



LABOR & EMPLOYMENT DEPARTMENT

ALERT

NEW INTERIM RULE REQUIRES COVERED FEDERAL CONTRACTORS TO REPORT TOP FIVE EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACTOR AWARDS FOR CERTAIN CONTRACTS

By Andrez Carberry

An interim rule issued by the federal government on July 8, 2010, requires that effective immediately (subject to the rollout period discussed below), covered federal contractors must report executive compensation and first-tier subcontract awards on contracts and orders expected to be valued at \$25,000 or more. Unless otherwise directed by the contracting officer, contractors must file the required reports by the end of the month following the month in which the covered subcontract award is made and annually thereafter.

This interim rule is the result of a joint effort among the Department of Defense, General Services Administration and the National Aeronautics and Space Administration and amends the Federal Acquisition Regulation to implement the Federal Funding Accountability and Transparency Act of 2006.

Required Reports

Under the interim rule, covered contractors must report:

- First-tier subcontractor awards or modifications on contracts expected to be valued at \$25,000 or more (including option contracts); and
- The names and total compensation of their five most highly compensated executives and the first-tier subcontractor(s) for the preceding completed fiscal year.

Reporting Timeline

The federal agencies acknowledged the far-reaching scope of this rule, and in an effort to minimize its impact on contractors, determined the rule will be implemented as follows:

- **Effective July 8, 2010:** Covered contractors must report newly awarded subcontracts of \$25,000 or more, if the prime contract is valued at \$20 million or more;
- **Effective October 1, 2010:** Covered contractors must report newly awarded subcontracts of \$25,000 or more, if the prime contract is valued at \$550,000 or more; and
- **Effective March 1, 2011:** Covered contractors must report newly awarded subcontracts of \$25,000 or more, if the prime contract is valued at \$25,000 or more.

Exceptions to the Reporting Requirements

- Contractors and subcontractors that gross less than \$300,000 annually from all sources;
- Classified solicitations and contracts;
- Contracts with individuals;
- Contracts or subcontracts valued at less than \$25,000;
- Contractors below the first-tier level, despite income source or size of subcontract; and

- Contractors are exempt from the executive compensation reporting requirements unless:
 - 80 percent or more of the contractor's or subcontractor's annual gross revenue is derived from federal contracts, subcontracts, loans, grants and cooperative agreements; and
 - \$25 million or more in annual gross revenue is derived from federal contracts, subcontracts, loans, grants and cooperative agreements; and
 - The public does not have access to information about the compensation of the senior executives through periodic reports filed under §13(a) or §15(d) of the Securities Exchange Act of 1934 or §6104 of the Internal Revenue Code of 1986.

Additional Requirements

In addition to the reporting requirements, going forward, all covered solicitations and contracts must contain the clause at FAR 52.204-10. Covered contractors are also charged with the responsibility of

informing their affected subcontractors that the required information will be made public.

Going Forward

Under the interim rule, failure to comply with the reporting requirements may lead to the contracting officer exercising "appropriate contractual remedies," and non-compliance will become a part of the contractor's performance information. Therefore, although this interim rule is being phased in to ease the burden on contractors, preparations should be made to ensure the necessary practices are developed to avoid costly mistakes and/or omissions by your company. Federal contractors should audit their contracts to determine whether they are subject to the interim rule and be cognizant of changes that may appear in the final rule.

For more information about this Alert, please contact Andrez S. Carberry at 212.878.7964 or acarberry@foxrothschild.com, or any member of our Labor & Employment Department.



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