



ATTORNEYS AT LAW

ADVISORY BULLETIN – June 18, 2010

## Reminder – Posting Requirements under Executive Order 13496 – Effective June 21, 2010

### I. Introduction

On May 20, 2010, the Office of Labor-Management Standards (OLMS) promulgated a final rule, codified as 29 C.F.R. 471, which implemented the requirements of Executive Order (EO) 13496 signed by President Barack Obama. This Executive Order and implementing rules require that federal contractors and subcontractors provide notice to their employees of the employees' rights to engage in union activities and of their collective bargaining powers with their employer.

### II. Who is Required to Comply

This rule applies to federal contractors and subcontractors unless one of the following exemptions applies:

- Prime contracts **under** the Simplified Acquisition Threshold set by Congress under the Office of Federal Procurement Policy Act. Currently the threshold is set at \$100,000.00.
- Contracts for **indefinite** amounts are exempt **only** if the contracting agency or contractor has reason to believe the amount to be ordered in any year under such contract will be less than the Simplified Acquisition Threshold.
- Subcontracts of \$10,000.00 or less are exempt **provided** the contractor and subcontractor do not engage in contracting activities to avoid the applicability of EO 13496.
- Contracts and subcontracts for work performed **exclusively** outside the territorial United States.

### III. Requirements for Compliance

In order to be in compliance with this rule, a federal contractor or subcontractor must meet (i) a notice requirement, and (ii) a contract clause requirement.

## A. Notice Requirement

All federal contractors and subcontractors covered by this rule must provide notice to their employees.

### i) Physical Notice

- If a contractor or subcontractor generally posts physical notices to employees, the notice language of this rule must also be posted physically.
- Physical notice must be placed:
  - In **conspicuous** places in and about the contractor's plants and offices so that the notice is seen by employees, and
  - Where employees covered by NLRA engage in activities relating to the performance of a contract which includes work that directly fulfills the contractual obligation or is necessary to the performance of the contract.
- If a **significant** portion of a contractor or subcontractor's workforce is not proficient in English, the notice must be provided in the language that the employees speak.

### ii) Electronic Notice

- If a contractor or subcontractor usually posts notices to employees electronically, the notice language of this rule must also be posted electronically.

### iii) Text of Notice

- The text of the notice is set forth in 29 C.F.R. 471 Appendix A to Subpart A.
- A copy of the required language is provided [here](#).

## B. Contracting Clause Requirement

- All Government contracts covered by this rule must contain the relevant [language](#) set forth in Appendix A to Subpart A to 29 C.F.R. 471.
- The contracting clause requirement can be met by reference to 29 C.F.R. Part 471, Appendix A to Subpart A. In other words, the notice clause need not be quoted verbatim in a contract, subcontract, or purchase order you enter **as long as** the citation is provided.

## IV. Non-Compliance

Under the new rules, the penalties for non-compliance may include:

- The cancellation, termination, or suspension of the contract.
- Disbarment of a non-complying contractor which would restrict a contracting agency from entering into future contracts or extending existing contracts with the non-complying contractor.
- Disbarment of a non-complying subcontractor which would restrict a contracting agency from entering into future contracts with a non-complying subcontractor.