shall receive and investigate complaints by employees of a Government contractor or subcontractor, where such complaints allege a failure to perform or a violation of the contractual provisions required by section 2 of this order.

Section 6. Compliance.

- a. The Secretary, or any agency or officer in the executive branch lawfully designated by rule, regulation, or order of the Secretary, may hold such [Federal Register / Vol. 74, No. 22 / Wednesday, February 4, 2009 / Presidential Documents 6109] hearings, public or private, regarding compliance with this order as the Secretary may deem advisable.
- b. The Secretary may hold hearings, or cause hearings to be held, in accordance with subsection (a) of this section, prior to imposing, ordering, or recommending the imposition of sanctions under this order. Neither an order for cancellation, termination, or suspension of any contract or debarment of any contractor from further Government contracts under section 7(b) of this order nor the inclusion of a contractor on a published list of noncomplying contractors under section 7(c) of this order shall be carried out without affording the contractor an opportunity for a hearing.

Section 7. Remedies.

In accordance with such rules, regulations, or orders as the Secretary may issue or adopt, the Secretary may:

- a. after consulting with the contracting department or agency, direct that department or agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor to comply with the contractual provisions required by section 2 of this order; contracts may be cancelled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon future compliance: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of the contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that completion of the contract is essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of the contracting department or agency, or his or her designee, continues to object to the issuance of such directive.
- b. after consulting with each affected contracting department or agency, provide that one or more contracting departments or agencies shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary that such contractor has complied with and will carry out the provisions of this order: Provided, that before issuing a directive under this subsection, the Secretary shall provide the head of each contracting department or agency an opportunity to offer written objections to the issuance of such a directive, which objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that further contracts or extensions or other modifications of existing contracts with the noncomplying contractor are essential to the agency's mission: And provided further, that no directive shall be issued by the Secretary under this subsection so long as the head of a contracting department or agency, or his or her designee, continues to object to the issuance of such directive.
- c. publish, or cause to be published, the names of contractors that have, in the judgment of the Secretary, failed to comply with the provisions of this order or of related rules, regulations, and orders of the Secretary.

Section 8. Reports.

Whenever the Secretary invokes section 7(a) or 7(b) of this order, the contracting department or agency shall report to the Secretary the results of the action it has taken within such time as the Secretary shall specify.

Section 9. Cooperation.

Each contracting department and agency shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions under this order.

Section 10. Sufficiency of Remedies.

If the Secretary finds that the authority vested in the Secretary by sections 5 through 9 of this order is not sufficient to effectuate the purposes of this order, the Secretary shall develop recommendations on how better to effectuate those purposes.

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Section 11. Delegation.

The Secretary may, in accordance with law, delegate any function or duty of the Secretary under this order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

Section 12. Implementation.

To the extent permitted by law, the Federal Acquisition Regulatory Council (FAR Council) shall take whatever action is required to implement in the Federal Acquisition Regulation (FAR) the provisions of this order and any related rules, regulations, or orders issued by the Secretary under this order and shall amend the FAR to require each solicitation of offers for a contract to include a provision that implements section 2 of this order.

Section 13. Revocation of Prior Order and Actions.

Executive Order 13201 of February 17, 2001, is revoked. The heads of executive departments and agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 13201.

Section 14. Severability.

If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstances shall not be affected thereby.

Section 15. General Provisions.

- a. Nothing in this order shall be construed to impair or otherwise affect:
 - i. authority granted by law to a department, agency, or the head thereof; or
 - ii. functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- b. This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- c. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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Section 16. Effective Date.

This order shall become effective immediately, and shall apply to contracts resulting from solicitations issued on or after the effective date of the rule promulgated by the Secretary pursuant to section 3(b) of this order.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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