



Jim Haining <jhaining@gmail.com>

My comments as to Executive Order 13658 and the Service Contract Act (SCA)

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**Housing Agency Procurement Assistance**

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Dear Procurement Professionals:

Within this mentoring Notice I will address two separate issues:

(1) Pertaining to **Executive Order 13658**, I have received the following information from a number of folks asking for comment (e.g. does this issue apply to our housing agency?).

FACT SHEET: PROPOSED RULEMAKING TO IMPLEMENT EXECUTIVE ORDER 13658, ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

<http://www.dol.gov/whd/flsa/nprm-EO13658/factsheet.htm>

It is my opinion that this Notice from the United States Department of Labor DOES NOT apply to housing agencies; to wit:

(1a) Within the introductory paragraph it states the the minimum set wage is "for all workers on Federal construction and service contracts." Please remember that though we are typically spending monies that are grants from the Federal government, as housing agencies we are NOT Federal agencies but are local governmental agencies that receive Federal grants (see Section 1.3 of HUD Procurement Handbook 7460.8 REV 2), so our work sites are not considered to be "Federal construction" work sites but are local government construction work sites.

(1b) I acknowledge that within the next paragraph of the attached the Notice makes reference that the Order pertains to "all contracts for construction covered by the Davis-Bacon Act," which construction contracts for housing agencies typically do fall within; however, Davis-Bacon wages determinations issued for a construction project will come to us directly from the Federal Government, so there is no need of any further corrective action on our part pertaining to such wage determinations (e.g. if the Federal Government issues us a Davis-Bacon wage rate for a certain construction-related job, that wage rate as issued is going to be the wage rate without any input or discussion from our agency).

CONCLUSION: From a careful reading of the language throughout the Notice, and taking into consideration the preceding two thoughts, it is clear that there is no requirement on our part to take any action to implement Executive Order 13658 because it applies to Federal Agencies, not local governmental agencies that expend Federal monies.

(2) Pertaining to the **Service Contract Act (SCA)**, please see the following link:

https://www.dol.gov/whd/regs/compliance/web/SCA_FAQ.htm

Addressing this issue is very simple; to wit: Within the very first sentence of the first paragraph it

states, "The Service Contract Act applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services in the United States through the use of service employees."

CONCLUSION: Housing Agencies do not implement the requirements of the SCA because our contracts are not a "contract entered into by the United States." Our agency is a local governmental agency expending funds granted to us by the Federal government.

I hope that this information is of a help.

Regards,

Michael S. Gifford, C.P.M., CPSD
Housing Agency Procurement Assistance

I have a consulting practice providing procurement- and contracts-related mentoring, training, and technical assistance to housing agencies. I help housing agencies conduct procurement and contracts in a HUD-compliant and "best practice" manner. [Click here](#) to see my full resume. Please do not hesitate to contact me if you have any questions or concerns pertaining to procurement and contracts (initial answering of questions is "no charge"). As I am either on-the-road or on the phone a lot, an initial contact by e-mail is best; please be sure to include your return telephone number (office/cellular) so that I can call you back.

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