

FAR Council Withdraws Proposed Rule on Federal Contractor Pay Requests

On January 8, 2025, the Federal Acquisition Regulatory (FAR) Council withdrew its Proposed Rule on Pay Equity and Transparency in Federal Contracting (the proposed rule), which was initially introduced in January 2024. This proposed rule would have prohibited federal contractors from obtaining or considering an applicant's past compensation history in employment decisions. It also would have required contractors to disclose compensation information in job listings for work related to a federal contract. Although many states already have similar pay equity rules in place, federal contractors will no longer need to worry about overlapping (and perhaps at times conflicting) federal versus state requirements in this area.

The Proposed Rule

The now withdrawn proposed rule was an outgrowth of President Biden's March 2022 Executive Order 14069, "Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency." This executive order directed the FAR Council to consider rules that would limit contractors "from seeking and considering information about job applicants' and employees' existing or past compensation when making employment decisions." The stated rationale for the rule was to improve outcomes for applicants by reducing ethnic and gender pay gaps, reducing pay secrecy and increasing opportunities for applicants to negotiate job salary and benefits.

As noted above, the proposed rule included several hiring-related limitations and requirements that would have applied to all federal prime and subcontractors. First, the proposed rule prohibited requesting or using compensation history in the hiring and compensation decision making process of employees working on or in connection with a government contract. Second, the proposed rule required contractors to disclose benefits and compensation ranges for positions performing work "in connection with" a federal government contract. In practice, this part of the rule would have required job advertisements related to federal contract work to include salary, wages, and a general description of the benefits offered to employees (undermining contractor/employer negotiation and bargaining power). Lastly, the proposed rule provided a framework for applicants to report federal contractor non-compliance with the requirements of the rule.

Withdrawal of the Proposed Rule

The withdrawal of the proposed rule should not come as a complete surprise given the pending change in administration and likely is just the first example of future withdrawals of proposed rules (and existing regulations) issued by the Biden administration that arguably could be tied to efforts to promote diversity, equity, and inclusion initiatives in the federal government. Of course, state pay equity rules addressing this topic (which currently exist in more than 20 states) are still operative and enforceable so contractors operating in a covered jurisdiction still may need to address similar requirements.

More broadly, this rule withdrawal serves as one example of the state of flux that the federal regulatory regime is entering and provides a preview on the incoming administration's likely stance on government contracting and labor policy. The withdrawal also illustrates how important it is for federal government contractors to remain engaged on these issues and be prepared to adapt, especially as the regulatory landscape continues to quickly shift under the new administration.



Eric Leonard

**Co-Chair,
Government
Contracts**

eleonard@cozen.com
Phone: (202) 280-6536
Fax: (202) 861-1905



Lawrence M. Prosen

Member

lprosen@cozen.com
Phone: (202) 304-1449
Fax: (202) 861-1905



Rachel Schwartz

Associate

rschwartz@cozen.com
Phone: (202) 280-6507
Fax: (202) 742-2539

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This article also includes contributions from Cozen O'Connor law clerk, Kristina Zaslavskaya.