



**U.S. Department
of Transportation**

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

ACTION: Class Deviation
CD-17-002

August 30, 2017

SUBJECT: Removal of Fair Pay and Safe Workplaces Final Rule and
Executive Order 13673

FROM: Willie H. Smith
Senior Procurement Executive, M-60

TO: Chief of the Contracting Office (COCO)
Acquisition Personnel

In accordance with Federal Acquisition Regulation (FAR) 1.404 and CAAC Letter 2017-01, dated June 12, 2017, I authorize a class deviation from the Federal Acquisition Regulation (FAR) to remove the Fair Pay and Safe Workplaces final rule (FAR Case 2014-025). Under the Congressional Review Act (5 U.S.C. Chapter 8), House Joint Resolution 37 (H.J.R. 37) was signed into law, Pub. L. 115-11, on March 27, 2017 to disapprove the FAR rule (81 FR 58562) which implements Executive Order (E.O.) 13673, Fair Pay and Safe Workplaces. This law states that the rule shall have no force or effect. On the same date, the President signed E.O. 13782, which revoked the E.O. underlying this rule.

Many sections of the FAR rule were already enjoined by the United States District Court for the Eastern District of Texas. Accordingly, no solicitations or contracts should have included FAR 52.222-57, 52.222-58, 52.222-59, 52.222-61, or paragraph (s) of the provision at 52.212-3. However, the Court Order did not enjoin implementation of the FAR rule addressing paycheck transparency requirements in the E.O., including FAR 22.2005, 22.2007(d), and clause 52.222-60 (see Policy Flash 2017-12). This coverage, which became effective for new solicitations issued on or after January 1, 2017, is now null and void.

A rulemaking has been undertaken to formally remove the coverage addressing the implementation of E.O. 13673 from the FAR. However, because the rule is null and void, all of the following steps should be followed at a minimum in the meantime.

1. Ensure new solicitations do not include clause 52.222-60;
2. If a solicitation has been issued with the clause 52.222-60, amend those solicitations immediately to remove the clause; and
3. If a contract has been issued that contains clause 52.222-60, modify the contract to delete the clause.

Agencies have the discretion to use a revised (cleaned) version of the provision at 52.212-3 (see Attachment 1). This version of the 52.212-3 removes the changes made by the disapproved FAR rule 2014-025. This includes removing:

1. The following definitions: "Administrative merits determination" , "Arbitral award or decision", "Civil judgment", "DOL Guidance" , "Enforcement agency", "Labor compliance agreement", "Labor laws", and "Labor law decision";
2. Paragraph (s) and reserving it; and
3. The injunction notes at paragraphs (a) and (s) added by FAR case 2014-025 (Injunction) published December 16, 2016 at 81 FR 91636.

This class deviation remains in effect until it is incorporated into the FAR, or is otherwise rescinded. Questions concerning this class deviation should be directed to LaWanda Morton-Chunn at lawanda.morton-chunn@dot.gov or (202) 366-2267.

Enclosure: Attachment 1