



Jim Haining <jhaining@gmail.com>

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## IMPORTANT FOLLOW-UP MESSAGE PERTAINING TO MY NOTICE DISTRIBUTED July 18th! (RE: My comments as to Executive Order 13658 and the Service Contract Act (SCA))

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HAPA <mgifford@procurementassistance.org>  
Reply-To: HAPA <mgifford@procurementassistance.org>  
To: jhaining@gmail.com

Thu, Jul 21, 2016 at 8:21 AM



Housing Agency Procurement Assistance

Housing Agency Procurement Assistance

Dear Procurement Professionals:

Immediately following is the Notice that I distributed on July 18th.

Following that Notice is a copy of a Notice and Letter that HUD issued in January, 2015, which confirms my opinion/comments stated following. A big thank you to Tom Hornack of Lakeland Housing Authority in FL for forwarding this information to me.

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



Housing Agency Procurement Assistance

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](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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VERIBAGE FROM THE HUD NOTICE ISSUED IN JANUARY, 2015:

Davis-Bacon wage decisions now include a note about Executive Order 13658, which concerns wages paid on federal contracts. We are distributing the attached clarification as the Executive Order does not apply to construction work subject to prevailing wage requirements under the "Related Acts" rather than the Davis-Bacon statute itself. This means CDBG, HOME, Public Housing, and Housing programs are not affected by the EO. HUD may have construction work subject to "pure" Davis-Bacon (i.e. property disposition) but not our grantees.

I hope you will be able to use this as you deal with questions from contractors, consultants, and staff.

Steve


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