

ALERT

LABOR & EMPLOYMENT LAW

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Federal Contractors Required to Report First-Tier Subcontract Awards In Excess of \$25,000

On July 7, 2010, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration issued an interim rule requiring federal contractors to make certain disclosures regarding first-tier subcontract awards. In particular, the rule requires contractors to report first-tier subcontract awards expected to be \$25,000 or more and, for certain larger government contractors, to report the executive compensation of the top five executives of both the contractor and subcontractor. (A “first-tier” subcontract is one made directly with the company contracting directly with the federal government.) In turn, this information will then be made available to the public. The interim rule is an outgrowth of the Federal Funding Accountability and Transparency Act of 2006, which required the Office of Management and Budget to create a free, public website containing full disclosure of all federal contract award information.

The interim rule does contain a number of exceptions to these reporting requirements. The reporting requirements do not apply to classified contracts, contracts with individuals, or contractors and subcontractors whose annual gross income is less than \$300,000. In addition, the executive compensation disclosures are only required of contractors and subcontractors if: (1) the entity receives at least \$25 million in annual gross revenue from federal contracts, loans, grants, and cooperative agreements; (2) the annual gross revenue from the federal contracts, loans, grants, and cooperative agreements makes up more than 80 percent of the entity’s annual gross revenue; and (3) the entity does not already publicly report the compensation of its senior executives.

While the interim rule takes effect immediately, its reporting requirements will be phased in based upon the size of the prime contract at issue. Until Sept. 30, 2010, any newly awarded subcontract must be reported if the prime contract award was \$20 million or more. From Oct. 1, 2010, to Feb. 28, 2011, the threshold will be lowered to prime contracts of \$550,000 or more. On March 1, 2011, the threshold will be further reduced to prime contracts of \$25,000 or more. The rule also states that interested parties should submit comments on the interim rule by Sept. 7, 2010, in order for those comments to be considered prior to the formulation of a final rule.

Employers with government contracts should take care to determine whether the interim rule applies to them, and determine the best methods for complying with it. They should also consider whether to submit comments in order to shape the formulation of a final rule.

To obtain more information please contact the Barnes & Thornburg Labor and Employment attorney with whom you work, or a leader of the firm's Labor and Employment Law Department in the following offices: Kenneth J. Yerkes, Chair (317) 231-7513; John T.L. Koenig, Atlanta (404) 264-4018; Norma W. Zeitler, Chicago (312) 214-8312; William A. Nolan, Columbus (614) 628-1401; Eric H.J. Stahlhut, Elkhart (574) 296-2524; Mark S. Kittaka, Fort Wayne (260) 425-4616; Michael A. Snapper, Grand Rapids (616) 742-3947; Peter A. Morse, Indianapolis (317) 231-7794; Kevin R. Coan, Minneapolis (612) 342-0324; Janilyn Brouwer Daub, South Bend (574) 237-1139; and Teresa L. Jakubowski, Washington, D.C. (202) 371-6366. Visit us online at www.btlaw.com/laborandemploymentlaw.

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