



**Final AGC Comments on the Regulations and Guidance
Proposed in Accordance with Executive Order 13673
Tuesday, June 7, 2016**

1. The proposed regulations would significantly increase the cost of competing for federal contracts and the cost of performing such contracts. To the same extent, they would erect new barriers to entry to the federal marketplace and erode the business case for pursuing federal contracts. The impact on small businesses would be particularly severe.
2. To mitigate the damage that the new scheme would otherwise cause, OIRA should require the FAR Council and the DOL to make the following adjustments to their original proposals:
 - i. Limit the reportable events to final judgments and admissions that the prospective contractor has violated one or more of the covered laws and executive orders;
 - ii. At least initially, and for a period of at least three years, limit the new reporting requirements, to prime contractors; and
 - iii. At any point at which the FAR Council and DOL may extend the new reporting requirements to subcontractors, limit the requirements to first-tier subcontractors and provide that the DOL shall be responsible for passing judgment on their eligibility for federal subcontracts.
3. To manage the risk that the cost of the new scheme and resulting damage will greatly exceed expectations, OIRA should also require the FAR Council and DOL to limit scope and cost of the labor compliance agreements so central to the new scheme that the FAR Council refers to them well over 100 times and DOL refers to them almost 30 more times. The proposed regulations and guidance omit, for example:
 - i. Any limitations on the duration of such agreements;
 - ii. Any limitations on the frequency, duration or depth of the training they might require;
 - iii. Any limitations on the frequency or depth of any recordkeeping or reporting they might require;
 - iv. Any limitations on the circumstances under which they might require a firm to go so far as to engage a third-party monitor; and
 - v. Any limitations on the "related matters" they might require a firm to address.
4. For the same reason, OIRA should also require the FAR Council and DOL to acknowledge and agree that the proposed regulations and guidance are inextricably intertwined and that OIRA therefore has the right to review any amendments or additions to either of those measures, specifically including any further "guidance" on the state laws that the new scheme covers.
5. In order to avoid confusion over roles and responsibilities, and limit the risk of resulting delays, OIRA should also require the FAR Council and DOL to clarify the scope and nature of each agency's responsibility for negotiating labor compliance agreements, for monitoring compliance with their terms and conditions, for communicating any questions or conclusions about or relating to compliance and for determining whether and to what extent any non-compliance will impact any prospective or current procurement.